

# **Perth Spectres Basketball Club (Inc)**

## **Constitution**

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## 1. Name

The name of the incorporated association is the Perth Spectres Basketball Club (Inc) (**the Association**).

## 2. Definitions and Interpretations

### 2.1 Definitions

In this Constitution:

- (a) **Act** means the *Associations Incorporation Act 2015 (WA)*;
- (b) **AGM** means the Annual General Meeting of the Association;
- (c) **Appointed Committee Member** means a Committee Member appointed under Rule 14.6;
- (d) **Associate Member** means a Member with the rights referred to in Rule 7.2(c);
- (e) **Association** means the Perth Spectres Basketball Club (Inc);
- (f) **Basketball WA** means Western Australian Basketball Federation (Incorporated);
- (g) **Books**, of the Association, includes the following:
  - (i) a register;
  - (ii) financial records, financial statements or financial reports, however compiled, recorded or stored;
  - (iii) a document;
  - (iv) any other record of information;
- (h) **By-Laws** means by-laws made by the Association under Rule 20;
- (i) **Chairperson** means the Committee Member holding office as the Club Leader, or a Committee Member appointed to act as the chairperson in the absence of the Club Leader;
- (j) **Club Leader** means the Committee Member holding office as the Club Leader of the Association;
- (k) **Commissioner** means the person for the time being designated as the Commissioner under section 153 of the Act;
- (l) **Committee** means the management Committee of the Association;
- (m) **Committee Meeting** means a meeting of the Committee;
- (n) **Committee Member** means a Member of the Committee;
- (o) **Community Leader** means the Committee Member holding office as Community Leader of the Association;
- (p) **Constitution** means:
  - (i) these Rules;
  - (ii) any By-Laws made in accordance with these Rules; and

in each case as amended from time to time;

- (q) **Elected Committee Member** means a Member of the Committee elected under Rule 14;
- (r) **Financial records** include:
  - (i) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
  - (ii) documents of prime entry; and
  - (iii) working papers and other documents needed to explain:
    - (A) the methods by which financial statements are prepared; and
    - (B) adjustments to be made in preparing financial statements;
- (s) **Financial Report**, of a Tier 2 association or a Tier 3 association, has the meaning given in section 63 of the Act;
- (t) **Financial Statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act;
- (u) **Financial Year**, of the Association, shall be the 12-month period commencing on 1 January in each year;
- (v) **General Meeting** of the Association, means a meeting of the Association that all Members are entitled to receive notice of and to attend;
- (w) **Life Member** means an individual upon whom life Membership of the Association has been conferred under Rule 7;
- (x) **Member** means a person (including a body corporate) who is an Ordinary Member, Life Member or an Associate Member of the Association; or any other class of Membership created in accordance with Rule 7.3;
- (y) **Membership Fees** means the fee determined in accordance with Rule 9.6;
- (z) **Membership** means Membership of the Association;
- (aa) **Objects** means the Association's Objects, as set out in Rule 3;
- (bb) **Ordinary Committee Member** means a Committee Member who is not an office bearer.
- (cc) **Ordinary Member** means a Member who is entitled to vote at General Meetings of the Association;
- (dd) **Quorum** means in the case of a General Meeting, 20% of the financial Members of the Association voting in person or by proxy, and in the case of a Committee Meeting, 50% of the Committee Members;
- (ee) **Register of Members** means the register of Members referred to in section 53 of the Act;

- (ff) **Rules** means these rules of the Association, as in force for the time being;
- (gg) **Secretary** means the Committee Member holding office as the secretary of the Association;
- (hh) **Special General Meeting** means a General Meeting of the Association other than the Annual General Meeting;
- (ii) **Sport Leader** means the Committee Member holding office as Sport Leader of the Association;
- (jj) **Special Resolution** means a resolution passed by the Members at a General Meeting in accordance with section 51 of the Act;
- (kk) **Spectres Australia** means the national controlling body for the “Spectres” brand of basketball;
- (ll) **Subcommittee** means a subcommittee appointed by the Committee under Rule 19;
- (mm) **Tier 1 association** means an incorporated association to which section 64(1) of the Act applies;
- (nn) **Tier 2 association** means an incorporated association to which section 64(2) of the Act applies; and
- (oo) **Tier 3 association** means an incorporated association to which section 64(3) of the Act applies.
- (pp) **Treasurer** means the Committee Member holding office as the treasurer of the Association;

## **2.2 Interpretation**

In this Constitution, unless the context otherwise requires:

- (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 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 circumstance; or
  - (iii) there is any reasonable doubt as to the correct procedure to be adopted on any occasion,then the Committee, having regard to this Constitution and the Act, may decide the matter and may direct what shall be done in each particular instance or may interpret this Constitution or direct what shall be done in a particular case.
- (b) Such direction, interpretation or decision of the Committee shall be set out in the agenda for the next General Meeting and, until rescinded or amended by the Committee 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 the Association**

The Objects for which the Association is established and maintained are to:

- (a) provide all Members of the community, regardless of age, skill level, gender or sexual orientation with a supportive and socially inclusive environment to participate as part of an LGBTQIA+ friendly basketball team;
- (b) encourage, administer, promote and advance basketball in Western Australia through social participation, development and competition;
- (c) formulate and/or adopt and implement appropriate policies relevant to the Association;
- (d) 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 the Association;
- (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 the Association**

### **4.1 Powers of the Association**

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

### **4.2 Not for Profit**

The property and income of the Association must be applied solely towards promoting the Objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Member, except in good faith in promoting those objects or purposes.

### **4.3 Payment to a Member**

- (a) A payment may be made to a Member out of the funds of the Association only if it is authorised under Rule 4.3(b).
- (b) A payment to a Member out of the funds of the Association is authorised if it is:
  - (i) the payment in good faith to the Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
  - (ii) the payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
  - (iii) the payment of reasonable rent to the Member for premises leased by the Member to the Association; or
  - (iv) the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association.

## **5. Status and Compliance of the Association**

### **5.1 Operation of Rules**

The Association and its Members acknowledge and agree that they are bound by this Constitution and that these Rules operate to create uniformity in the way in which the Objects of the Association are achieved.

### **5.2 Relationship of Association with Spectres Australia**

- (a) Spectres Australia is recognised by the Association as the national controlling body for the Spectres brand of basketball.
- (b) The Association is affiliated to Spectres Australia, and will work collaboratively with Spectres Australia and each of the other Spectres sporting associations in cities across Australia to further the collective Spectres values of community, friendship and respect.

- (c) Should the Association wish to disaffiliate with Spectres Australia, the Association agrees that it will no longer use the Spectres brand for any purpose whatsoever, and will take all necessary steps to disassociate itself from the Spectres name, including from bank accounts, websites, email accounts, social media, uniforms and apparel and other intellectual and physical property.

**Note for this rule 5.2:** *The Association cannot disaffiliate from Spectres Australia unless the prior approval of the Members is first obtained by Special Resolution at a General Meeting.*

## **6. Source of Funds and Application of Income**

### **6.1 Source of Funds**

The funds of the Association may be derived from entrance fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Committee.

### **6.2 Control of Funds**

- (a) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- (b) Subject to any restrictions imposed at a General Meeting, the Committee may approve expenditure on behalf of the Association.
- (c) The Committee may authorise the Treasurer to expend funds on behalf of the Association up to a specified limit without requiring approval from the Committee for each item on which the funds are expended.
- (d) All cheques, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by 2 office holders of the Committee.
- (e) All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

### **6.3 Financial Statements and Financial Reports**

- (a) For each Financial Year, the Committee must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the Financial Statements or Financial Reports of the Association are met.
- (b) Without limiting Rule 6.3(a), those requirements include:
  - (i) if the Association is a Tier 1 association, the preparation of the Financial Statements; and
  - (ii) if the Association is a Tier 2 association or Tier 3 association, the preparation of the Financial Report; and

- (iii) if required, the review or auditing of the Financial Statements or Financial Report, as applicable; and
- (iv) the presentation to the AGM of the Financial Statements or Financial Report, as applicable; and
- (v) if required, the presentation to the AGM of the copy of the report of the review or auditor's report, as applicable, on the Financial Statements or Financial Report.

## **7 Members**

### **7.1 Eligibility for Membership**

Any person who supports the objects of the Association who is 18 years of age or over is eligible to apply to become a Member.

### **7.2 Categories of Membership**

The Members of the Association shall consist of:

- (a) **Ordinary Members:** An Ordinary Member shall have full voting rights and any other rights conferred as Ordinary Members by these Rules or approved by a resolution at a General Meeting;
- (b) **Life Members:**
  - (i) Life Membership of the Association may be conferred on a Member who has given distinguished service to the Association and if the Committee votes in favour of that person receiving Life Membership;
  - (ii) The Committee may nominate a person who has rendered distinguished or special service to the Association or basketball for Life Membership of the Association. The nomination must be in writing on the form prescribed by the Committee from time to time (if any) and must be submitted to the Secretary at least 21 days before the date set down for the next AGM;
  - (iii) A nomination for Life Membership will be considered by the Committee and if successful, announced and minuted at the AGM;
  - (iv) Conditions, obligations and privileges of Life Membership shall be as prescribed from time to time by the Committee.
- (c) **Associate Member:** Associate Members are able to enjoy the benefits of Ordinary Members with the exception of the power of voting. For the purposes of the *Liquor Control Act 1988*, an Associate Member shall be viewed as an Ordinary Member
- (d) Any other class of Membership created in accordance with Rule 7.3.

### **7.3 Creation of New Categories**

A General Meeting may by resolution, 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.

## **8 Register of Members**

### **8.1 Secretary to Keep Register**

The Secretary will keep and maintain:

- (a) a Register of all Members in which will be entered such information as is required under the Act from time to time, the class of Membership to which each Member belongs and the date upon which each Member became a Member, and
- (b) a record of the names and residential, postal or email addresses of persons who hold office with the Association.

### **8.2 Inspection of Register**

- (a) 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.
- (b) The Committee may require a Member who requests a copy of the Register to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association.
- (c) The Association may charge a reasonable fee to the Member for providing a copy of the Register, the amount to be determined by the Committee from time to time.

### **8.3 Use of Register**

The Register may be used by the Association to further the Objects of the Association, as the Committee considers appropriate.

## **9 Membership**

### **9.1 Membership Rules**

All applicants for Membership of the Association must complete a personal information form. The information on this form will be used by the Association only for purposes of record keeping and contact for the purpose of furthering the Objects of the Association or any activity incidental thereto.

## **9.2 Application for Membership**

An application for new Membership by a Member must be:

- (a) in writing in the form prescribed by the Committee from time to time and lodged with the Secretary for Committee acceptance; and
- (b) accompanied by the annual Membership Fees.

## **9.3 Discretion to Accept or Reject Applications**

The Committee may accept or reject an application.

- (a) Membership of the Association shall commence upon acceptance of the application by the Committee.
- (b) If an application is rejected, the Committee is not required to give the reasons for the rejection of the Membership application.
- (c) Where the Committee rejects an application, it shall refund any Membership Fees forwarded with the application.

## **9.4 Membership Renewal**

Members shall:

- (a) renew their Membership with the Association in accordance with the procedures applicable from time to time;
- (b) pay the annual Membership Fees determined by the Committee; and
- (c) pay any arrears (by way of agreement to a payment plan or otherwise) in accordance with the procedures applicable from time to time.

## **9.5 Effect of Membership**

The Association and each Member acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of the Members and between each of them and the Association and that they are bound by this Constitution;
- (b) they will comply with and observe this Constitution;
- (c) this Constitution is necessary and reasonable for promoting the Objects of the Association and particularly the advancement and protection of the LGBTQIA+ community.

## **9.6 Subscriptions and Fees**

- (a) The annual Membership Fee (if any), and any other fees, levies, charges and other amounts payable by Members (or any category of Members) to the Association, will be as determined by the Committee from time to time.

- (b) Any Member who has not paid all monies due and payable by that Member to the Association will (subject to the Committee'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 Committee's discretion.
- (c) If a Member has not paid the annual Membership Fees within the period of 3 months after the due date, the Member ceases to be a Member on the expiry of that period.
- (d) If a person who has ceased to be a Member under subrule (c) offers to pay the annual Membership fee after the period referred to in that subrule has expired —
  - (i) the Committee may, at its discretion, accept that payment; and
  - (ii) if the payment is accepted, the person's Membership is reinstated from the date the payment is accepted.

## **9.7 Resignation**

- (a) A Member may resign from Membership of the Association by giving written notice of the resignation to the Secretary.
- (b) The resignation takes effect:
  - (i) when the Secretary receives the notice; or
  - (ii) if a later time is stated in the notice, at that later time.
- (c) A person who has resigned from Membership of the Association remains liable for any fees that are owed to the Association (**Owed Amount**) at the time of resignation.
- (d) The Owed Amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

## **9.8 When Membership Ceases**

- (a) A person ceases to be a Member when any of the following takes place:
  - (i) for a Member who is an individual, the individual dies;
  - (ii) for a Member who is a body corporate, the body corporate is wound up;
  - (iii) the person resigns from the Association under Rule 9.7;
  - (iv) the person is expelled from the Association under Rule 10.1;
  - (v) the person ceases to be a Member under Rule 9.6(c).
- (b) The Secretary must keep a record, for at least one year after a person ceases to be a Member, of:
  - (i) the date on which the person ceased to be a Member; and
  - (ii) the reason why the person ceased to be a Member.

## **10 Disciplinary Action**

In this Rule 10, 'Member', in relation to a Member who is expelled from the Association, includes a former Member.

### **10.1 Suspension or Expulsion**

- (a) The Committee may decide to suspend a Member's Membership or to expel a Member from the Association if:
  - (i) the Member contravenes this Constitution or the By-Laws, policies or procedures of the Association; or
  - (ii) the Member acts detrimentally to the interests of the Association.
- (b) The Secretary must give the Member written notice of the proposed suspension or expulsion at least 28 days before the Committee Meeting at which the proposal is to be considered by the Committee.
- (c) The notice given to the Member must state:
  - (i) when and where the Committee Meeting is to be held; and
  - (ii) the grounds on which the proposed suspension or expulsion is based; and
  - (iii) that the Member, or the Member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the proposed suspension or expulsion.
- (d) At the Committee Meeting, the Committee must:
  - (i) give the Member, or the Member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the proposed suspension or expulsion; and
  - (ii) give due consideration to any submissions so made; and
  - (iii) decide:
    - (A) whether or not to suspend the Member's Membership and, if the decision is to suspend the Membership, the period of suspension; or
    - (B) whether or not to expel the Member from the Association.
- (e) A decision of the Committee to suspend the Member's Membership or to expel the Member from the Association takes immediate effect.
- (f) The Committee must give the Member written notice of the Committee's decision, and the reasons for the decision, within 7 days after the Committee Meeting at which the decision is made.

- (g) A Member whose Membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Committee's decision under sub-Rule (f), give written notice to the Secretary requesting the appointment of a mediator under Rule 18.
- (h) If notice is given under sub-Rule (g), the Member who gives the notice and the Committee are the parties to the Mediation.

## **10.2 Consequences of Suspension**

- (a) During the period a Member's Membership is suspended, the Member:
  - (i) loses any rights (including voting rights) arising as a result of Membership; and
  - (ii) is not entitled to a refund, rebate, relief or credit for Membership fees paid, or payable, to the Association.
- (b) When a Member's Membership is suspended, the Secretary must record in the Register of Members:
  - (i) that the Member's Membership is suspended; and
  - (ii) the date on which the suspension takes effect; and
  - (iii) the period of the suspension.
- (c) When the period of the suspension ends, the Secretary must record in the Register of Members that the Member's Membership is no longer suspended.

## **11 General Meetings**

### **11.1 Annual General Meetings**

- (a) The Committee must determine the date, time and place of the AGM.
- (b) If it is proposed to hold the AGM more than 6 months after the end of the Association's Financial Year, the Secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the Financial Year.
- (c) The ordinary business of the AGM is as follows:
  - (i) to confirm the minutes of the previous AGM and of any Special General Meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (ii) to receive and consider:
    - (A) the Committee's annual report on the Association's activities during the preceding Financial Year; and
    - (B) if the Association is a Tier 1 association, the Financial Statements of the Association for the preceding Financial Year presented under Part 5 of the Act; and



- (C) if the Association is a Tier 2 association or a Tier 3 association, the Financial Report of the Association for the preceding Financial Year presented under Part 5 of the Act;
- (D) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the Financial Statements or Financial Report;
- (iii) to elect the office holders of the Association and other Committee Members;
- (iv) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;
- (v) to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by Members;
- (vi) to consider any motion of which notice has been given.
- (d) Any other business of which notice has been given in accordance with these Rules may be conducted at the AGM.

## **11.2 Special General Meetings**

- (a) The Committee may convene a Special General Meeting.
- (b) The Committee must convene a Special General Meeting if at least 20% of the Members require a Special General Meeting to be convened.
- (c) The Members requiring a Special General Meeting to be convened must:
  - (i) make the requirement by written notice given to the Secretary; and
  - (ii) state in the notice the business to be considered at the meeting; and
  - (iii) each sign the notice.
- (d) The Special General Meeting must be convened within 28 days after notice is given under sub-Rule 11.2(c).
- (e) If the Committee does not convene a Special General Meeting within that 28-day period, the Members making the requirement (or any of them) may convene the Special General Meeting.
- (f) A Special General Meeting convened by Members under sub-Rule (e):
  - (i) must be held within 3 months after the date the original requirement was made; and
  - (ii) may only consider the business stated in the notice by which the requirement was made.
- (g) No business other than that circulated in accordance with this Rule 11.2 will be transacted at the meeting.

- (h) The Association must reimburse any reasonable expenses incurred by the Members convening a Special General Meeting under sub-Rule (e).

### **11.3 Notice of General Meetings**

- (a) The Secretary or, in the case of a Special General Meeting convened under Rule 11.2(e), the Members convening the meeting, must give to each Member:
  - (i) at least 21 days' notice of a General Meeting if a Special Resolution is to be proposed at the meeting; or
  - (ii) at least 14 days' notice of a General Meeting in any other case.
- (b) The notice must:
  - (i) specify the date, time and place of the meeting; and
  - (ii) indicate the general nature of each item of business to be considered at the meeting; and
  - (iii) if the meeting is the AGM, include the names of the Members who have nominated for election to the Committee under Rule 14.2; and
  - (iv) if the meeting is the AGM, include notice of motions to be considered at the meeting;
  - (v) if a Special Resolution is proposed:
    - (A) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - (B) state that the resolution is intended to be proposed as a Special Resolution; and
    - (C) comply with Rule 11.4(g).

**Note for this Rule 11.3:** Section 51(1) of the Act states that a resolution is a Special Resolution if it is passed:

- (a) at a General Meeting of an incorporated association; and
- (b) by the votes of not less than three-fourths of the Members of the Association who cast a vote at the meeting.

### **11.4 Proxies**

- (a) Subject to sub-Rule 11.4(b), an Ordinary Member may appoint an individual who is an Ordinary Member as their proxy to vote and speak on their behalf at a General Meeting.
- (b) An Ordinary Member may be appointed the proxy for not more than 10 other Members.
- (c) The appointment of a proxy must be in writing and signed by the Member making the appointment.
- (d) The Member appointing the proxy may give specific directions as to how the proxy is to vote on their behalf.

- (e) If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit.
- (f) If the Committee has approved a form for the appointment of a proxy, the Member may use that form or any other form:
  - (i) that clearly identifies the person appointed as the Member's proxy; and
  - (ii) that has been signed by the Member.
- (g) Notice of a General Meeting given to an Ordinary Member under Rule 11.3 must:
  - (i) state that the Member may appoint an individual who is an Ordinary Member as a proxy for the meeting; and
  - (ii) include a copy of any form that the Committee has approved for the appointment of a proxy.
- (h) A form appointing a proxy must be given to the Secretary before the commencement of the General Meeting for which the proxy is appointed.

#### **11.5 Use of Technology to be Present at General Meetings**

- (a) The presence of a Member at a General Meeting need not be by attendance in person but may be by that Member and each other Member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (b) A Member who participates in a General Meeting as allowed under sub-Rule (a) is taken to be present at the meeting and, if the Member votes at the meeting, the Member is taken to have voted in person.

#### **11.6 Presiding Member and Quorum for General Meetings**

- (a) The Club Leader must preside as Chairperson of each General Meeting.
- (b) If the Club Leader is absent or is unwilling to act as Chairperson of a General Meeting, the Committee Members at the meeting must choose one of them to act as Chairperson of the meeting.
- (c) No business is to be conducted at a General Meeting unless a Quorum is present.
- (d) If a Quorum is not present within 30 minutes after the notified commencement time of a General Meeting:
  - (i) in the case of a Special General Meeting, the meeting lapses;  
or
  - (ii) in the case of the AGM, the meeting is adjourned to:
    - (A) the same time and day in the following week; and

- (B) the same place, unless the Chairperson specifies another place at the time of the adjournment or written notice of another place is given to the Members before the day to which the meeting is adjourned.
- (e) If:
  - (i) a quorum is not present within 30 minutes after the commencement time of an AGM held under sub-Rule (d)(ii); and
  - (ii) at least two ordinary Members are present at the meeting, those Members present are taken to constitute a quorum.

### **11.7 Adjournment of General Meeting**

- (a) The Chairperson of a General Meeting at which a Quorum is present may, with the consent of a majority of the ordinary Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (b) Without limiting sub-Rule (a), a meeting may be adjourned:
  - (i) if there is insufficient time to deal with the business at hand; or
  - (ii) to give the Members more time to consider an item of business.
- (c) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (d) Notice of the adjournment of a meeting under this Rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with Rule 11.3.

### **11.8 Voting at General Meeting**

- (a) On any question arising at a General Meeting:
  - (i) each financial Ordinary Member has one vote unless the Member may also vote on behalf of a body corporate under rule 11.8(b); and
  - (ii) Ordinary Members may vote personally or by proxy.
- (b) An Ordinary Member that is a body corporate may, in writing, appoint an individual, whether or not the individual is a Member, to vote on behalf of the body corporate on any question at a particular General Meeting or at any General Meeting, as specified in the document by which the appointment is made.
  - (i) A copy of the document by which the appointment is made must be given to the Secretary before any General Meeting to which the appointment applies.
  - (ii) The appointment has effect until —

- (A) the end of any General Meeting to which the appointment applies; or
  - (B) the appointment is revoked by the body corporate and written notice of the revocation is given to the Secretary.
- (c) Except in the case of a Special Resolution, a motion is carried if a majority of the Ordinary Members present at a General Meeting vote in favour of the motion.
- (d) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (e) If the question is whether or not to confirm the minutes of a previous General Meeting, only Members who were present at that meeting may vote.
- (f) For a person to be eligible to vote at a General Meeting as an Ordinary Member, or on behalf of an Ordinary Member that is a body corporate under sub-Rule (b), the Ordinary Member:
  - (i) must have been an Ordinary Member at the time notice of the meeting was given under Rule 11.3; and
  - (ii) must have paid any fee or other money payable to the Association by the Member.

### **11.9 When Special Resolutions are Required**

- (a) A Special Resolution is required if it is proposed at a General Meeting:
  - (i) to affiliate the Association with a body other than Spectres Australia;
  - (ii) to disaffiliate the Association with Spectres Australia; or
  - (iii) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- (b) Sub-Rule (a) does not limit the matters in relation to which a Special Resolution may be proposed.

**Note for this Rule 11.9:** *Under the Act, a Special Resolution is required if an incorporated association proposes to do any act authorised by Sections 30(1), 93(1), 102(4), 121(2) and 129.*

### **11.10 Determining Whether Resolution Carried**

- (a) In this Rule 11.10, 'poll' means the process of voting in relation to a matter that is conducted in writing.
- (b) Subject to sub-Rule (d), the Chairperson of a General Meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been:
  - (i) carried; or
  - (ii) carried unanimously; or

- (iii) carried by a particular majority; or
- (iv) lost.
- (c) If the resolution is a Special Resolution, the declaration under sub-Rule (b) must identify the resolution as a Special Resolution.
- (d) If a poll is demanded on any question by the chairperson of the meeting or by at least three Ordinary Members present in person or by proxy:
  - (i) the poll must be taken at the meeting in the manner determined by the Chairperson; and
  - (ii) the Chairperson must declare the determination of the resolution on the basis of the poll.
- (e) If a poll is demanded on the election of an officer of the Association or on a question of an adjournment, the poll must be taken immediately.
- (f) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the Chairperson.
- (g) A declaration under sub-Rule (b) or (d) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### **11.11 Minutes of General Meeting**

- (a) The Secretary, or a person authorised by the Committee from time to time, must take and keep minutes of each General Meeting.
- (b) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (c) In addition, the minutes of each AGM must record:
  - (i) the names of the Ordinary Members attending the meeting; and
  - (ii) any proxy forms given to the Secretary under Rule 11.4(h); and
  - (iii) the Financial Statements or Financial Report presented at the meeting, as referred to in Rule 11.1(c)(ii)(B) or 11.1(c)(ii)(C); and
  - (iv) any report of the review or auditor's report on the Financial Statements or Financial Report presented at the meeting, as referred to in Rule 11.1(c)(ii)(D).
- (d) The minutes of a General Meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (e) The Chairperson must ensure that the minutes of a General Meeting are reviewed and signed as correct by:
  - (i) the Chairperson of the meeting; or
  - (ii) the Chairperson of the next General Meeting.

- (f) When the minutes of a General Meeting have been signed as correct, they are, in the absence of evidence to the contrary, taken to be proof that:
  - (i) the meeting to which the minutes relate was duly convened and held; and
  - (ii) the matters recorded as having taken place at the meeting took place as recorded; and
  - (iii) any election or appointment purportedly made at the meeting was validly made.

### **11.12 Notice of Motion**

Notice in writing of all motions for consideration at a General Meeting (not being a Special General Meeting) must be received by the Secretary at least 28 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 Secretary will be communicated to each Member and Committee Member at least 14 days prior to the General Meeting concerned, using any technology that gives the Members as a whole a reasonable opportunity to consider the motion in advance of the meeting.

## **12 Role of the Committee**

Subject to the Act, this Constitution, the By-Laws (if any) and any resolution passed at a General Meeting, the Committee has the power to do all things necessary or convenient to be done for the proper management of the Association. The Committee:

- (a) will manage the Association for the collective and mutual benefit of the Members, and the sport of basketball;
- (b) will administer the Association in accordance with the Objects;
- (c) will take all reasonable steps to ensure that the Association complies with the Act, and this Constitution.

## **13 Composition of Committee and Duties of Members**

### **13.1 Committee Members**

- (a) The Committee will consist of:
  - (i) The five office bearers of the Association; and
  - (ii) At least two ordinary Committee Members.
- (b) The Elected Committee Members will be elected by the Members present at the AGM in accordance with Rule 14.3.
- (c) The office bearers of the Association shall be:
  - (i) Club Leader
  - (ii) Community Leader
  - (iii) Sport Leader

- (iv) Secretary
- (v) Treasurer
- (d) All office bearer positions shall expire when the position is declared vacant at the AGM convened after the date of their election.
- (e) The terms of all ordinary Committee Members shall expire when the position is declared vacant at the first AGM convened after the date of their election.
- (f) Subject to section 39 of the Act, a person may be an Elected Committee Member if the person is:
  - (i) an individual who has reached 18 years of age; and
  - (ii) a financial Ordinary Member.
- (g) A person must not hold more than one position on the Committee at the same time.

### **13.2 Club Leader**

The Club Leader shall:

- (a) represent the Association and chair all General Meetings and Committee Meetings and perform all duties as ordinarily pertain to the leader of the Association;
- (b) be well informed of all the Association's activities;
- (c) be knowledgeable of the future directions and plans of Members;
- (d) foster a strong working relationship with Basketball WA and other relevant organisations;
- (e) have a good working knowledge of this Constitution, the policies of the Association and the duties of all office holders and subcommittees;
- (f) represent the Association;
- (g) be a supportive leader for all Members;
- (h) act as a facilitator for Association activities; and
- (i) ensure the planning and budgeting for the future is carried out in accordance with the wishes of the Members.

### **13.3 Secretary**

The Secretary has the following duties:

- (a) consult with the Club Leader regarding the business to be conducted at each Committee Meeting and General Meeting;
- (b) prepare the notices required for meetings and for the business to be conducted at meetings;
- (c) unless another Member is authorised by the Committee to do so, maintain on behalf of the Association the Register of Members, and record in the Register any changes in the Membership, as required under section 53(1) of the Act;



- (d) maintain on behalf of the Association an up-to-date copy of this Constitution, as required under section 35(1) of the Act;
- (e) unless another Member is authorised by the Committee to do so, maintain on behalf of the Association a record of Committee Members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- (f) ensure the safe custody of the books of the Association, other than the Financial Records, Financial Statements and Financial Reports, as applicable to the Association;
- (g) maintain full and accurate minutes of Committee Meetings and General Meetings;
- (h) keep proper records in accordance with the Act and/or any applicable code of conduct; and
- (i) carry out any other duty given to the Secretary under this Constitution or by the Committee.

#### **13.4 Treasurer**

The Treasurer has the following duties:

- (a) ensure that any amounts payable to the Association are collected and issue receipts for those amounts in the Association's name;
- (b) ensure that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Committee;
- (c) ensure that any payments to be made by the Association that have been authorised by the Committee or at a General Meeting are made on time;
- (d) ensure that the Association complies with the relevant requirements of Part 5 of the Act;
- (e) ensure the safe custody of the Association's Financial Records, Financial Statements and Financial Reports, as applicable to the Association;
- (f) if the Association is a Tier 1 association, coordinate the preparation of the Association's Financial Statements before their submission to the Association's AGM;
- (g) if the Association is a Tier 2 association or Tier 3 association, coordinate the preparation of the Association's Financial Report before its submission to the Association's AGM;
- (h) provide any assistance required by an auditor or reviewer conducting an audit or review of the Association's Financial Statements or Financial Report under Part 5 Division 5 of the Act; and
- (i) carry out any other duty given to the Treasurer under this Constitution or by the Committee.

### **13.5 Community Leader**

The Community Leader has the following duties:

- (a) act as a leader for ensuring the Association's community and diversity is represented through engagement on social media, at events and in its Membership;
- (b) work closely with the Club Leader with regards to LGBTQIA+ inclusivity and advocacy with other bodies/organisations including (but not limited to) the Western Australian Government, Basketball WA and other organisations;
- (c) take a lead role in organising regional outreach trips and programs to support Association Members and the greater community;
- (d) assist in the continued development of Association relationships across the community;
- (e) be a key driver behind the Association's values of Community, Friendship and Respect, by questioning the 'drivers' and values within the Association and the greater community;
- (f) act as a facilitator for the Association's community and diversity activities during training, regional outreach and events;
- (g) act as a community and diversity advocate by acting as the point of contact for internal and external diversity enquiries, communications and consultations.

### **13.6 Sport Leader**

The Sport Leader has the following duties:

- (a) act as a leader and facilitator for sporting and competition teams across the Association;
- (b) ensure that teams and players are appropriately registered and that outstanding match payments are made on time;
- (c) maintain up-to-date records of players, teams, captains and venues;
- (d) ensure all season payments are made by participating players;
- (e) communicate with team captains, other players and competition officials on matters concerning competition basketball, including administration, rules, Association values and player conduct;
- (f) assist with the coordination of training sessions and other social basketball activities, including venue bookings;
- (g) assist with the purchase and maintenance of playing equipment;
- (h) assist with the purchase and distribution of player uniforms; and
- (i) carry out any other duty given to the Sport Leader by the Committee.

## **14 Election of Committee Members**

### **14.1 How Members become Committee Members**

A Member becomes a Committee Member if the Member:

- (a) is elected to the Committee at a General Meeting under Rule 14.3; or
- (b) is appointed to the Committee to fill a casual vacancy under Rule 14.6.

### **14.2 Nomination of Elected Committee Members**

- (a) At least 42 days before an AGM, the Secretary must send written notice to all the Members:
  - (i) calling for nominations for election to the Committee, and detailing the number of Ordinary Committee Members; and
  - (ii) stating the date by which nominations must be received by the Secretary to comply with sub-Rule (b).
- (b) A Member who wishes to be considered for election to the Committee at the AGM must nominate for election by sending written notice of the nomination to the Secretary at least 28 days before the AGM.
- (c) A Member whose nomination does not comply with this Rule is not eligible for election to the Committee unless the Member is nominated under Rule 14.3.

### **14.3 Election of Committee Members**

- (a) At the AGM, a separate election must be held for each office bearer of the Committee.
- (b) If there is no nomination for an office bearer position, the Chairperson of the meeting may call for nominations from the Ordinary Members at the meeting.
- (c) If only one Member has nominated for an office bearer position, the Chairperson of the meeting must declare the Member elected to the position.
- (d) If more than one Member has nominated for an office bearer position, the Ordinary Members at the meeting must vote in accordance with procedures that have been determined by the Committee to decide who is to be elected to the position.
- (e) Prior to the AGM, the outgoing Committee must decide by resolution the number of Ordinary Committee Members to hold office for the next year.
- (f) If the number of Members nominating for the position of Ordinary Committee Member is less than the number to be elected, any positions remaining unfilled will be deemed a casual vacancy under rule 14.6.

- (g) If the number of Members nominating for the position of Ordinary Committee Member is greater than the number to be elected; the Ordinary Members must vote in accordance with procedures that have been determined by the Committee to decide who are to be elected to the position of Ordinary Committee Member.
- (h) A Member may only nominate for:
  - (i) one office bearer position; or
  - (ii) a position of Ordinary Committee Member; or
  - (iii) one office bearer position and a position of Ordinary Committee Member.
- (i) At the AGM the election of office bearer positions must take place before the election of Ordinary Committee Members.
- (j) A Member may only hold one position on the Committee. If a Member is elected to an office bearer position, they are ineligible to be elected as an Ordinary Committee Member.
- (k) A Member who has nominated for a position may vote for themselves.
- (l) A Committee Member's term will commence at the conclusion of the AGM at which they are elected.

#### **14.4 Resignation and Removal from Office**

- (a) A Committee Member may resign from the Committee by written notice given to the Secretary or, if the resigning Member is the Secretary, given to the Club Leader.
- (b) The resignation takes effect:
  - (i) when the notice is received by the Secretary or Club Leader; or
  - (ii) if a later time is stated in the notice, at the later time.
- (c) At a General Meeting, the Association may by resolution:
  - (i) remove a Committee Member from office; and
  - (ii) elect a Member who is eligible to fill the vacant position.
- (d) A Committee Member who is the subject of a proposed resolution under sub-Rule (c)(i) may make written representations (of a reasonable length) to the Secretary or Club Leader and may ask that the representations be provided to the Members.
- (e) The Secretary or Club Leader may give a copy of the representations to each Member or, if they are not so given, the Committee Member may require them to be read out at the General Meeting at which the resolution is to be considered.

#### **14.5 When Membership of Committee Ceases**

A person ceases to be a Committee Member if the person:

- (a) dies or otherwise ceases to be a Member; or

- (b) resigns from the Committee or is removed from office under Rule 14.4(c)(i); or
- (c) becomes ineligible to accept an appointment or act as a Committee Member under section 39 of the Act;
- (d) becomes permanently unable to act as a Committee Member because of a mental or physical disability; or
- (e) fails to attend 3 consecutive Committee Meetings, of which the person has been given notice, without having notified the Committee that the person will be unable to attend.

**Note for this Rule 14.5** - Section 41 of the Act imposes requirements, arising when a person ceases to be a Member of the Committee (Committee) of an incorporated association, that relate to returning documents and records.

## **14.6 Filling Casual Vacancies**

- (a) The Committee may appoint a Member who is eligible under Rule 13.1(f) to fill a position on the Committee that:
  - (i) has become vacant; or
  - (ii) was not filled by election at the most recent AGM.
- (b) If the position of Secretary becomes vacant, the Committee must appoint a Member who is eligible under Rule 13.1(f) to fill the position within 14 days after the vacancy arises.
- (c) Subject to the requirement for a Quorum under Rule 15.5, the Committee may continue to act despite any vacancy in its Membership.
- (d) If there are fewer Committee Members than required for a Quorum under Rule 15.5, the Committee may act only for the purpose of:
  - (i) appointing Committee Members under this Rule; or
  - (ii) convening a General Meeting.
- (e) The term of office of a person appointed to fill a casual vacancy shall expire at the conclusion of the AGM next following the appointment.

## **15 Meetings of the Committee**

### **15.1 Committee to Meet**

The Committee shall meet as often as is deemed necessary in each calendar year for the dispatch of business and will meet on at least 4 occasions per year on the dates and at the times and place determined by the Committee. The Committee may adjourn and otherwise regulate their meetings as it thinks fit. The Club Leader shall, upon the request of 2 Committee Members, convene a meeting of the Committee within 14 days.

## **15.2 Decisions of Committee**

A resolution of the Committee must be passed by a majority of votes of the Committee Members present at the meeting and entitled to vote on the resolution. In the case of an equality of votes, the Chairperson shall have a casting vote.

## **15.3 Validity of Committee Members' Acts**

The acts of a Committee or subcommittee, or of a Committee Member or Member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Committee Member or Member of a subcommittee.

## **15.4 Use of Technology to be Present at Committee Meetings**

- (a) The presence of a Committee Member at a Committee Meeting need not be by attendance in person but may be by that Committee Member and each other Committee Member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (b) A Member who participates in a Committee Meeting as allowed under Rule 15.4(a) is taken to be present at the meeting and, if the Member votes at the meeting, the Member is taken to have voted in person.

## **15.5 Quorum**

- (a) Subject to Rule 14.6(d), no business is to be conducted at a Committee Meeting unless a Quorum is present.
- (b) If a Quorum is not present within 30 minutes after the notified commencement time of a Committee Meeting:
  - (i) in the case of a Special Meeting - the meeting lapses; or
  - (ii) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (c) If:
  - (i) a Quorum is not present within 30 minutes after the commencement time of a Committee Meeting held under Rule 15.5(b)(ii); and
  - (ii) at least 2 Committee Members are present at the meeting, those Members present are taken to constitute a Quorum.

## **15.6 Notice of Committee Meetings**

- (a) Unless all Committee Members agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than 48 hours oral or written notice of the meeting of the Committee shall be given to each Committee Member by the Secretary.

- (b) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (c) Unless sub-Rule (d) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (d) Urgent business that has not been described in the notice may be conducted at the meeting if the Committee Members at the meeting unanimously agree to treat that business as urgent.

### **15.7 Chair of Committee Meeting**

The Club Leader will chair Committee Meetings. If the Club Leader is absent or unwilling to act as chairperson of the meeting, the Committee must choose one of them to chair the meeting or part of it.

### **15.8 Voting at Committee Meetings**

- (a) Each Committee Member present at a Committee Meeting has one vote on any question arising at the meeting.
- (b) A motion is carried if a majority of the Committee Members present at the Committee Meeting vote in favour of the motion.
- (c) If the votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (d) A vote may take place by the Committee Members present indicating their agreement or disagreement or by a show of hands, unless the Committee decides that a secret ballot is needed to determine a particular question.
- (e) If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

### **15.9 Minutes of Committee Meetings**

- (a) The Committee must ensure that minutes are taken and kept of each Committee Meeting.
- (b) The minutes must record the following:
  - (i) the names of the Committee Members present at the meeting;
  - (ii) the name of any person attending the meeting by invitation;
  - (iii) the business considered at the meeting;
  - (iv) any motion on which a vote is taken at the meeting and the result of the vote.
- (c) The minutes of a Committee Meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (d) The Chairperson must ensure that the minutes of a Committee Meeting are reviewed and signed as correct by:
  - (i) the Chairperson of the meeting; or
  - (ii) the Chairperson of the next Committee Meeting.

- (e) When the minutes of a Committee Meeting have been signed as correct, they are, until the contrary is proved, evidence that:
  - (i) the meeting to which the minutes relate was duly convened and held; and
  - (ii) the matters recorded as having taken place at the meeting took place as recorded; and
  - (iii) any appointment purportedly made at the meeting was validly made.

### **15.10 Payments to Committee Members**

- (a) In this rule —
  - (i) Committee Member includes a member of a subcommittee;
  - (ii) Committee Meeting includes a meeting of a subcommittee.
- (b) A Committee Member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred —
  - (i) in attending a Committee Meeting; or
  - (ii) in attending a General Meeting; or
  - (iii) otherwise in connection with the Association's business.

## **16 Conflicts**

### **16.1 Disclosure of material personal interest**

A Committee Member must declare any material personal interest they have in a matter being considered at a Committee Meeting as soon as the Member becomes aware of the interest, and disclose the nature and extent of the interest to the Committee in accordance with section 42 of the Act.

### **16.2 Disclosure of Interests**

In accordance with section 43 of the Act, a Committee Member who has a material personal interest in a matter being considered at a Committee Meeting must not –

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

## **17 Disputes**

### **17.1 In this Rule 17:**

- (a) 'grievance procedure' means the procedures set out in this Rule 17;
- (b) 'party to a dispute' includes a person
  - (i) who is a party to the dispute; and
  - (ii) who ceased to be a Member within 6 months before the dispute has come to the attention of each party to the dispute.



## **17.2 Application**

The procedure set out in this Rule 17 (the grievance procedure) applies to disputes:

- (a) between Members; or
- (b) between one or more Members and the Association.

## **17.3 Parties to Attempt to Resolve Dispute**

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.

## **17.4 How Grievance Procedure is Started**

- (a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Rule 17.3, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of:
  - (i) the parties to the dispute; and
  - (ii) the matters that are the subject of the dispute.
- (b) Within 28 days after the Secretary is given the notice, a Committee Meeting must be convened to consider and determine the dispute.
- (c) The Secretary must give each party to the dispute written notice of the Committee Meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (d) The notice given to each party to the dispute must state:
  - (i) when and where the Committee Meeting is to be held; and
  - (ii) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the dispute.
- (e) If:
  - (i) the dispute is between one or more Members and the Association; and
  - (ii) any party to the dispute gives written notice to the Secretary stating that the party:
    - (A) does not agree to the dispute being determined by the Committee; and
    - (B) requests the appointment of a mediator under Rule 18;

the Committee must not determine the dispute.

## **17.5 Determination of dispute by Committee**

- (a) At the Committee Meeting at which a dispute is to be considered and determined, the Committee must:
  - (i) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the dispute; and
  - (ii) give due consideration to any submissions so made; and
  - (iii) determine the dispute.
- (b) The Committee must give each party to the dispute written notice of the Committee's determination, and the reasons for the determination, within 7 days after the Committee Meeting at which the determination is made.
- (c) A party to the dispute may, within 14 days after receiving notice of the Committee's determination under Rule 17.5(b), give written notice to the Secretary requesting the appointment of a mediator under Rule 18.
- (d) If notice is given under Rule 17.5(c), each party to the dispute is a party to the mediation.

## **18 Mediation**

### **18.1 Application of Rule**

- (a) This Rule applies if written notice has been given to the Secretary requesting the appointment of a mediator:
  - (i) by a Member under Rule 10.1(g); or
  - (ii) by a party to a dispute under Rule 17.4(e)(ii) or 17.5(c).
- (b) If this Rule applies, a mediator must be chosen or appointed under Rule 18.2.

### **18.2 Appointment of mediator**

- (a) The mediator must be a person chosen:
  - (i) if the appointment of a mediator was requested by a Member under Rule 10.1(g) - by agreement between the Member and the Committee; or
  - (ii) if the appointment of a mediator was requested by a party to a dispute under Rule 17.4(e)(ii) or 17.5(c) by agreement between the parties to the dispute.
- (b) If there is no agreement for the purposes of Rule 18.2(a)(i) or 18.2(a)(ii) then, subject to Rule 18.2(c), the Committee must appoint the mediator. The person appointed as mediator by the Committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre.

- (c) The person appointed as mediator by the Committee may be a Member or former Member of the Association but must not:
  - (i) have a personal interest in the matter that is the subject of the mediation; or
  - (ii) be biased in favour of or against any party to the mediation.

### **18.3 Mediation Process**

- (a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (b) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (c) In conducting the mediation, the mediator must:
  - (i) give each party to the mediation every opportunity to be heard; and
  - (ii) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (iii) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (d) The mediator cannot determine the matter that is the subject of the mediation.
- (e) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (f) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

### **18.4 If Mediation Results in Decision to Suspend or Expel being Revoked**

If:

- (a) mediation takes place because a Member whose Membership is suspended or who is expelled from the Association gives notice under Rule 10.1(g); and
- (b) as the result of the mediation, the decision to suspend the Member's Membership or expel the Member is revoked,

that revocation does not affect the validity of any decision made at a Committee Meeting or General Meeting during the period of suspension or expulsion.

## **19 Subcommittees and Subsidiary Offices**

### **19.1 Subcommittees and Subsidiary offices**

- (a) To help the Committee in the conduct of the Association's business, the Committee may, in writing, do either or both of the following:
  - (i) appoint one or more subcommittees;
  - (ii) create one or more subsidiary offices and appoint people to those offices.
- (b) A subcommittee may consist of the number of people, whether or not Members, that the Committee considers appropriate.
- (c) A person may be appointed to a subsidiary office whether or not the person is a Member.
- (d) Subject to any directions given by the Committee:
  - (i) a subcommittee may meet and conduct business as it considers appropriate; and
  - (ii) the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

### **19.2 Delegation to Subcommittees**

- (a) In this Rule 19.2:
  - '**non-delegable duty**' means a duty imposed on the Committee by the Act or another written law.
- (b) The Committee may, in writing, delegate to a subcommittee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the Committee other than:
  - (i) the power to delegate; and
  - (ii) a non-delegable duty.
- (c) A power or duty, the exercise or performance of which has been delegated to a subcommittee or the holder of a subsidiary office under this rule, may be exercised or performed by the subcommittee or holder in accordance with the terms of the delegation.
- (d) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Committee specifies in the document by which the delegation is made.
- (e) The delegation does not prevent the Committee from exercising or performing at any time the power or duty delegated.
- (f) Any act or thing done by a subcommittee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the Committee.
- (g) The Committee may, in writing, amend or revoke the delegation.

## **20 By-Laws**

The Association may, by resolution at a General Meeting, make, amend or revoke By-Laws.

- (a) By-Laws may:
  - (i) provide for the rights and obligations that apply to any classes of Associate Members approved under Rule 7.2; and
  - (ii) impose restrictions on the Committee's powers, including the power to dispose of the Association's assets; and
  - (iii) impose requirements relating to the Financial Reporting and financial accountability of the association and the auditing of the Association's accounts; and
  - (iv) provide for any other matter the Association considers necessary or convenient to be dealt with in the By-Laws.
- (b) A By-Law is of no effect to the extent that it is inconsistent with the Act, the regulations or these Rules.
- (c) Without limiting Rule 20(b), a by-law made for the purposes of Rule 20(a)(iii) may only impose requirements on the Association that are additional to, and do not restrict, a requirement imposed on the Association under Part 5 of the Act.
- (d) At the request of a Member, the Association must make a copy of the By-Laws available for inspection by the Member.

## **21 Records and Accounts**

### **21.1 Custody of Books and Securities**

- (a) Subject to Rule 21.1(b), the books and any securities of the Association must be kept in the Secretary's custody or under the Secretary's control.
- (b) The Financial Records and, as applicable, the Financial Statements or Financial Reports of the Association must be kept in the Treasurer's custody or under the Treasurer's control.
- (c) Rule 21.1(a) and 21.1(b) have effect except as otherwise decided by the Committee.
- (d) The books of the Association must be retained for at least 7 years.

### **21.2 Record of Office Holders**

The record of Committee Members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the Secretary's custody or under the Secretary's control.

*Note for this Rule 21.2: Section 58 of the Act:*

- (a) *sets out the details of the record that an incorporated association must maintain of the Committee Members and certain others; and*

- (b) *provides for Members to inspect, make a copy of or take an extract from the record; and*
- (c) *prohibits a person from disclosing information in the record except for authorised purposes.*

### **21.3 Inspection of Records and Documents**

- (a) This Rule 21.3 applies to a Member who wants to inspect:
  - (i) the Register of Members under section 54(1) of the Act; or
  - (ii) the record of the names and addresses of Committee Members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
  - (iii) any other record or document of the Association.
- (b) The Member must contact the Secretary to make the necessary arrangements for the inspection.
- (c) The inspection must be free of charge.
- (d) If the Member wants to inspect a document that records the minutes of a Committee Meeting, the right to inspect that document is subject to any decision the Committee has made about minutes of Committee Meetings generally, or the minutes of a specific Committee Meeting, being available for inspection by Members.
- (e) The Member may make a copy of or take an extract from a record or document referred to in Rule 21.3(a)(iii) but does not have a right to remove the record or document for that purpose.

**Note for this sub-Rule:** *Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in Rule 21.3(a)(i) and the record referred to in Rule 21.3(a)(ii).*

- (f) The Member must not use or disclose information in a record or document referred to in Rule 21.3(a) except for a purpose connected to the affairs of the Association or that is related to complying with a requirement of the Act.

### **21.4 Publication by Committee Member of Statements about Association Business Prohibited**

A Committee Member must not publish, or cause to be published, any statement about the business conducted by the Association at a General Meeting or Committee Meeting unless:

- (a) the Committee Member has been authorised to do so at a Committee Meeting; and
- (b) the authority given to the Committee Member has been recorded in the minutes of the Committee Meeting at which it was given.

## **22 Auditor**

The Committee can 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.

## **23 Notice**

### **23.1 Giving of Notices**

- (a) In this Rule 23, '**recorded**' means recorded in the register of Members.
- (b) A notice or other document that is to be given to a Member under these Rules is taken not to have been given to the Member unless it is in writing and:
  - (i) delivered by hand to the recorded address of the Member; or
  - (ii) sent by prepaid post to the recorded postal address of the Member; or
  - (iii) sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the Member.

### **23.2 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 Secretary an address for the giving of notices to them;
- (b) the Committee Members;
- (c) the auditor for the time being of the Association; and
- (d) Life Members whose address is known to the Secretary.

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

## **24 Executing Documents and Common Seal**

- (a) The Association may execute a document without using a common seal if the document is signed by:
  - (i) two Committee Members; or
  - (ii) one Committee Member and a person authorised by the Committee.
- (b) If the Association has a common seal:
  - (i) the name of the Association must appear in legible characters on the common seal; and
  - (ii) a document may only be sealed with the common seal by the authority of the Committee and in the presence of:

- (A) two Committee Members; or
  - (B) one Committee Member and a person authorised by the Committee,  
and each of them is to sign the document to attest that the document was sealed in their presence.
- (c) The Secretary must make a written record of each use of the common seal.
  - (d) The common seal must be kept in the custody of the Secretary or another Committee Member authorised by the Committee.

## **25 Amendments to this Constitution**

If the Association wants to alter or rescind any of these Rules, or to make additional Rules, the Association may do so only by Special Resolution and by otherwise complying with Part 3 Division 2 of the Act.

**Note for this rule:** *Section 31 of the Act requires an incorporated association to obtain the Commissioner's approval if the alteration of its rules has effect to change the name of the association.*

*Section 33 of the Act requires an incorporated association to obtain the Commissioner's approval if the alteration of its rules has effect to alter the objects or purposes of the association or the manner in which surplus property of the association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.*

## **26 Distribution of Surplus Property on Cancellation of Incorporation or Winding Up**

- (a) In this Rule 26 'surplus property', in relation to the Association, means property remaining after satisfaction of:
  - (i) the debts and liabilities of the Association; and
  - (ii) the costs, charges and expenses of winding up or cancelling the incorporation of the Association,but does not include books relating to the management of the Association.
- (b) On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

**Note for this Rule 26:** *Section 24(1) of the Act sets out a provision that is implied in these Rules describing the entities to which the surplus property of an incorporated association may be distributed on the cancellation of the incorporation or the winding up of the association. Part 9 of the Act deals with the winding up of incorporated associations, and Part 10 of the Act deals with the cancellation of the incorporation of incorporated associations.*