

Basketball WA

Constitution
22 April 2013

Basketball WA - Constitution

1. Name	4
2. Definitions and Interpretations	4
3. Objects of Basketball WA	6
4. Powers of Basketball WA	7
5. Status and Compliance of Basketball WA	7
6. Source of Funds and Application of Income	8
7. Members	8
8. Register of Members	9
9. Membership	10
10. Effect of Membership	11
11. Subscriptions and Fees	11
12. Discontinuance of Membership	11
13. Discipline of Members	11
14. General Meetings	12
15. Business	12
16. Notice of Motion	13
17. Special General Meetings	13
18. Proceedings at General Meetings	13
19. Voting at General Meetings and for the Board	15
20. Role of the Board	15
21. Composition of the Board	16

22.	Elected Board Members	16
23.	Appointed Board Members	17
24.	Vacancies of Board Members	18
25.	Meetings of the Board	19
26.	Conflicts	20
27.	Chief Executive Officer	21
28.	Delegations	21
29.	By-Laws	21
30.	Records and Accounts	22
31.	Auditor	22
32.	Notice	22
33.	Seal	23
34.	Amendments to Constitution	23
35.	Indemnity	23
36.	Dissolution	24
37.	Disputes and Mediation	24
38.	Effect of These Rules	25
39.	Transitional Arrangements	25

Basketball WA - Constitution

1. Name

The name of the incorporated association is the Western Australian Basketball Federation (Inc) (**Basketball WA**).

2. Definitions and Interpretations

2.1 Definitions

In this Constitution:

Act means the *Associations Incorporation Act 1987 (WA)*.

Affiliated Association(s) means:

- (a) Affiliated Country and Metropolitan Basketball Associations that pay affiliation fees, as required from time to time to Basketball WA.
- (b) Country Affiliated Associations and Metropolitan Affiliated Associations are as defined by the Board from time to time. ;
- (c) any other group that may be admitted as an Affiliated Association by the Board, which may include but is not limited to Recreation Centres.

AGM means the annual general meeting of Basketball WA.

Appointed Board Member means a Board Member appointed under Rule 27.

Basketball Australia (BA) means Basketball Australia Limited trading as Basketball Australia.

BA's Constitution means:

- (d) the Constitution of Basketball Australia; and
- (e) any by-laws of Basketball Australia,

in each case as amended from time to time.

BA's Objects means the objects of Basketball Australia as defined from time to time in BA's Constitution.

Board means the Board of Basketball WA.

Board Member means a member of the Board.

By-Laws have the meaning given in Rule 33.

Chair means the person who chairs the Board from time to time.

Chief Executive Officer (CEO) means the person who is appointed to carry out the duties set out in Rule 31.

CPI means the Consumer Price Index (All Groups) Perth for the preceding 12 months to 30 September as published by the Australian Bureau of Statistics.

Elected Board Member means a Board Member elected under Rule 26.

FIBA means the International Basketball Federation being the world governing body.

Financial Year means the calendar year ending 31 December in each year.

General Meeting means any general meeting of Basketball WA.

Intellectual Property means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, patents or service marks (whether registered or registrable) relating to Basketball WA or any event, competition or basketball activity of or conducted, promoted or administered by Basketball WA.

Life Member means an individual upon whom life membership of Basketball WA has been conferred under Rule 7.3.

Member means a member for the time being of Basketball WA under Rule 7.

Membership means membership of Basketball WA.

Objects mean Basketball WA's objects, as set out in Rule 3.

Recreation Centres means those sports facilities running basketball programs and competitions that:

- (a) pay an affiliation fee to Basketball WA; and
- (b) are not managed by Basketball WA,

but does not include any such facility if it is otherwise a member of, or otherwise represented by, an Affiliated Association.

Rule(s) means these Rule(s) of Basketball WA.

Seal means the common seal of Basketball WA and includes any official seal of Basketball WA.

Special Resolution means a resolution:

- (a) put at a General Meeting of Basketball WA of which 21 days notice, accompanied by notice of intention to propose the resolution as a special resolution, has been given to the Affiliated Associations in accordance with this Constitution; and
- (b) passed by at least two thirds of the votes entitled to be cast at that meeting.

State Association means a body that is or may be recognised by Basketball Australia as the controlling body of and for basketball in a State.

2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) another grammatical form of a defined word or expression has a corresponding meaning;

- (g) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (i) a reference to 'writing' will unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the Rule or phrase cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance will not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

2.4 Expressions in Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter dealt with by a particular provision of the Act has the same meaning as that provision of the Act.

2.5 Lack of Provision or Reasonable Doubt

- (a) If:
 - (i) any circumstances arise for which no provision is made by this Constitution;
 - (ii) there arises any reasonable doubt as to the interpretation of the Rules in any circumstances; or
 - (iii) there is any reasonable doubt as to the correct procedure to be adopted on any occasion,

then the Board, having regard to this Constitution, may decide the matter and may direct what shall be done in each particular instance or may interpret the Constitution or direct what shall be done in a particular case.
- (b) Such direction, interpretation or decision of the Board shall be set out in the agenda for the next General Meeting and, until rescinded or amended by the Board or disallowed by a resolution of a General Meeting, it shall have the same validity and effect as if specifically included in this Constitution.
- (c) Any such decision, interpretation or direction may be considered at a General Meeting without any notice being given of the intention to consider it.

3. Objects of Basketball WA

Basketball WA is the peak body for the administration of the sport of basketball in Western Australia. The objects for which Basketball WA is established and maintained are to:

- (a) regulate, encourage, administer, promote and advance basketball in Western Australia through participation, development, competition, facility development and commercial means;
- (b) formulate and/or adopt and implement appropriate policies in relation to such matters as arise from time to time as issues to be addressed in basketball;
- (c) adopt, formulate, issue, interpret, implement and amend from time to time such by-laws and regulations as are necessary for the administration and development of basketball in Western Australia;
- (d) develop, administer and control the sport of basketball in Western Australia in accordance with and having regard to the General Statutes and Internal Regulations and other rules of FIBA and the By-Laws and any Regulations of Basketball Australia;
- (e) undertake and/or do all such things or activities as are necessary, incidental or conducive to the advancement of the Objects.

4. Powers of Basketball WA

In addition to the rights, powers and privileges provided under the Act, Basketball WA has power to do all such acts and things as are incidental, conducive or subsidiary to all or any of the objects of Basketball WA.

5. Status and Compliance of Basketball WA

5.1 Recognition of Basketball WA

- (a) Basketball WA is recognised by the Government of Western Australia, Basketball Australia and other sporting organisations as the controlling body for the sport of basketball in Western Australia.
- (b) Basketball WA is the only sporting body in Western Australia affiliated to Basketball Australia in respect of the sport of basketball.
- (c) Basketball WA has, pursuant to its position as the State Association in relation to Western Australia for the purposes of Basketball Australia's Constitution, agreed to be bound by the Constitution of Basketball Australia.

5.2 Compliance of Basketball WA

The Members acknowledge and agree that Basketball WA will:

- (a) be or remain incorporated in Western Australia;
- (b) where deemed appropriate by the Board:
 - (i) use its best endeavours to comply with and be bound by the standards and technical requirements of Basketball Australia; and
 - (ii) to the best of its ability uphold and enforce the policies and procedures published from time to time by Basketball Australia.

5.3 Operation of Rules

- (a) Basketball WA and its Members acknowledge and agree that they are bound by these Rules and that these Rules operate to create uniformity in the way in which

the Objects of Basketball WA and basketball are conducted, promoted, encouraged and administered throughout Western Australia.

- (b) All Affiliated Associations acknowledge and agree that upon applying for membership of Basketball WA, they consent to their Associations and their members being members of Basketball WA and Basketball Australia and are bound by this Constitution and the Constitution of Basketball Australia.

6. Source of Funds and Application of Income

- (a) The funds of Basketball WA may be derived from annual membership subscriptions, fees and levies payable by Members, competition fees, facility hire, donations, grants, sponsorships and such other sources as the Board determines.
- (b) The income and property of Basketball WA must be applied solely towards the promotion of the Objects.
- (c) Except as prescribed in this Constitution:
 - (i) no portion of the income or property of Basketball WA shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
 - (ii) no remuneration or other benefit in money or money's worth shall be paid or given by Basketball WA to any Member who holds any office of Basketball WA.
- (d) Nothing contained in Rules 6(b) or (c) shall prevent payment in good faith of or to any Member or member of any Affiliated Association:
 - (i) for any services actually rendered to Basketball WA, whether as an employee or otherwise;
 - (ii) for goods supplied to Basketball WA in the ordinary and usual course of business;
 - (iii) of interest on money borrowed from any Member;
 - (iv) of rent for premises demised or let by any Member to Basketball WA;
 - (v) of any out-of-pocket expenses incurred by the Member on behalf of Basketball WA;
 - (vi) of grants to regulate, encourage, administer, promote, advance and manage basketball in Western Australia through participation, development and competition programs; or
 - (vii) any other reason;

provided that any such payment must not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

7. Members

7.1 Category of Members

The Members of Basketball WA shall consist of:

- (a) the Affiliated Associations;

- (b) Life Members; and
- (c) such new categories of Members, created in accordance with Rule 7.2.

7.2 Creation of New Categories

The Board has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights unless the prior approval of the Members is first obtained by special resolution at a General Meeting.

7.3 Life Members

- (a) The Board or an Affiliated Association may nominate a person who has rendered distinguished or special service to basketball in Western Australia for life membership of Basketball WA. The nomination must be on the prescribed form (if any) and must be submitted to the CEO at least 21 days before the date set down for the next AGM.
- (b) A nomination for Life Membership will be considered by the Board and if successful, announced and minuted at the Annual General Meeting.
- (c) Conditions, obligations and privileges of life membership shall be as prescribed in the By-Laws.
- (d) Existing Life Members at the time of adoption of this Constitution will be retained.

7.4 Liability of Members

The liability of the Members of Basketball WA is limited.

8. Register of Members

8.1 CEO to keep Register

The CEO will keep and maintain:

- (a) a register of all Affiliated Associations and their members in which will be entered such information as is required under the Act from time to time, and
- (b) a record of the names and residential or postal addresses of persons who hold office with Basketball WA.

8.2 Inspection of Register

An extract of the Register of any members, or office bearers, will be available for inspection by Members upon request. A member may copy but not remove the register of members.

8.3 Use of Register

The Register may be used by Basketball WA to further the Objects of Basketball WA, as the Board considers appropriate.

8.4 Right of Basketball Australia to Access Register

- (a) Subject to the limitations contained in the Privacy Act 1988 (Cth), Basketball WA may provide a copy of the Register to Basketball Australia at a time and in a form acceptable to Basketball Australia and may provide regular updates of the Register to Basketball Australia. Basketball Australia may use the information contained in the Register and the Register itself to further the Objects of Basketball Australia, subject to reasonable confidentiality and privacy considerations.

- (b) Basketball WA may enter into arrangements with Basketball Australia to manage the whole or parts of the Register on its behalf, subject to the limitations contained in the Privacy Act 1988 (Cth).

9. Membership

9.1 Application for Membership

An application for new membership by an Affiliated Association must be:

- (a) in writing on the forms prescribed by the Board and lodged with the CEO for Board acceptance and
- (b) accompanied by the appropriate fee.

9.2 Discretion to Accept or Reject Application

Basketball WA may accept or reject an application.

- (a) Where Basketball WA accepts an application, the applicant shall become a Member. Membership of Basketball WA shall be deemed to commence upon acceptance of the application by Basketball WA
- (b) If an application is rejected, upon the request of the applicant, the reasons for the rejection of the membership application shall be provided.
- (c) Where Basketball WA rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by Basketball WA.

9.3 Membership Renewal

- (a) Affiliated Associations shall:
 - (i) renew their membership with Basketball WA in accordance with the procedures applicable from time to time;
 - (ii) pay the annual fees prescribed by Basketball WA and
 - (iii) pay any arrears (by way of agreement to a payment plan or otherwise) in accordance with the procedures applicable from time to time.

9.4 Obligations of Affiliated Associations

Affiliated Associations will:

- (a) be or remain incorporated in Western Australia;
- (b) have objects that align with the Objects of Basketball WA and do all that is necessary to enable the Objects to be achieved;
- (c) maintain a database of all affiliated clubs and the individual members registered with each affiliated club and provide a copy of this information to Basketball WA on an annual basis;
- (d) if having serious administrative, operational or financial difficulties, advise the CEO as soon as practicable of those difficulties;
- (e) acknowledge that, where the CEO has been advised or otherwise becomes aware of such difficulties, Basketball WA may, become involved by whatever means both parties agree, to address such difficulties.

10. Effect of Membership

Affiliated Associations and each of the members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and Basketball WA and that they are bound by the Constitution and the By-Laws;
- (b) they will comply with and observe the Constitution and the By-Laws
- (c) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of Basketball WA, the Members and the sport of basketball; and
- (d) the Constitution and By-Laws are necessary and reasonable for promoting the objects of Basketball WA and particularly the advancement and protection of the sport of basketball in Western Australia;

11. Subscriptions and Fees

- (a) The annual Membership subscription (if any), and any other fees, levies, charges and other amounts payable by Members (or any category of Members) to Basketball WA, will be as determined by the Board from time to time.
- (b) Notwithstanding Rule 11 (a), the Board may not increase the annual Membership subscription by more than CPI or 5% whichever is the greater, above the Membership subscription applicable to the immediately preceding year, unless approved by special resolution passed at a General Meeting.
- (c) Any Member who has not paid all monies due and payable by that Member to Basketball WA will (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Board's discretion.

12. Discontinuance of Membership

12.1 Discontinuance of Membership

For the purposes of this Constitution, the Board may remove any Affiliated Association as a Member of BWA for just cause.

12.2 Membership may be Reinstated

A body that has been removed under Rule 12.1 may be reinstated at the discretion of the Board, on application in accordance with this Constitution and otherwise on such conditions as the Board sees fit.

12.3 Cessation of Membership

When an Affiliated Association ceases to be a Member in accordance with this Constitution or the Act, the affiliated clubs and individual members of that Association may apply to Basketball WA and become Members in accordance with this Constitution.

13. Discipline of Members

13.1 Disciplinary Committee

- (a) Where the Board is advised or considers that a Member has allegedly:

- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
 - (ii) acted in a manner unbecoming of a Member or prejudicial to the objects and interests of Basketball WA and/or the sport of Basketball; or
 - (iii) brought Basketball WA or the sport of Basketball into disrepute;
- (b) the Board may commence or cause to be commenced disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, disciplinary procedures, penalties and appeal mechanisms (if any) of Basketball WA as determined from time to time.
- (c) The Board may appoint a disciplinary committee to deal with any disciplinary matter referred to it. Such a disciplinary committee shall operate under the principles expressed in the By-Laws.

14. General Meetings

14.1 General Meetings

There will be a minimum of one General Meeting each year, which will be treated as, and must comply with the requirements of the Act in relation to, Basketball WA's AGM. The date, time and venue of this General Meeting will be as determined by the Board.

14.2 Notice of Meeting

- (a) Notice of every General Meeting will be given to every Member.
- (b) At least 28 days written notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given of any General Meeting. The notice must:
 - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (ii) state the general nature of the meeting's business;
 - (iii) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and that resolution;

14.3 Place of Meeting

A General Meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

15. Business

15.1 Business of General Meetings

- (a) The Business to be transacted at the Annual General Meeting includes the consideration of accounts and the reports of the Board and auditor, on the election of Board Members and announcement of new Life Members (if any)
- (b) All business transacted at a General Meeting, and at an Annual General Meeting, with the exception of those matters referred to in Rule 15.1 (a) will be special business.

15.2 Business Transacted

No business other than that stated on the notice of meeting will be transacted at that meeting.

16. Notice of Motion

Notices of Motion

Notice in writing of all motions for consideration at a General Meeting must be received by the CEO at least 14 days prior to the date of the meeting. Notices received within this time shall be placed on the agenda for the relevant meeting. A copy of all notices of motion received by the CEO will be communicated to each Member and Board Member at least 10 days prior to the General Meeting concerned.

17. Special General Meetings

17.1 Special General Meetings May be Held

The Board may, whenever it thinks fit, convene a Special General Meeting and, where, but for this Rule more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

17.2 Request for Special General Meetings

- (a) The Board shall on the request in writing of 30% of the Affiliated Associations convene a Special General Meeting.
- (b) The request for a Special General Meeting shall state the object(s) of the meeting; be signed by the Members making the request under Rule 17.2 (a) and be sent to Basketball WA. The request may consist of several documents in a like form, each signed by one or more of the Members making the request.
- (c) If the Board does not cause a Special General Meeting to be held within 6 weeks after the date on which the request is sent to Basketball WA, the Members making the request, or any of them, may convene a Special General Meeting to be held not later than 6 weeks after that date.
- (d) A Special General Meeting convened by the Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.
- (e) If the Board receives a written request to convene a Special General Meeting under these Rules within the 60 day period before the AGM, Basketball WA may deal with the matters set out in the request or notice of appeal at the AGM.

18. Proceedings at General Meetings

18.1 Quorum

The quorum for a General Meeting is ten (10) Affiliated Associations The quorum must be present at all times during the meeting.

18.2 Chair of General Meeting

The Chair will chair every General Meeting. If the Chair is unavailable, the Deputy Chair shall be the Chair. If both are unavailable within 15 minutes of the start time of the meeting then the Members present may elect a Chair from those present.

18.3 Adjournment for lack of Quorum

If a General Meeting does not have a quorum present within thirty minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the CEO or Chair specifies. If the CEO or Chair does not specify one or more of these things, then the meeting is adjourned to:

- (a) if the date is not specified - the same day in the following week; and
- (b) if the time is not specified - the same time; and
- (c) if the place is not specified - the same place.

18.4 Adjournment Generally

The Chair of a General Meeting may, in accordance with the Act, at any meeting at which a quorum is present (and will if so directed by the meeting), adjourn the General Meeting from time to time and from place to place. No business will be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place. When a General Meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

18.5 Lack of Quorum at Adjourned Meeting

If no quorum is present at the resumed meeting within thirty minutes after the time for the meeting, then:

- (a) if the meeting was called as a consequence of a request of Members, the meeting is dissolved;
- (b) in all other cases, the Members present are a quorum.

18.6 Voting Procedure

Unless a General Meeting is being held electronically, a resolution put to the vote at a General Meeting must be decided on a show of hands or in the case of an electronic meeting, verbally unless a poll is demanded. Where a General Meeting is being held electronically voting shall be verbal unless otherwise ruled by the Chair. A poll may be demanded by:

- (a) at least three Members present and entitled to vote on the resolution; or
- (b) the Chair of the General Meeting.

The poll may be demanded before a vote is taken or before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

18.7 Recording of Determinations

Unless a poll is demanded under Rule 18.8, a declaration by the Chair of the General Meeting that a resolution has, on a show of hands or in the case of an electronic meeting verbally, been carried or carried unanimously or lost is conclusive evidence of the result provided that the declaration reflects the show of hands or verbal determination. Neither the Chair nor the minutes need state the number or proportion of the votes recorded in favour or against.

18.8 Demand for poll

Subject to Rule 18.6, a poll may be demanded on any resolution. A poll demanded on a matter must be taken when and in the manner the Chair directs. A demand for a poll may be withdrawn.

19. Voting at General Meetings and for the Board

19.1 Voting

- (a) Every Affiliated Association will have one vote.
- (b) In addition, every Affiliated Association will have in respect of every General Meeting:
 - (i) where the Affiliated Association is fully financial with Basketball WA, one (1) additional vote for each fifty persons (50) or part of fifty persons registered with Basketball WA and in respect of whom registration fees have been paid to Basketball WA; or
- (c) On the election of the Board, the votes of every Member will be counted on the basis that each Member entitled to vote has one vote and in the case of every Member who is an Affiliated Association, that that Member has in addition the number of votes calculated in accordance with Rule 19.1(b).
- (d) On a poll at a General Meeting the votes of every Member will be counted on the basis that each Member entitled to vote has one vote and in the case of every Member who is an Affiliated Association, that that Member has in addition the number of votes calculated in accordance with Rule 19.1(b).
- (e) Registered numbers used by Basketball WA under Rule 19.1(b) will be based on those submitted by Affiliated Associations in accordance with Rule 9.4(c).

19.2 Entitlement to vote

- (a) No Member is entitled to vote at any General Meeting if that Member is unfinancial.
- (b) Life Members, may attend and at the discretion of the Chair, debate at General meetings but shall not be entitled to vote.

19.3 Postal Voting

Should an issue arise between General Meetings which requires a decision or ratification, the Board may determine that the matter be dealt with by a postal vote or other remote voting method. The CEO will notify all Members of the proposition to be answered 'for' or 'against', and set the time for such voting to be considered. After the time fixed has elapsed, votes from Members will be counted by the CEO and the Chair and the proposition resolved. The result of a postal vote will be conveyed to all Members by the CEO.

20. Role of the Board

Subject to the Act and this Constitution, the Board will manage the business of Basketball WA and exercise the powers of Basketball WA. In particular, the Board will:

- (a) act on all issues in accordance with the Objects and shall operate for the collective and mutual benefit of Basketball WA, the Affiliated Associations and the sport of basketball throughout Western Australia;
- (b) govern the sport of basketball in Western Australia in accordance with the Objects;
- (c) determine major strategic directions of Basketball WA;
- (d) review Basketball WA's performance in achieving its strategic plan objectives;
- (e) appoint a CEO for such term and on such conditions as it thinks fit and will monitor, evaluate, set remuneration and have the power to remove the CEO.; and
- (f) ensure an appropriate risk management framework is in place.

21. Composition of the Board

21.1 Board Composition

The Board will consist of:

- (a) five Elected Board Members nominated by the Affiliated Associations in accordance with Rule 22;
- (b) two Appointed Board Members appointed by the five Elected Board Members in accordance with Rule 23.

21.2 Chair of Board

- (a) The position of Chair shall be appointed by the Board from amongst its members as soon as practicable after each AGM. The appointee will hold the position until the conclusion of the next AGM following his or her appointment. A Board Member may be re-appointed as Chair.
- (b) The position of Deputy Chair shall be appointed by the Board from amongst its members as soon as practicable after each AGM. The appointee will hold the position until the conclusion of the next AGM following his or her appointment. A Board Member may be re-appointed as Deputy Chair.

22. Elected Board Members

22.1 Qualifications for an Elected Board Member

An Elected Board Member must be a minimum of 18 years of age and may have specific skills in commerce, finance, marketing, law or business generally or such other skills which would further the Objects of Basketball WA.

22.2 Notice Seeking Nominations

At least 42 days prior to the date of the Annual General Meeting (excluding the meeting date) in each year, a Notice Seeking Nominations will be given to each Member, notifying each Member of the positions on the Board for which an election is to be held, and calling on Members to nominate persons for election to the Board.

22.3 Lodgement of Nominations

Following service of the Notice Seeking Nominations, any person desiring to nominate for election to the Board will lodge with Basketball WA at the offices of Basketball WA within 14 days of the date of the notice:

- (a) A duly completed nomination form, signed by the person who is the candidate for election, and countersigned by one Affiliated Association Representative who nominated the candidate for election.
- (b) If desired, a written statement of not more than 200 words specifying background information concerning the person who is the candidate for election and particulars of any policies or matters that person intends to adopt, if elected.

22.4 Voting Procedure

- (a) At least 21 days prior to the date of the Annual General meeting, each Member entitled to vote will be forwarded a Notice of Candidates for Election and a Voting Form.
- (b) If there are only the required number of candidates for any position on the Board, or no candidate for a position, then the Notice of Candidates for Election will specify the position in that regard.
- (c) Subject to Rule 22.3(b) the Notice of Candidates for Election will:
 - (i) specify the number of positions on the Board for which an election is required to be held;
 - (ii) specify the names of each candidate for election;
 - (iii) incorporate if supplied by a candidate, the written statement relating to the candidate which a candidate is entitled to furnish; and
- (d) The Notice of Candidates for Election and the Voting Form will be in a format approved by the Board.
- (e) Each Member desiring to vote for the election of a Board Member will complete and return the Voting Form to Basketball WA by no later than 5.00pm, 10 days prior to the Annual General Meeting (excluding the day of the meeting).
- (f) At the Annual General Meeting of Basketball WA, the Chair of the Annual General Meeting will announce the result of the election of the Board.

22.5 Audit Verification of Voting

The Auditor of Basketball WA will check and verify the voting for the Board and will prepare a report on the election for the Annual General Meeting.

22.6 Term of Appointment of Elected Board Members

- (a) Elected Board Members will serve on the Board in accordance with this Constitution for a term of two years, or to the second AGM after appointment, whichever is the earlier.
- (b) To ensure rotational terms, after the initial arrangements outlined in Rule 39, two members of the Board will be elected in each odd numbered year and three will be elected in each even numbered year.
- (c) No Elected Board Member shall serve more than 5 consecutive full terms in office.

23. Appointed Board Members

23.1 Appointment

The Board may appoint up to two Appointed Board Members.

23.2 Qualifications for an Appointed Board Member

An Appointed Board Member must be a minimum of 18 years of age and may have specific skills in commerce, finance, marketing, law or business generally or such other skills which compliment the Board composition, but need not have experience in or exposure to basketball.

23.3 Term of Appointment

Appointed Board Members will be appointed by the Board in accordance with this Constitution to the AGM after appointment, and may serve for a maximum of 10 consecutive terms.

24. Vacancies of Board Members

24.1 Grounds for Termination of Board Member

In addition to the circumstances (if any) in which the office of a Board Member becomes vacant by virtue of the Act, the office of a Board Member becomes vacant if the Board Member:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) resigns his or her office in writing to Basketball WA;
- (e) is absent without the consent of the Board from three consecutive meetings of the Board ;
- (f) holds any office of employment of Basketball WA (other than the CEO);
- (g) without the prior consent or later ratification of the Board holds, any office of profit under Basketball WA;
- (h) breaches the Basketball WA Board Members code of conduct or fails to declare a conflict of interest;
- (i) is removed from office by a Special Resolution of the Board under Rule 24.2; or
- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Law* or is disqualified from office under the Act.

24.2 Removal of a Board Member

A Board Member, before the expiration of his or her term of office may be removed by Special Resolution at a General Meeting. If a Board Member is so removed, the office of the Board Member becomes vacant and shall be filled in accordance with the procedure set out in Rule 24.3.

24.3 Casual Vacancies

- (a) In the event of a casual vacancy in the position of an Elected Board Member, Basketball WA will call for nominations from Affiliated Associations within 21 days of the casual vacancy occurring and may appoint an individual to the vacant position. The person so appointed may continue in the position up to the next Annual General Meeting at which time the appointment may be extended to the date that the position would otherwise have expired.

- (b) In the event of a casual vacancy in the position of an Appointed Board Member, the Board may appoint an individual to the vacant position and the person so appointed may continue in the position up to the next Annual General Meeting at which time the appointment may be extended to the date that the position would otherwise have expired.
- (c) If a casual vacancy arises within 3 months of the next Annual General Meeting, the casual vacancy need not be filled and nominations in accordance with Rule 24.3(a) need not be called for.

24.4 Remaining Board Members May Act

In the event of a casual vacancy or vacancies in the position of a Board Member, the remaining Board Members may act but, if the number of remaining Board Members is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Board Members to a number sufficient to constitute such a quorum in accordance with Rule 25.6.

25. Meetings of the Board

25.1 Board to Meet

The Board shall meet as often as is deemed necessary in each calendar year for the dispatch of business and will meet on at least 6 occasions per year or at least as often as is required under the Act, whichever is the greater), and subject to these Rules may adjourn and otherwise regulate their meetings as they think fit. The CEO shall, upon the request of three (3) Board Members, convene a meeting of the Board within 21 days.

25.2 Decisions of Board

Subject to Rule 25.2(b), each Board Member will have one vote at Board meetings. A resolution of the Board must be passed by a majority of votes of the Board Members present at the meeting and entitled to vote on the resolution. In the case of an equality of votes, the Chair shall have a casting vote.

25.3 Validity of Board Members' Acts

All acts done by any meeting of the Board or of a committee or by any person acting as a Board Member are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Board Member or person so acting, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Board Member.

25.4 Written Resolution

The Board may pass a resolution without a Board meeting being held if a majority of the Board Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate documents may be used for signing by Board Members if the wording of the resolution and statement is identical in each copy. The resolution is passed when a majority of the Board Members in favour of the resolution sign the document and return their respective signed copies to the CEO.

25.5 Manner of Holding Meetings

A Board meeting may be called or held using any technology consented to by all the Board Members. The consent may be a standing one. A Board Member may only withdraw his or her consent within a reasonable period before the meeting.

25.6 Quorum

Unless the Board determines otherwise, the quorum for a Board meeting is 50% plus 1 and the quorum must be present at all times during the meeting.

25.7 Notice of Board Meetings

Unless all Board Members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than 7 days' oral or written notice of the meeting of the Board shall be given to each Board Member by the CEO. The agenda shall be forwarded to each Board Member not less than 3 days prior to such meeting.

25.8 Validity of Board Decisions

A procedural defect in decisions taken by the Board shall not result in such decision being invalidated.

25.9 Chair of Board Meeting

The Chair will chair Board meetings. If the Chair is not available the Deputy Chair will chair the meeting. If the Chair and the Deputy Chair are not available the Board must elect a Board Member present to chair a meeting or part of it.

26. Conflicts

26.1 Board Members' Interests

A Board Member is disqualified from:

- (a) holding any place of profit or position of employment in Basketball WA or in any company or incorporated association in which Basketball WA is a shareholder, apart from Perth Lynx Ltd; and
- (b) Any contract or arrangement entered into by or on behalf of Basketball WA in which any Board Member is in any way interested will be voided for such reason.

26.2 Conflict of Interest

A Board Member must declare his or her interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) other financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent himself from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Board Member does vote, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Board Member to absent himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

26.3 Disclosure of Interests

The nature of the interest of such Board Member must be declared by the Board Member at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Board Member becomes interested in a

contract or other matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Board Member becomes so interested.

26.4 General Disclosure

A general notice that a Board Member is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under Rule 26.3 as regards such Board Member and the said transactions. After such general notice it is not necessary for such Board Member to give a special notice relating to any particular transaction with that firm or company.

26.5 Recording Disclosures

It is the duty of the CEO to record in the minutes any declaration made or any general notice as aforesaid given by a Board Member in accordance with Rules 26.3 and 26.4.

27. Chief Executive Officer

27.1 Duties

The CEO will:

- (a) act as and carry out the duties of Secretary and (unless prohibited by law) public officer of Basketball WA
- (b) carry out any other duties as may be deemed necessary and directed by the Board from time to time.

27.2 Broad Power to Manage

Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the CEO has power to perform all such things as appear necessary or desirable for the proper management and administration of Basketball WA. No resolution passed by Basketball WA in General Meeting shall invalidate any prior act of the CEO or the Board which would have been valid if that resolution had not been passed.

27.3 CEO may Employ

The CEO, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the CEO determines.

28. Delegations

28.1 Board may Delegate Functions

The Board may by instrument in writing create or establish or appoint from among its own members, the Members, or otherwise, committees, working groups, individual officers or consultants to carry out such duties and functions, and with such powers, as the Board determines.

29. By-Laws

- (a) The Board may from time to time as circumstances dictate, formulate, interpret, adopt, make, alter and amend By-Laws for Basketball WA's proper advancement, management and administration, the advancement of Basketball WA's objects and basketball as it thinks necessary or desirable. The By-Laws be consistent with this Constitution and all policy directives of the Board. The By-Laws are binding on all Members.

- (b) Any By-Laws so made will be valid unless disallowed or amended by a Special Resolution of the Members.
- (c) The CEO must bring to the notice of the Board and Affiliated Associations all By-Laws and any formulation, interpretation, amendment, alteration and repeal of them. Affiliated Associations must draw such notices to the attention of their own members.
- (d) All rules and regulations of Basketball WA in force at the date of the approval of this Constitution (including existing By-Laws) insofar as such rules and regulations are not inconsistent with, or have been replaced by this Constitution, shall continue in force under this Constitution.

30. Records and Accounts

30.1 CEO to Keep Records

The CEO must:

- (a) establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of Basketball WA and the Board , and produce these as appropriate at each Board meeting or General Meeting;
- (b) keep proper accounting and other records in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct.

These records, minutes and books of account must be kept in the care and control of the CEO, who must ensure that they are retained for the appropriate term as determined by the applicable law after the completion of the transactions or operations to which they relate.

30.2 Board to Submit Accounts

The Board must submit to the Annual General Meeting the accounts of Basketball WA in accordance with this Constitution and the Act.

30.3 Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to Basketball WA, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two Board Members or a Board Member and the CEO, unless otherwise approved by the Board .

31. Auditor

The Board must appoint a properly qualified auditor or auditors and fix the remuneration of such auditor or auditors. The auditor's duties will be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted principles, or any applicable code of conduct.

32. Notice

32.1 Giving of Notices

A notice may be given to any Board Member or Member:

- (a) personally; or

- (b) by sending it by post to the address of the Board Member as notified to the CEO or the address for the Member in the register of members or the alternative address (if any) nominated by the Board Member or Member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the Board Member or Member.
- (d) Any notice sent by post is taken to have been given three business days after it is posted. Any notice sent by facsimile or other electronic means is taken to be given on the business day after it is sent.

32.2 Entitlement to Notices

Notice of every General Meeting will be given in any manner authorised by this Constitution to:

- (a) every Member, except those who have not supplied to the CEO an address for the giving of notices to them;
- (b) the Affiliated Associations;
- (c) the Board Members;
- (d) the auditor for the time being of Basketball WA; and
- (e) Life Members whose address is known to the CEO.

No other person is entitled to receive notices of General Meetings.

33. Seal

33.1 Safe Custody of Seal

The CEO shall provide for Safe custody of the Seal.

33.2 Affixing Seal

The Seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by 2 Board Members or a Board Member and the CEO.

33.3 Board Member's Interest

A Board Member may not sign a document to which the seal of Basketball WA is fixed where the Board Member is interested in the contract or arrangement to which the document relates.

34. Amendments to Constitution

- (a) Basketball WA will take reasonable steps to ensure that this Constitution is amended from time to time so as to be generally in conformity with future amendments made to BA's Constitution, subject to such variations as the Board consider being necessary or appropriate.
- (b) This Constitution must not be altered except by Special Resolution in accordance with the Act and in compliance with all other procedures under the Act (if any).

35. Indemnity

Basketball WA will indemnify (either directly or through one or more interposed entities) any person who is or has been a Board Member and, if so resolved by the Board, Basketball WA's auditor, out of Basketball WA's funds against the following:

- (a) any liability to another person (other than Basketball WA or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
- (b) any liability for costs and expenses incurred by that person strictly in their capacity as a Board Member:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act or the Corporations Act.

36. Dissolution

- (a) Basketball WA may be wound up in accordance with the provisions of the Act.
- b) If upon the winding up or dissolution of Basketball WA there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed amongst the Members, or former Members. The surplus property must be given or transferred to another association incorporated under the Act which has similar objects and which is not carried out for the purpose of profit or gain to its individual Members, and which association shall be determined by resolution of the Members.

37. Disputes and Mediation

- (a) The grievance procedure set out in this Rule applies to disputes under these Rules between:
 - (i) a Member and another Member; or
 - (ii) a Member and Basketball WA; or
 - (iii) if Basketball WA provides services to non-members, those non-members who receive services from Basketball WA, and Basketball WA.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (d) The mediator must be-
 - (i) a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement-
 - in the case of a dispute between a member and another member, a person appointed by the CEO of Basketball WA;
 - in the case of a dispute between a member or relevant non-member (as defined by sub-Rule (a) (iii)) and Basketball WA, a person who is a mediator appointed to, or employed with, a not for profit organisation.
- (e) A member of Basketball WA can be a mediator.
- (f) The mediator cannot be a member who is a party to the dispute.
- (g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

- (h) The mediator, in conducting the mediation, must-
 - (i) give the parties to the mediation process every opportunity to be heard;
 - (ii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (i) The mediator must not determine the dispute.
- (j) The mediation must be confidential and without prejudice.
- (k) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

38. Effect of These Rules

These Rules come into effect and will supersede and replace any previously existing constitutions, rules and orders of the Association, unless otherwise provided for in this Constitution and will remain in force until amended.

39. Transitional Arrangements

Once this Constitution is adopted for the first time, the following transitional arrangements will be undertaken to allow a new Board to be established.

- (a) The existing Board at the time of adoption of the new Constitution will become an Interim Board for such time until the new Board is elected.
- (b) Within 60 days of the adoption of the new Constitution a new Board will be elected, using the process outlined in Rule 22.
- (c) For the Elected Board Members
 - (i) Two members will be elected for one year
 - (ii) Three members will be elected for two years.
- (d) A post election meeting will be called for Members to meet with the new Board.