



# Constitution

Geelong United Basketball Inc.

Adopted on 3 November 2022

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# CONSTITUTION OF GEELONG UNITED BASKETBALL INC.

## **1 Association's name**

The name of the association is **Geelong United Basketball Inc.**

## **2 Association's purposes**

The association's purpose is to represent the interests of basketball and all involved in basketball within the association, the Greater Geelong, Bellarine, Golden Plains and Surf Coast region and surrounding areas and at state and national level by, without limitation:

- (a) providing individuals with opportunities to maximise their potential by competing in the highest level of basketball possible, given their own ability;
- (b) promote, develop and encourage participation in the sport of basketball, including the formation of clubs and teams to take part in competitions conducted by the association;
- (c) provide support and assistance for clubs and teams in all areas of their operations;
- (d) enter, select and manage teams to represent the association at local, state, national and international level;
- (e) affiliate with Basketball Victoria (BV) and actively promote, foster and develop state basketball;
- (f) to recognise, support and sponsor the activities of other companies or business activities formed by the association from time to time in order to promote the purposes of the association;
- (g) to co-operate or join with or support any association, organisation, society or individual whose activities or purposes are similar to those of the association or which advances the sport of basketball directly or indirectly;
- (h) to pursue through itself or other such entities any commercial, business or trading arrangements or activities which will assist the association to advance the sport of basketball directly or indirectly; and
- (i) deal with any other matters that the association may deem to be in the interests of the sport of basketball.

## **3 Association's powers**

Solely for carrying out the association's purposes, the association may exercise all of the powers of an incorporated association under the Associations Act.

## **4 Not for profit**

### **4.1 Application of the association's income and property**

- (a) The association's income and property must be applied solely towards promoting the association's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of bonus or other profit distribution, to any member in their capacity as a member.
- (c) This rule 4 does not prohibit indemnification of, or a payment of premiums on contracts of insurance for, any board member to the extent permitted by law and this constitution.

### **4.2 Board member fees**

The association does not pay fees to a board member for acting as a board member.

### **4.3 Other payments to board members**

The association may pay:

- (a) out of pocket expenses properly incurred by a board member in performing a duty as a board member of the association approved by the board; or
- (b) a service rendered to the association, by a board member in a professional or technical capacity or as an employee, where:
  - (i) the provision of the service has the prior approval of the board members; and
  - (ii) the amount payable is not more than an amount which commercially would be reasonable payment for the service.

## **5 Membership**

### **5.1 Members**

- (a) The association must have at least 5 members.
- (b) The members are:
  - (i) the board members;
  - (ii) the members who are members at the time of adopting this constitution; and
  - (iii) any other person who are admitted to membership in accordance with this rule 5.

## 5.2 **Membership categories**

The association shall have the following categories of membership:

- (a) board members;
- (b) Club Members;
- (c) Life Members;
- (d) Participating Members;
- (e) Temporary Members; and
- (f) such other category of membership as the board members may determine from time to time

## 5.3 **Board members**

- (a) Board members are members of the association and have the right to receive notice, attend and vote at general meetings.
- (b) Board members automatically become members once elected or appointed as a board member, and do not need to apply or pay any membership fee.
- (c) Board members automatically cease being a member once they cease being a board member.

## 5.4 **Club Members**

- (a) A Club Member is any club, body, organisation or association (incorporated or unincorporated) (**Club**) which have objectives or purposes that promote, develop and encourage participation in and support the game of basketball.
- (b) Any Club that wishes to apply to become a Club Member must make a formal application in accordance with rule 5.8.
- (c) Once a Club is admitted as a Club Member, that Club must nominate:
  - (i) one person from that Club's committee of management to be the Club's delegate; and
  - (ii) one person from the Club's committee of management to be an alternate to the person nominated under rule 5.4(c)(i).
- (d) Club Members must pay such membership fees or levies as set by the board members in accordance with rule 5.9.
- (e) Club Members, through their Club delegate, have the right to receive notice, attend and vote at, general meetings.

## 5.5 Life Members

- (a) Life membership is the highest honour which can be bestowed by the association on a person for longstanding and valued service or contribution to the association and/or the sport of basketball in the Greater Geelong and surrounding region.
- (b) On the nomination of the board members, any person may be elected as a life member at any annual general meeting by special resolution.
- (c) The board must present a written report to the annual general meeting on the services of any nominee together with its recommendation as to the suitability for the honour.
- (d) Life members shall be granted the privileges of free membership and have the right to receive notice, attend, speak and vote at general meetings.
- (e) Life membership can be cancelled by members at an annual general meeting by special resolution.
- (f) The board members may make rules which set out the process for members to nominate any person for life membership, including (but not limited to) criteria to become a life member as well as any additional privileges and benefits of life membership.
- (g) Any life members existing at the time of the adoption of this constitution continue to be life members.

## 5.6 Participating Member

- (a) A participating member includes:
  - (i) any person who is registered to play in any competition conducted by the association or team entered by the association in any other competition (**playing member**); and
  - (ii) any referee, technical official, official, coach, team manager or other person who participates in any competition conducted by the association or team entered by the association in any other competition (**non-playing member**).
- (b) A participating member who is a playing member and has paid any relevant registration fee or any levy imposed by the association:
  - (i) is not required to pay any membership fee; and
  - (ii) is entitled to attend at a general meeting but does not have a right to vote.



## 5.7 **Temporary Members**

- (a) The following persons shall be temporary members of the association:
  - (i) any sponsor of the association provided however that such temporary membership shall be applicable only on those days when a team representing the association is playing basketball at the association's premises;
  - (ii) any member, player or official of any team of basketball players visiting from another basketball association whose team is involved in playing basketball at the association's premises and/or in a competition organised by the association provided however that such temporary membership shall be applicable only on those days when the competition in which the team is so involved is being conducted;
  - (iii) any official of any association or league in which the association enters, or is proposing to enter a team in a competition, whilst such official is visiting any facility used by the association on official business; and
  - (iv) any other category or class of temporary member as determined by the board members.
- (b) A temporary member is not required to pay a membership fee and does not have any rights to receive notice, attend or vote at a general meeting.

## 5.8 **Application for membership**

- (a) Every applicant for membership must apply in the form and manner decided by the board members.
- (b) After receipt of an application for membership, the board members must consider the application and decide whether to admit or reject the applicant. The board members need not give any reason for rejecting an application.

## 5.9 **Annual membership fees and levies**

- (a) The annual membership fee and any levies for each category of member is decided by the board members.
- (b) The board members must notify all members of the amount and time for payment of the annual membership fee and levies.
- (c) Where an annual membership fee or any levy is not received:
  - (i) one month after the due date, the board members may issue a reminder notice to the member;

- (ii) one month after the reminder notice is sent, the member's rights will be suspended, including the right to receive notices of general meetings and the right to attend and vote at general meetings; and
- (iii) two months after the reminder notice is sent, the person ceases to be a member.

**5.10 Register**

- (a) The association must maintain a register of voting members setting out the name, address, email address (if any) for receipt of notices and date membership starts and ceases.
- (b) The date membership ceases must be recorded within 14 days of that date and all information other than the name of the person and the date on which the person ceased to be a member must be removed from the register.

**5.11 Grievance procedure**

- (a) Any dispute under this constitution between a member and another member or between a member and the association must, unless the parties otherwise agree, be dealt with by the procedure in this rule 5.11.
- (b) Any party to a dispute between members may refer the dispute to the board members for determination or mediation.
- (c) If there is a dispute between the association and a member, either party may require the dispute be referred to mediation.
- (d) The mediator must be unbiased.
- (e) Subject to rule 5.11(d), the mediator may be:
  - (i) a board member;
  - (ii) a member; or
  - (iii) a third party appointed by the board members.
- (f) The mediator will be decided by agreement between the parties to the dispute, or in the absence of agreement within 14 days:
  - (i) in the case of a dispute between a member and another member, a person appointed by the board members; or
  - (ii) in the case of a dispute between a member and the association, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice) or its successor in law.

- (g) Any party to a dispute may appoint any person to act on behalf of that party.
- (h) In each dispute:
  - (i) the parties to the dispute must have a reasonable opportunity to be heard;
  - (ii) due consideration must be given to any statement submitted by a party; and
  - (iii) natural justice must be accorded to the parties to the dispute throughout the process.
- (i) If the mediation does not result in the dispute being resolved, within a reasonable time as decided by the mediator, or failing this decision, within one month of the party requiring mediation, any party to the dispute may refer the matter to an unbiased decision maker for determination.
- (j) A determination made under rule 5.11(i) is final and binding on all parties to the dispute.

#### 5.12 **Disciplinary action**

- (a) The board members may decide there are grounds to investigate if:
  - (i) a member has failed to comply with the rules or any procedures or policies of the association;
  - (ii) it is in the interests of the association for a member to no longer remain a member; or
  - (iii) the member is not supporting the purposes of the association or by act or omission may cause detriment to the association or its reputation.
- (b) The board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (c) The board members may establish a sub-committee or consider the matter itself or refer the matter to a third party, provided the decision maker is unbiased.
- (d) At least two weeks before a meeting to consider the issues, the decision maker, must give the member notice:
  - (i) stating the date, place and time of the meeting;
  - (ii) setting out the grounds on which the investigation is based; and
  - (iii) informing the member that she or he may attend the meeting and may give an explanation or submission.

- (e) The decision maker has 4 weeks to consider the issues and may call for further information and hearings. The decision maker may decide on the appropriate disciplinary action, if any, including a decision to expel the member. Any decision must be notified to the member within 6 weeks from the meeting referred to in rule 5.12(d).
- (f) A member who has received notice under rule 5.12(d) must not initiate a grievance procedure under rule 5.11 until the determination under this rule 5.12.
- (g) A determination by the decision maker is final and binding on all parties.

**5.13 When membership ceases**

Membership ceases if the member:

- (a) if they are a playing member under rule 5.6(a)(i) and they have not registered or have not paid the relevant fees or levy to play in a competition conducted by the association;
- (b) resigns as a member by giving notice to the association;
- (c) becomes bankrupt or insolvent or makes any arrangement or composition with her or his creditors;
- (d) is expelled under rule 5.12;
- (e) has not replied within 3 months of a notice sent to the person asking to confirm that the person wishes to remain a member;
- (f) ceases to be a member under rule 5.9; or
- (g) as otherwise provided for in this constitution.

**5.14 Rights, obligations and liabilities of members**

- (a) Unless otherwise specifically provided for in this constitution or as determined by the board members, the members have the right to:
  - (i) receive notice, attend, participate and vote at general meetings; and
  - (ii) inspect the association's records, including the register of members, in accordance with rule 17.3.
- (b) All members are required to comply with this constitution and any policies of the association that are applicable to members and support the purposes of the association set out in rule 2.
- (c) The liabilities of a member, as a member, are limited to the amount, if any, unpaid by the member in respect of any membership fee or levy.
- (d) The rights of a member are not transferrable and end when membership ceases.

## **6 Winding Up**

- (a) If, on the winding up or dissolution of the association, any property remains after satisfaction of all its debts and liabilities, and after application of rule 19 (if applicable), this property must only be given or transferred to another body or bodies (whether incorporated or not) having purposes similar to the purposes of the association and rules which prohibit the distribution of its income and property among its members and being not carried on for the profit or gain to their members.
- (b) The body or bodies referred to in rule 6(a) must be decided by the board members, or if the board members do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of winding up or dissolution of the association.

## **7 Altering this Constitution**

- (a) The association must not pass a special resolution altering this constitution, if, as a result, the association would cease to be a not-for-profit association.
- (b) A resolution purporting to alter this constitution in breach of rule 7(a) will have no effect.
- (c) This constitution may only be altered, deleted or added to, in accordance with section 50 of the Associations Act.

## **8 General Meetings**

### **8.1 Convening general meetings**

- (a) The association must be accountable to the members within the terms of the law, including as applicable, the Associations Act and this constitution.
- (b) The association must convene an annual general meeting within 5 months of the end of the Financial Year.
- (c) The board members may convene a general meeting at such time and place as the board members think fit.

### **8.2 Convening general meetings at request of members**

- (a) If at least 10% of members entitled to vote request that a general meeting be held for a proper purpose and with a valid resolution, the board members must:
  - (i) within 21 days of the members' request, give all members notice of a general meeting; and
  - (ii) hold the meeting within 2 months of the members' request.
- (b) The members who make the request must:

- (i) state in the request the resolution to be proposed at the meeting and the identity of the members making the request; and
  - (ii) give notice of the request to the association.
- (c) The board members may not postpone or cancel a general meeting convened in response to a members requisition under rule 8.2(a) in accordance with rule 8.4 without the prior consent of the persons who requisitioned or convened the meeting.

### 8.3 **Notice of general meetings**

- (a) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 15 to each person who is at the date of the notice:
- (i) a member;
  - (ii) a board member; or
  - (iii) the Auditor, if applicable.
- (b) A notice of general meeting must:
- (i) specify the date, time and place of the meeting;
  - (ii) state the general nature of the business to be transacted at the meeting;
  - (iii) state in full any proposed special resolution and state that the resolution is being proposed as a special resolution; and
  - (iv) specify any details of voting such as proxies, voting by notice or other methods of voting, as decided by the board members.
- (c) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate anything done or resolution passed at the general meeting if:
- (i) the non-receipt or failure occurred by accident or error; or
  - (ii) before or after the meeting, the person notifies the association of that person's agreement to that thing or resolution.
- (d) A person's attendance at a general meeting waives any objection to a failure to give notice, or the giving of a defective notice, of the meeting.

### 8.4 **Changing, postponing or adjourning general meetings**

- (a) The board members may change the venue for, postpone, adjourn or cancel a general meeting if:

- (i) they reasonably consider that the meeting has become unnecessary;
  - (ii) the venue would be unreasonable or impractical;
  - (iii) a change is necessary in the interest of conducting the meeting efficiently; or
  - (iv) a quorum is not present under rule 8.5.
- (b) No business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
  - (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
  - (d) Except as provided by rule 8.4(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### 8.5 **Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of at least 10 members entitled to vote and who are present personally, by proxy or who have submitted a vote by notice in accordance with rule 8.14 (if permitted) (unless the number of members is less than 10, in which case a quorum will be at least 5 members).
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting the meeting stands adjourned to the day, and at the time and place, that the board members decide or, if the board members do not make a decision, to the same day in the next week at the same time and place.
- (d) If at the adjourned meeting under rule 8.4(c), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### 8.6 **Digital general meetings**

- (a) The simultaneous linking together by telephone or digital means of a sufficient number of the members to constitute a quorum constitutes a general meeting, provided the members have a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution relating to meetings of the members apply, as far as they can, with any necessary changes, to meetings of the members by telephone or digital means.
- (c) A member who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.

- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.
- (e) The board members may decide the procedures in relation to voting at a meeting by telephone or digital means, including specifying the form, method and timing of voting by notice.

#### 8.7 **Chair of general meetings**

- (a) The chair of the board must preside as chair at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If there is no chair of the board or both the conditions in rule 8.7(a) have not been met, the deputy chair of the board must preside as chair at the general meeting if present and willing to act.
- (c) If there is no deputy chair of the board and the conditions in rule 8.7(b) have not been met, the members present must elect another chair of the meeting.
- (d) A chair elected under rule 8.7(c) must be:
  - (i) another board member who is present and willing to act; or
  - (ii) if no other board member present at the meeting is willing to act, a member who is present and willing to act.
- (e) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (f) Where the votes on a proposed resolution are equal:
  - (i) the chair of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as lost.

#### 8.8 **Decisions of the members**

- (a) Every member has one vote unless a poll is demanded.
- (b) The board members may decide the manner voting is held at a meeting or, where a meeting is not required, by postal, electronic or any other means of voting.
- (c) Unless otherwise decided by the board members, each member entitled to vote at a meeting of members may vote:
  - (i) in person, or where a member is an incorporated body (body corporate), by its representatives;



- (ii) by proxy;
  - (iii) by direct vote in accordance with rule 8.14 (if permitted).
- (d) A proxy or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in her or his own right.
  - (e) If the board members decide, voting by notice may be permitted in addition to or instead of proxy voting.
  - (f) An objection to the qualification of a person to vote must be:
    - (i) raised before the vote objected to is counted; and
    - (ii) referred to the chair, whose decision is final.
  - (g) A vote not disallowed by the chair under rule 8.8(f)(ii) is valid for all purposes.
  - (h) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members.

#### 8.9 **Voting by show of hands or ballot**

- (a) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or immediately after the declaration of the result of the show of hands, a ballot (poll) is demanded by:
  - (i) the chair of the meeting; or
  - (ii) any member present (who is entitled to vote at the general meeting).
- (b) A demand for a ballot does not prevent a general meeting continuing for the transaction of any business except the question on which the ballot has been demanded.
- (c) Unless a ballot is duly demanded, a declaration by the chair of a general meeting that a resolution has been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (d) If a ballot is duly demanded or required to be held at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chair of the meeting directs. The result of the ballot is the resolution of the meeting at which the ballot was demanded.
- (e) Voting in a ballot will be conducted in accordance with the weighted voting system set out in rule 8.12.

- (f) A ballot demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (g) The demand for a ballot may be withdrawn.

**8.10 Voting by secret ballot for certain resolutions**

A secret ballot using the weighted voting system set out in rule 8.12 must be held if a vote is to be conducted in respect of:

- (a) the election of board members in accordance with this constitution; or
- (b) the granting of life membership in accordance with 5.5(b).

**8.11 Voting rights suspended**

If a member who has the right to vote at a general meeting is not fully financial at the time a vote is to be conducted at a general meeting, that member's right to vote at the general meeting will be suspended and any votes cast by that member will be disregarded.

**8.12 Weighted voting system for a ballot**

- (a) Every member who is entitled to vote at a general meeting, other than a Club Member, has one vote each in a ballot.
- (b) The number of votes a Club Member is entitled to exercise during a ballot is calculated by reference to the number of teams entered and paid for at the last registration period immediately before the calling of the general meeting at which the vote is being conducted, and will be determined as follows:

<b>Number of teams</b>	<b>No of votes</b>
1 – 10 teams	1
11 – 25 teams	2
26 – 40 teams	3
41+ teams	4

- (c) The number of votes to be allocated to each Club Member will be determined by the chair on the advice of the Secretary, whose decision is final.

**8.13 Voting by proxy or representative**

- (a) A member may appoint a proxy by giving notice to the association, and an incorporated member (a body corporate) may appoint a proxy or a representative, to attend a meeting and vote on behalf of the member.
- (b) The proxy needs to be a member (or representative) of the association.

- (c) The appointment of a proxy or representative may direct the manner in which the proxy or representative is to vote in respect of a particular resolution and, where this is provided, the proxy or representative is not entitled to vote on the proposed resolution except as directed in the appointment.
- (d) The appointment of a proxy or representative is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution in person, the person acting as proxy or representative for the appointer is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

#### 8.14 **Voting by giving notice to the association**

- (a) The board members may decide that a member who is entitled to attend and vote on a resolution at a general meeting is entitled to vote by notice in respect of that resolution.
- (b) The board members may decide the procedures in relation to voting by notice, including specifying the form, method and timing of casting a vote at a meeting.
- (c) A person who has cast a vote by notice prior to a meeting is entitled to attend the meeting. If a member attempts to cast more than one vote on a particular resolution, the vote cast in person at the meeting prevails over the vote cast by notice prior to the meeting.

### **9 Board Members**

#### 9.1 **Composition of board**

- (a) The board members will be the persons who were board members immediately before the adoption of this constitution.
- (b) The number of board members will be 9 of which at least 6 must be elected board members.
- (c) The board members may appoint any individual as a board member to fill a casual vacancy of an elected board member provided:
  - (i) before appointing the board member, that individual signs a consent to act as a board member;
  - (ii) the individual is not disqualified from managing a corporation under the Corporations Act.
- (d) Subject to rule 9.6, the board members must resign from office as provided in rule 9.2.

#### 9.2 **Process for retirement and re-election.**

- (a) The board members must hold an election at each annual general meeting.

- (b) At every annual general meeting (after excluding any board members appointed under rule 9.1(c)), at least 2 board members must retire from office.
- (c) No elected board member may hold office without re-election beyond the third annual general meeting following the meeting at which the board member was last elected or re-elected.
- (d) The board members to retire under rule 9.2(b) are those board members who wish to retire and not offer themselves for re-election, those board members required to retire under rule 9.2(c) and, so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between board members who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be decided by lot.
- (e) The board members to retire under rule 9.2(b) (both as to number and identity) is decided having regard to the composition of the board at the date of the notice calling the annual general meeting. A board member is not required to retire and is not relieved from retiring because of a change in the number or identity of the board members after the date of the notice but before the meeting closes.
- (f) If an elected board member vacates their office before the end of their elected term, any board member subsequently elected to replace that vacated office will only hold office until the end of the original term of the elected board member they have replaced.
- (g) A board member retiring from office is eligible for re-election subject to a maximum term of 9 consecutive years.
- (h) The retirement of a board member from office and the re-election of the board member or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (i) The board members may, by unanimous resolution, appoint a retiring board member who has reached the maximum term under rule 9.2(f) as an ex-officio non-voting board member for a maximum period of 1 year if such an appointment would be in the interests of the association and help further the purposes as set out in rule 2. Any such appointment is separate and distinct to the appointment of a co-opted board member under rule 9.5.

### 9.3 **Nomination of elected board members**

- (a) Nominations of candidates for election as board members must be received by the association at least 14 days prior to the annual general meeting unless the board members decide otherwise.

- (b) The nominations must be:
  - (i) accompanied by a short biographical statement and the consent of the candidate;
  - (ii) endorsed by two members; and
  - (iii) given to the association by notice.
- (c) The board members may review the nominees in accordance with a board composition policy and may endorse candidates for election by the members.

#### 9.4 **Restrictions on who can be a board member**

A person cannot nominate for, or hold a position as, a board member if that person is a member of the committee of management of a Club Member.

#### 9.5 **Co-opted board members**

- (a) The board members must, at its first meeting after each annual general meeting, appoint such number of co-opted board members as is necessary to ensure the minimum number of board members under rule 9.1(b) is satisfied.
- (b) In co-opting board members under rule 9.5(a) the board members must have regard to the following requirements:
  - (i) at least one co-opted board member should have extensive financial experience and expertise; and
  - (ii) at least one co-opted board member should have special business acumen and/or technical skills or knowledge of community sport.
- (c) The term of a co-opted board member is 1 year. However, a co-opted board member is eligible for re-appointment each year subject to a maximum term of 6 consecutive years.
- (d) If a co-opted board member resigns from office or ceases to hold office in accordance with rule 9.6, the board members must co-opt another person to fill the vacancy.

#### 9.6 **Vacation of office**

The office of a board member becomes vacant:

- (a) if the board member dies;
- (b) if the board member resigns by giving notice to the association;
- (c) if the board member is removed from office by special resolution of the members;

- (d) if the board member is appointed for a specific term of office and is not reappointed;
- (e) if the board member is disqualified from managing a corporation under the Corporations Act;
- (f) except to the extent of a leave of absence granted by the board members, if the board member fails to attend at least three consecutive board meetings or at least four meetings over a period of one year;
- (g) if the board member is in breach of rule 9.4; or
- (h) in the circumstances described in section 78 of the Associations Act.

9.7 **Leave of absence**

- (a) The board members may grant a board member leave of absence from board meetings for a period not exceeding 3 months.
- (b) The board members must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the board member to seek the leave in advance.

9.8 **Powers and duties of board members**

- (a) The board members are responsible for managing the association's affairs and carrying out the association's purposes set out in rule 2.
- (b) The board members may exercise all the association's powers which are not required, by the Associations Act or by this constitution, to be exercised by the members in general meeting.
- (c) The board members may delegate any of their powers and functions to one or more of the board members, a committee, an employee, an agent or other person as the board members decide.

9.9 **Board positions**

- (a) The board members may elect a chair, a deputy chair, a treasurer, or other positions as and when the board members decide and may decide the period for which that board member is to hold that position.
- (b) The secretary must be appointed in accordance with rule 12.1 and need not be a member of the board.

9.10 **Board member's interests**

- (a) Subject to rule 9.10(b), a board member who has a perceived or actual material conflict of interest (including a material personal interest) in a matter being considered by the board members must:

- (i) as soon as she or he becomes aware of her or his interest, disclose to the board members the nature and extent of her or his interest and the relation of the interest to the activities of the association; and
  - (ii) where it is a material personal interest, disclose the nature and extent of the interest to the members at the next general meeting.
- (b) Rule 9.10(a)(ii) does not apply in respect of an interest that exists only by virtue of the fact that the board member:
- (i) is a member of a class of persons for whose benefit the association is established; or
  - (ii) has the interest in common with all or a substantial proportion of the members.
- (c) A board member who has a perceived or actual conflict of interest in a contract, or proposed contract, with the association, or who has a perceived or actual material conflict of interest in a matter being considered by the board members, must not, unless rule 9.10(b) applies:
- (i) be present while the matter is being considered; or
  - (ii) vote on the matter.
- (d) A disclosure under rule 9.10(a)(i) and (ii) must be recorded in the minutes of the meetings at which the disclosure is made. This may be a standing notice of disclosure.
- (e) A contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the board member and the association and the board member is not liable to account for profits derived from the contract, provided rules 9.10(a) and 9.10(c) have been complied with (if applicable) by the board member.
- (f) If there are not enough board members to form a quorum to consider a matter due to rule 9.10(c), any board member (including a board member with a perceived or actual material conflict of interest) may call a general meeting to consider the matter.
- (g) The board members may make regulations or adopt a policy dealing with a conflict of interest, including requiring the disclosure of interests that a board member, and any person considered by the board members as related to or associated with the board member, may have, or may be perceived to have, in any matter concerning or which may affect the association, in any way.

## 9.11 **Use of information**

- (a) A board member must not:

- (i) while a board member; or
- (ii) after ceasing to be a board member,

knowingly or recklessly make improper use of information acquired by virtue of her or his position in the association so as to:

- (iii) gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person; or
  - (iv) cause a detriment to the association.
- (b) A board member must not knowingly or recklessly make improper use of her or his position in the association so as to:
- (i) gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person; or
  - (ii) cause detriment to the association.

## **10 Board Meetings**

### **10.1 Convening board meetings**

- (a) The board members may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) A board member may convene a meeting of the board members by giving reasonable notice to the other board members.
- (c) The secretary must, on the requisition of a board member, convene a meeting of the board members.
- (d) A notice of a board meeting:
  - (i) must specifying the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may be given immediately before the meeting; and
  - (iv) may be given in any way authorised by rule 15.1.
- (e) A board member may waive the requirement of notice of a meeting of board members by giving notice to the association.
- (f) The non-receipt of notice of a meeting, or a failure to give notice of a meeting, does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;



- (ii) the board member waives notice of that meeting before or after the meeting;
- (iii) the board member notifies the association of their agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
- (iv) the board member attended the meeting.

#### 10.2 **Digital board meetings**

- (a) The simultaneous linking together by telephone or digital means of a sufficient number of the board members to constitute a quorum constitutes a board meeting.
- (b) A board member who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (c) All the provisions in this rule 10 apply, as far as they can and with any necessary changes, to board meetings by telephone or digital means.
- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one of the board members was at that place for the duration of the meeting.
- (e) If a technical difficulty occurs which means that one or more board members cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of board member remains present, continue with the meeting.

#### 10.3 **Quorum at board meetings**

- (a) No business may be transacted at a board meeting unless a quorum of board members is present at the time the business is dealt with.
- (b) A quorum consists of a majority of the board members.
- (c) If the number of board members in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of board members fixed under this constitution, the remaining board members must act as soon as possible to appoint additional board members, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

#### 10.4 **Chair**

- (a) The board members may elect one of the board members as chair and may decide the period for which that person is to be the chair.

- (b) The chair of the board must preside as chair at each board meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chair or the conditions in rule 10.4(b) have not been met:
  - (i) if the board has elected a deputy chair who is present at the meeting, the deputy chair will chair the meeting; or
  - (ii) the board members present must elect one of the board members as chair of the meeting.

10.5 **Decisions of board members**

- (a) A resolution at a board meeting must be decided by a majority of votes cast by the board members present.
- (b) Where the votes on a proposed resolution are equal:
  - (i) the chair of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as lost.

10.6 **Decisions without a meeting**

- (a) A resolution in writing which:
  - (i) is signed by all the board members; or
  - (ii) is signed by a majority of board members entitled to vote on the resolution, the number of which is not less than a quorum at a meeting of the board members,is a valid resolution of the board members.
- (b) A written resolution under rule 10.6(a)(i) is effective when signed by the last of the board members to sign the resolution.
- (c) A written resolution under rule 10.6(a) may consist of several documents in the same form, each signed by one or more of the board members.
- (d) A board member may signify assent to a document by signing the document, or by notifying the Secretary of the board member's assent in person or by post, fax, telephone or other method of written, audio or audio-visual communication or other form of technology.
- (e) Where a document is assented to in accordance with this rule 10.6, the document is to be taken as a minute of a directors meeting.

## 10.7 **Advisory councils and sub-committees**

- (a) The board members may delegate any of their powers to one or more advisory councils or sub-committees consisting of the number of committee members and other individuals they think fit.
- (b) An advisory council or sub-committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the board members.
- (c) The provisions of this rule 10 that apply to meetings and resolutions of board members apply, so far as they can and with any necessary changes, to meetings and resolutions of any committee.

## 10.8 **Validity of acts**

An act done by a person acting as a board member, a meeting of board members, or a person exercising a power or function delegated to them by a board member is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the board members or the advisory council or sub-committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a board member or delegate;
- (b) the person being disqualified as a board member or having vacated office; or
- (c) the person not being entitled to vote.

## 11 **Chief Executive**

### 11.1 **Appointment**

- (a) The board members may appoint a chief executive for such period and on such terms as the board members think fit.
- (b) Only the board members may terminate the appointment of the chief executive.

### 11.2 **Role of chief executive**

The chief executive is responsible for the day to day control and management of the association and its affairs on behalf of the board members.

### 11.3 **Powers of chief executive**

The board members may:

- (a) confer on the chief executive the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vest in or exercisable by the board members;

- (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on the chief executive; and
- (c) authorise the chief executive to delegate all or any of the powers, discretions and duties conferred on the chief executive.

#### 11.4 **Attendance at board meetings**

- (a) The chief executive is entitled to attend all meetings of the board members and general meetings and all other meetings at which the chief executive attendance is required by this constitution or which the board members direct.
- (b) The chief executive is not a board member and does not have a vote at board meetings.

## 12 **Secretary**

### 12.1 **Appointment**

- (a) The board members must appoint a secretary to hold the position subject to the Associations Act and carry out the duties provided in the Associations Act and any additional duties as decided by the board members.
- (b) Before being appointed, the secretary must:
  - (i) consent to the appointment;
  - (ii) be at least 18 years old; and
  - (iii) be a resident of Australia.
- (c) The secretary may hold any other position or office in the association but is not required to be a board member.
- (d) Rule 9.11 relating to use of information or position applies to the secretary as though she or he is a board member.

### 12.2 **Vacation in office**

- (a) The office of a secretary becomes vacant:
  - (i) if the secretary dies;
  - (ii) if the secretary ceases to be a resident of Australia;
  - (iii) if the secretary resigns by giving notice to the association;
  - (iv) if the secretary is removed from office by resolution of the board members; or
  - (v) in the circumstances described in section 78 of the Associations Act.

- (b) The board members must appoint a new secretary within 14 days of the office becoming vacant and provide notice as required under the Associations Act.

### **13 Indemnification and Insurance**

#### **13.1 Persons to whom the indemnity and insurance apply**

The indemnity and insurance referred to in this rule 13 applies to Indemnified Officers.

#### **13.2 Indemnity**

- (a) The association must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the association.
- (b) This indemnity:
  - (i) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the association;
  - (ii) is enforceable without that person having first to incur any expense or make any payment; and
  - (iii) operates only to the extent that the loss or liability in question is not covered by insurance.

#### **13.3 Insurance**

The association may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the association where the board members consider it appropriate to do so.

#### **13.4 Savings**

Nothing in this rule 13:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 13; or
- (b) limits the capacity of the association to indemnify or provide or pay for insurance for any person to whom this rule 13 does not apply.

## **14 Financial Records**

### **14.1 Keep financial records**

- (a) The board members must keep financial records that:
  - (i) correctly record and explain the association's transactions and financial position and performance; and
  - (ii) enable true and fair financial statements to be prepared as required by the Associations Act or any other law.
- (b) The records must be retained for at least 7 years.

### **14.2 Tier one, tier two or tier three association**

- (a) Each year the board members must determine whether the association is a tier one, tier two or tier three association in accordance with the Associations Act and comply with the requirements of reporting, review and audit applicable to that tier as set out in the Act.
- (b) At the time of adoption of this constitution:
  - (i) tier one has total revenue less than \$250,000 during the previous Financial Year;
  - (ii) tier two has total revenue of more than \$250,000 but less than \$1,000,000 during the previous Financial Year;
  - (iii) tier three has total revenue of more than \$1,000,000 during the previous Financial Year.

## **15 Notice**

### **15.1 Notice from the association**

The association may give notice and any communication in any one or more ways:

- (a) personally;
- (b) by post to the person's nominated address;
- (c) by email or other electronic means;
- (d) by prominently displaying the notice or communication or publication at the association's registered address and the association's primary basketball stadium; and/or
- (e) by notifying the person by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

## 15.2 **Notice to the association**

Notice may be given to the association:

- (a) by personal service at its registered address;
- (b) by post to its registered address;
- (c) by sending it to the association's principal email address, or if there is no principal email address, to the email address of the secretary; or
- (d) in relation to voting by notice, in the manner decided by the board members.

## 15.3 **Time of service**

- (a) A notice from the association properly addressed and posted is taken to be served at 10.00am on the day that is three Business Days after the date it was posted.
- (b) Where the association sends a notice by email or other electronic means, the notice is taken as served at the time it is sent.
- (c) If service under rule 15.3(b) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the following Business Day.

## 15.4 **Other communications and documents**

Rules 15.1 to 15.3 apply, as far as they can, with any necessary changes, to the service of any communication or document.

## 16 **Source and Management of Funds**

- (a) The funds of the association are to be derived from fees, subscriptions, gifts, sponsorships, donations, government grants, fundraising activities and such other sources as the board members determine.
- (b) The funds must be managed as decided by the board members.
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed:
  - (i) as the board members decide; or
  - (ii) failing a decision, by any 2 board members.

## 17 **Records**

### 17.1 **Custody or records**

The board members or their delegate for this purpose must keep in its or their custody, or under its or their control, all records, books, documents and securities of the association.

17.2 **Minutes**

- (a) The board members must ensure:
  - (i) minutes of general meetings, board meetings and committee meetings (including all resolutions proposed); and
  - (ii) records of resolutions passed by members, board members and committees, without a meeting,

are recorded accurately and kept as part of the association's records. The records must be made within one month after the relevant meeting is held or resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

17.3 **Inspection of records**

- (a) The documents associated with incorporation, this constitution, the trust deed of any trust of which the association is a trustee, and the minutes of general meetings, including accounting records and financial statements submitted to that general meeting, must be made available for inspection by any voting member who gives the chair, the secretary or delegate for this purpose, reasonable notice that the voting member wishes to inspect them.
- (b) The board members must give a member a copy of anything referred to in rule 17.3(a) within 14 days of a request from a voting member and payment of any reasonable fee set by the board members.
- (c) A voting member (other than a board member) may apply to the board members to have access to:
  - (i) minutes of board meetings or meetings of advisory councils or sub-committees;
  - (ii) any resolutions of the board or any committee;
  - (iii) records, books, relevant documents or securities of the association.
- (d) The application must state the voting member's purpose for the access and specify how the voting member will use the information.
- (e) The board members must review the application at the board meeting following the receipt of the application, or if that is not practicable, at the following board meeting. The board members may request further information or undertakings from the voting member as to the use of the information. The board members may:



- (i) agree to the application, subject to the association's legal and other duties (including privacy, commercial confidentiality, governance) on such terms and conditions as it considers necessary, including setting access and time limits to control any disruption or inconvenience to management or volunteer time, and may require the member to enter a confidentiality deed or deed restricting the use and disclosure, and any other conditions the board members consider necessary or desirable; or
- (ii) refuse the application in its absolute discretion without the need to provide reasons, if it considers it may not be in the interests of the association, or any of the other entities referred to in the relevant documents, to allow the voting member access.

#### 17.4 **Returning documents of the association**

Any person who has possession or control of documents that belong to the association are required to return the documents to the secretary within 28 days after the person ceases to be a member or ceases to hold the position or role by virtue of which that person had possession or control of the documents.

### 18 **Execution of Documents**

There is no common seal. Contracts and documents of the association must be signed:

- (a) as authorised by the board members; or
- (b) by any 2 board members; or
- (c) by a board member and the secretary.

### 19 **Deductible Gift Recipient Status**

#### 19.1 **Application of this rule**

This rule only applies if the association is, or becomes, a deductible gift recipient under ITAA 97.

#### 19.2 **Gift Account**

- (a) The association must maintain a management account (**Gift Account**):
  - (i) to identify and record Gifts and Deductible Contributions;
  - (ii) to identify and record any money received by the association because of those Gifts and Deductible Contributions; and
  - (iii) that does not record any other money or property.
- (b) Receipts for Gifts or Deductible Contributions must state the;

- (i) name and ABN of the association;
  - (ii) the date and amount (or value, if property) of the Gift or Deductible Contribution;
  - (iii) the name of the donor or contributors;
  - (iv) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).
- (c) The association may use the Gift Account as a public fund, and establish rules for the public fund.

### 19.3 **Winding up or revocation of deductible gift recipient endorsement**

- (a) Upon:
- (i) the winding up of the association; or
  - (ii) the association ceasing to be a deductible gift recipient under the ITAA 97,
- whichever is earlier, any surplus funds in the Gift Account must be transferred to an entity:
- (iii) which is charitable at law; and
  - (iv) gifts to which are deductible under the ITAA 97.
- (b) The identity of the entity referred to in rule 19.3(a) must be decided by the board members, or if the board members do not wish to decide or do not decide, it must be decided by the Supreme Court of Victoria

## 20 **Definitions and Interpretation**

### 20.1 **Definitions**

The meanings of the terms used in this constitution are set out below.

**Associations Act** means the *Associations Incorporations Reform Act 2012* (Vic).

**Auditor** means the auditor of the association for the purposes of audit and review under the Associations Act.

**board member** means a member of the committee of management of the association.

**Business Day** means any day that banks are open for general business and is not a Saturday, Sunday or public holiday in Geelong, Victoria.

**Corporations Act** means *Corporations Act 2001* (Cth).

**Deductible Contribution** means a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.

**fully financial** means that the member has no overdue debts or liabilities due to the association.

**Financial Year** means the period of 12 months ending 31 October.

**Gift** means a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage.

**Indemnified Officer** means each person who is or has been a board member or secretary of the association and includes:

- (a) an office holder within the meaning of the Associations Act; and
- (b) any former office holder as the board members in each case decide.

**ITAA 97** means the *Income Tax Assessment Act 1997* (Cth).

**vote by notice** means a vote submitted by a member by giving notice to the association for or against the identified resolution.

**voting member** means a member of the association who is entitled to vote at general meetings.

## 20.2 **Rules for interpreting this document**

In this constitution:

- (a) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) a reference to a document being 'signed' or to 'signature' includes that document being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, includes the document being authenticated in accordance with the Corporations Act or any other method approved by the board members;
- (d) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
- (e) the singular includes the plural and the plural includes the singular; and
- (f) headings are used for convenience only and do not affect the interpretation of these rules.

## 21 Application of the Associations Act

### 21.1 Associations Act

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Associations Act has the same meaning as in that provision; and
- (b) subject to rule 21.1(a), an expression in a rule that has a defined meaning for the purposes of the Associations Act has the same meaning as in the Associations Act.

### 21.2 Model rules

The provisions of this constitution displace each provision of the Model rules, except to the extent required by the Associations Act.

## 22 Transitional Arrangements

### 22.1 Scope of this rule

- (a) The transitional provisions set out in this rule 22 have been inserted to ensure a smooth transition and adoption of this new constitution.
- (b) These transitional provisions automatically cease to have any effect once the transitional arrangements have been completed.
- (c) For the avoidance of doubt, if there is any inconsistency between the transitional arrangements in this rule 22 and any other rules in this constitution, the transitional arrangements in this rule 22 will prevail.

### 22.2 Definitions

In this rule 22:

**transition end date** means the date of the first annual general meeting held after the transition start date.

**transition start date** means the date this constitution is adopted by the members.

**transition period** means the period starting on the transition start date and ending on the transition end date.

### 22.3 Board members

On and from the transition start date, the board members will be as follows:

<b>Name of board member</b>	<b>Status of board member</b>
Renee Jovic	Elected

Mike Deam	Elected
Francis Harrison	Elected
Andy Mathers	Elected
Amanda Ruiz	Co-opted
Ashley Adams	Co-opted
Nicole Sleep	Co-opted

**22.4 Casual vacancy appointments**

As soon as possible after the transition start date, the board members will meet to appoint to 2 casual vacancies the purposes of rule 9.1(c).

**22.5 Minimum board members**

Notwithstanding rule 9.1(b), during the transition period the minimum number of board members is 7 and the minimum number of elected board members is 4.

**22.6 Board retirement and re-election**

For the purposes of rule 9.2(b), the following retirement and rotation of board members will take place at the annual general meetings in the three years immediately following the adoption of this constitution as set out in the table below:

<b>Board member</b>	<b>2022FY AGM</b>	<b>2023FY AGM</b>	<b>2024FY AGM</b>
Renee Jovic		Up for election	
Mike Deam		Up for election	
Francis Harrison			Up for election
Andy Mathers			Up for election
Casual vacancy	Up for election		
Casual vacancy	Up for election		

*Note: The 2 casual vacancies referred to in the table above will be the 2 casual vacancy appointments made under rule 22.4.*

**22.7 Term of office**

Notwithstanding anything else in these rules, for the purposes of implementing the transitional arrangements set out in this rule 22:

- (a) the length of service of each current elected board member (as per the table in rule 22.3) is to be extended by 1 year to facilitate the retirement and re-election transition in accordance with rule 22.6 and, for the avoidance of doubt, that additional year is to be included in the calculation of service for the purposes of rule 9.2(f);
- (b) any prior service of any board member who is, or has previously been, a co-opted board member is to be excluded for the purposes of rule 9.2(f) and reset at the conclusion of the annual general meeting held following the adoption of this new constitution; and
- (c) any period of service for a board member appointed under rule 22.4 will be excluded for the purposes of rule 9.2(f).