

# Constitution

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**WHITEHORSE NETBALL ASSOCIATION INCORPORATED**

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# ASSOCIATIONS INCORPORATION REFORM ACT 2012 (VIC)

## CONSTITUTION

### OF

## WHITEHORSE NETBALL ASSOCIATION INCORPORATED

### PART I – OBJECTS, POWERS AND INTERPRETATION

#### 1. NAME OF ASSOCIATION

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The name of the association is Whitehorse Netball Association Incorporated (**Association**).

#### 2. OBJECTS OF ASSOCIATION

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The Association is established solely for these purposes. The purposes of the Association are to:

- (a) assist Netball Victoria to manage, promote and control Netball, for all Members within the Whitehorse municipality and surrounding area;
- (b) promote a greater community awareness of, and enjoyment in Netball and its contribution to sport generally;
- (c) further develop Netball within the area under the Association's control and with these Objects in view, promoting and holding, either alone or jointly with any other association, club, or person Netball competitions, championships, exhibitions, meetings and other activities of the Association generally;
- (d) encourage competitors to realise their potential and athletic abilities;
- (e) develop a sense of sportsmanship and a high degree of proficiency in competitors;
- (f) ensure the maintenance and enhancement of the Association, Netball Victoria, the Members and Netball, its standards, quality and reputation for the benefit of the Members and Netball;
- (g) promote, encourage and provide facilities for the education, practice and play of the sport of Netball and to raise levels and standards of Netball;
- (h) co-operate with other regions of Netball Victoria in any Netball related matters;
- (i) use and protect the Intellectual Property;
- (j) pursue such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further the interests of Netball within the Association's jurisdiction;
- (k) have regard to the public interest in its operations;

- (l) promote the health and safety of Members and all other participants in Netball within the Association's jurisdiction;
- (m) seek and obtain improved facilities for the enjoyment of Netball within the Association's jurisdiction;
- (n) apply the property and capacity of the Association towards the fulfilment and achievement of these Objects;
- (o) affiliate and otherwise liaise with Netball Victoria and such other bodies as may be desirable, in the pursuit of these Objects; and
- (p) undertake and do all such things or activities which are necessary, incidental and conducive to the advancement of these Objects.

### 3. POWERS OF ASSOCIATION

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Solely for furthering the Objects, the Association has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the *Corporations Act 2001* (Cth).

### 4. INTERPRETATION

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#### 4.1 Definitions

In this Constitution unless the contrary intention appears, these words shall have the following meanings:

**Act** means the *Associations Incorporation Reform Act 2012* (Vic) or any other act under which the Association may be incorporated from time to time.

**Appointed Director** means a Director that is not entitled to vote at a meeting of the Board and is appointed under rule 24.

**Association** means the Whitehorse Netball Association Incorporated.

**Board** means the body consisting of the Directors under rule 22.

**By-Law** means any by-law, regulation or policy made by the Board under rule 30.

**Club** means a netball club or association (whether incorporated, unincorporated or otherwise).

**Delegate** means the person elected or appointed from time to time by a Primary Competition Member to act for and on behalf of that Primary Competition Member and represent the Primary Competition Member at General Meetings or otherwise.

**Director** means a member of the Board elected or appointed in accordance with this Constitution and includes the Elected Directors and the Appointed Directors.

**Elected Director** means a Director elected under rule 23.

**Financial Year** means the year ending on 31 December.

**General Meeting** means the annual or any special general meeting of the Association.

**Individual Member** means a registered financial individual member of a Primary Competition Member or Secondary Competition Member or an individual member who has made direct application to be a Member of the Association in accordance with rule 6.4.

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

**International Netball Federation** means the International Federation of Netball Association, the international governing body for Netball, or its successors.

**Life Member** means an individual upon whom life membership of the Association has been conferred under rule 6.7.

**Major Competition** means the major competition run by the Association on a Saturday.

**Member** means a member for the time being of the Association under Part III of this Constitution.

**Netball** means the sport of netball as determined by the International Netball Federation with such variation as may be recognised by Netball Australia or Netball Victoria from time to time.

**Netball Australia** means Netball Australia Association Incorporated, the governing body for Netball in Australia, or its successors.

**Netball Victoria** means Victorian Netball Association Incorporated, the governing body for Netball in Victoria, or its successors.

**Objects** mean the objects of the Association in rule 2.

**Primary Competition Member** means a Club that is member of the Association's Major Competition.

**Register** means the Register of the Association in rule 8.

**Seal** means the common seal of the Association and includes any official seal of the Association.

**Secondary Competition Member** means a team that is a member of the Association's competitions, other than its Major Competition.

**Secretary** means the secretary of the Association as determined in accordance with rule 28.2.

**Special Resolution** has the same meaning in the Act.

## 4.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;



- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) 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
- (h) a reference to "writing" shall 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.

#### **4.3 Severance**

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

#### **4.4 Expressions in Act**

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

#### **4.5 Model Rules**

The model rules made under the Act are expressly displaced by this Constitution.

## **PART II – ASSOCIATION AND AFFILIATE CONSTITUTIONS**

### **5. STATUS OF ASSOCIATION**

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#### **5.1 Recognition of Association**

The Association is recognised as a member of Netball Victoria and as the controlling authority for Netball in the Whitehorse municipality and surrounding area. Subject to compliance with this Constitution and the Netball Victoria constitution, the Association shall continue to be recognised as a member of Netball Victoria. The Association shall administer Netball in the Whitehorse municipality and surrounding area in accordance with the Objects.

## **PART III – MEMBERSHIP**

### **6. MEMBERS**

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#### **6.1 Minimum number of members**

The Association must have at least five Members.

#### **6.2 Categories of Member**

The Members shall be, and shall be divided into, the following categories:

- (a) Primary Competition Members, who, subject to this Constitution, may be represented at General Meetings by one Delegate each. Each Delegate shall have the right to be present, to debate and to vote at General Meetings.
- (b) Secondary Competition Members, who, subject to this Constitution, may have one representative who is entitled to attend General Meetings, but such representative shall have no right to debate or vote at General Meetings.
- (c) Life Members of the Association, who subject to this Constitution, shall have the right to present, to debate and to vote at General Meetings;
- (d) Individual Members, who subject to this Constitution, may attend General Meetings, but have no right to debate or vote at General Meetings; and
- (e) such new categories of Members, created in accordance with rule 6.3 below.

#### **6.3 Creation of New Categories**

The Board has the right and power to from time to time create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights) and even if the effect of this is to alter rights, privileges or obligations of an existing class of members.

#### **6.4 Application for Membership**

An application for membership by a Primary Competition Member, a Secondary Competition Member or an Individual Member (if applicable) must be:

- (a) in writing on the form prescribed from time to time by the Board, from the applicant or its nominated representative and lodged with the Association;
- (b) accompanied by the appropriate fee, if any; and
- (c) in the case of an application by a Primary Competition Member or a Secondary Competition Member, accompanied by:
  - (i) such information as the Association may reasonably request including a copy of the applicant's constitution (if any and which must be acceptable to the Association) and register of members; and
  - (ii) a declaration that the applicant is solvent.

## **6.5 Discretion to Accept or Reject Application**

- (a) The Association may accept or reject an application and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Association accepts an application, the applicant shall become a Member. Membership of the Association shall be deemed to commence upon acceptance of the application by the Association. The Association shall amend the register accordingly as soon as practicable.
- (c) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

## **6.6 Membership Renewal**

- (a) Clubs and Individuals must reapply for membership with the Association annually and in accordance with the procedures set down by the Association in By-Laws from time to time.
- (b) Upon request by the Association, a Club must lodge with the Association an updated copy of its constitution (including all amendments), provide details of any change in its Delegate and provide such other information as reasonably requested by the Association.

## **6.7 Life Membership**

- (a) The life members of the Deakin Netball Association Incorporated became Life Members of the Association on the date that the Deakin Netball Association amalgamated with the Nunawading Districts Netball Association Incorporated.
- (b) Subject to rule 6.7(a), Life Membership shall be awarded only to persons who have been involved with the Association for a minimum of fifteen years and in such time have rendered a significant contribution and special service to Netball and the Association. For the avoidance of doubt, fifteen years' service can be to the Association, the Deakin Netball Association and/or the Nunawading Districts Netball Association Incorporated.
- (c) A Member or the Board may nominate any person who meets the criteria in rule 6.7(b) for life membership. The nomination must be on the prescribed form (if any) and must be submitted to the Board.
- (d) The Board will in its sole discretion decide whether to confer Life Membership on any nominee. If Life Membership is conferred, the Board will announce this to the Members.

## **7. SUBSCRIPTIONS AND FEES**

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- (a) The annual membership subscription, fees and any levies payable by Members (or any category of members) (if any) to the Association, the basis of, the time for and manner of payment shall be as determined by the Board from time to time.
- (b) Any Member which or who has not paid all monies due and payable by that Member to the Association shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended

until such time as the monies are fully paid or otherwise in the Board's discretion. In the meantime, the Member shall have no automatic right to resign from the Association, and shall be dealt with in the Board's discretion, which includes the right to expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

## **8. REGISTER OF MEMBERS**

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### **8.1 Association to Keep Register**

The Association shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

### **8.2 Inspection of Register**

Inspection of the Register will be available as provided by the Act and in accordance with rule 31.7.

### **8.3 Register to be kept by Clubs**

Clubs shall maintain, in a form acceptable to the Association and with such details as are required by the Board, a register of all Clubs that are members of the Association. Such register shall be available for inspection (including copying) by the Board upon reasonable request.

## **9. EFFECT OF MEMBERSHIP**

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- (a) Members acknowledge and agree that:
- (i) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the By-Laws;
  - (ii) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee;
  - (iii) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Association;
  - (iv) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Association, the Members and Netball;
  - (v) this Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Netball; and
  - (vi) they are entitled to all benefits, advantages, privileges and services of Association membership.
- (b) A right, privilege or obligation of a Member by reason of their membership of the Association is not capable of being transferred or transmitted to another Member.

## **10. DISCONTINUANCE OF MEMBERSHIP**

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### **10.1 Notice of Resignation**

Subject to this Constitution any Member which has paid all monies due and payable to the Association and has no other liability (contingent or otherwise) to the Association may resign from the Association by giving one months' notice in writing to the Association of such intention to withdraw or resign and upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member may resign by notice in writing with immediate effect.

### **10.2 Expiration of Notice Period**

Upon the expiration of a notice given under rule 10.1, an entry, recording the date on which the Member who gave notice ceased to be a Member, shall be recorded in the Register.

### **10.3 Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Association and its property including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately.

### **10.4 Membership may be Reinstated**

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board, on application in accordance with this Constitution and otherwise on such conditions as it sees fit.

### **10.5 Cessation of Membership**

Where a Primary Competition Member or a Secondary Competition Member ceases to be a Member in accordance with this Constitution or the Act, the Individual Members of that Club may cease or remain Members to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

## **11. DISCIPLINE OF MEMBERS**

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### **11.1 Establishing a Disciplinary Committee**

Where the Board is advised of an allegation (not being vexatious, trifling or frivolous) or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the Objects and the interests of the Association and/or Netball, or another Member; or
- (c) brought themselves, another member, the Association or Netball into disrepute,

the Board may by resolution and in accordance with rule 29, establish a disciplinary committee to convene to hear a matter against any Member and to determine what action, if any, to take against that Member (**Disciplinary Hearing**), and that Member,

will be subject to, and submits unreservedly to the jurisdiction, disciplinary procedures and penalties and the appeal mechanisms (if any) in this Constitution.

## **11.2 Provisional Suspension**

- (a) Upon establishing a disciplinary committee in accordance with rule 11.1, the Board may by resolution provisionally suspend the Member subject to the Disciplinary Hearing until such time as the disciplinary committee makes a finding.
- (b) The disciplinary committee may lift a provisional suspension prior to making a finding at the Disciplinary Hearing.

## **11.3 Disciplinary Committee Members**

The members of the disciplinary committee:

- (a) may be Members or anyone else; but
- (b) must not be biased against, or in favour of, the Member concerned.

## **11.4 Notice of Alleged Breach**

- (a) Where a disciplinary committee is established the Association shall serve on the Member not earlier than twenty eight days and not later than fourteen days before the Disciplinary Hearing is to be held, a notice in writing:
  - (i) setting out the alleged breach of the Member and the grounds on which it is based;
  - (ii) stating that the Member may address the disciplinary committee at the Disciplinary Hearing;
  - (iii) stating the date, place and time of that Disciplinary Hearing;
  - (iv) informing the Member that he, she or it may do one or more of the following:
    - (A) attend that Disciplinary Hearing;
    - (B) give the disciplinary committee prior to or at that meeting a written statement regarding the alleged breach.

## **11.5 Determination of Disciplinary Committee**

- (a) The disciplinary committee shall ensure that the Disciplinary Hearing accords with the principles of natural justice by ensuring that:
  - (i) the Member has every opportunity to be heard and to call witnesses; and
  - (ii) due consideration is given to any written statement submitted by the Member or a witness;before determining whether the alleged breach occurred.

- (b) If the disciplinary committee determines there was a breach under rule 11.1, it will determine what penalty (if any) shall be given to the Member, and give notice of this to the Board.
- (c) The penalties able to be given to the Member by the disciplinary committee include:
  - (i) expel a Member from the Association;
  - (ii) suspend a Member from membership of the Association or accessing certain privileges of membership for a specified period;
  - (iii) fine a Member; or
  - (iv) impose such other penalty, action or educative process as the disciplinary committee sees fit.

### **11.6 Appeal**

- (a) Subject to rule 11.6(b) an Appeal Tribunal may be appointed by the Board to hear and adjudicate on any appeal lodged by a Member against the decision of the Disciplinary Committee.
- (b) An appeal may only be lodged by a party directly affected by a decision and where such an appeal is based on the ground that new information or evidence can be presented that was not available at the time of the original decision being appealed against.

### **11.7 Appeal Tribunal**

- (a) The Board will appoint an Appeal Tribunal to determine an appeal lodged in accordance with the provisions of rule 11.6. The composition of an Appeal Tribunal shall be:
  - (i) an individual with a high level of legal training and experience in arbitration; or
  - (ii) a panel of two or three persons deemed suitable by the Board whereby a chairperson shall be appointed with experience in legal process or dispute resolution.
- (b) No member of the Appeal Tribunal pursuant to rule 11.7(a) may have been a party to or directly interested in the decision under appeal or the original matter brought for determination.

### **11.8 Appeals Process**

- (a) Formal advice to the Board of an appeal against a decision of the Disciplinary Committee shall be forwarded to the Board in writing within fourteen days of formal advice of the decision being appealed.
- (b) The lodgement of appeal must be accompanied by payment of an appeal fee as determined by the Board. The fee shall be fully refundable if the appeal is successful.

- (c) The Board shall determine whether the appeal falls within the grounds for appeal pursuant to rule 11.6(b). If satisfied, an Appeal Tribunal will be appointed within seven days of formal lodgement of the appeal.
- (d) The Appeal Tribunal will schedule a date and venue for a hearing as soon as possible and no later than twenty-one days after formal lodgement of the appeal.
- (e) If, as the circumstances may be, all parties are unable to be present at an appeal hearing, they may participate by tele-conference or other medium as determined appropriate at the discretion of the Appeal Tribunal.
- (f) The parties will be advised of the grounds for appeal and invited to lodge written submissions which must be received the Association no later than two business days prior to the scheduled hearing. The Board shall ensure that all written submissions are distributed to all parties and the Appeal Tribunal in a timely manner prior to the hearing.
- (g) The Appeal Tribunal may then deal with the offence forthwith adhering to the principles of a fair hearing as broadly outlined in rule 11.5.
- (h) The Appeal Tribunal may adjourn a hearing to obtain further information or evidence.
- (i) At the conclusion of the hearing the Appeal Tribunal shall:
  - (i) uphold the appeal and rescind the original decision, or
  - (ii) dismiss the appeal; or
  - (iii) dismiss the appeal and review the penalty within the provisions of rule 11.5(c);
- (j) The decision of the Appeal Tribunal shall be final.
- (k) The Appeal Tribunal must forward to the Board a written report outlining their determination of the matter

## **PART IV - GENERAL MEETINGS**

### **12. DELEGATES**

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#### **12.1 Appointment of Delegates**

- (a) Each Primary Competition Member shall nominate to the Board one Delegate for such term as is deemed appropriate by the Primary Competition Member. A Delegate must:
  - (i) be an Individual Member;
  - (ii) be appropriately empowered by the appointing Primary Competition Member to consider, make decisions and vote at General Meetings; and
  - (iii) not be a Director.



- (b) The Board may in its direction determine that a person nominated to be a Delegate shall not represent a Primary Competition Member as a Delegate, and shall notify the Primary Competition Member accordingly.
- (c) Any proposed change in the Delegate shall be notified to the Board in writing. The Board may approve or reject the proposed Delegate in its discretion, and shall notify the Primary Competition Member of its decision (without being obliged to provide reasons) as soon as practicable.
- (d) The Delegate may nominate a nominee to represent the Primary Competition Member from time to time, but in the event the appointed Delegate fails to attend two consecutive General Meetings, he shall be presumed to have vacated his position, and the Primary Competition Member shall immediately nominate another Delegate.
- (e) Each Delegate shall comply with the directions given by a resolution of the Primary Competition Member appointing that Delegate, including in respect of voting and if required by the Board shall provide to the Board evidence of such compliance.
- (f) The Association shall record the Delegate, and any change in Delegate, in a Register.

## **12.2 Primary Competition Member to Advise**

Where nomination of a Delegate has not occurred under rule 12.1(a), a Primary Competition Member shall, at least forty eight hours prior to any General Meeting, advise in writing to the Association its appointed Delegate.

## **13. GENERAL MEETINGS**

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- (a) An annual general meeting of the Association shall be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the annual general meeting shall be special general meetings and shall be held in accordance with this Constitution.

## **14. NOTICE OF GENERAL MEETING**

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### **14.1 Notice of General Meetings**

- (a) Notice of every General Meeting shall be given to each Primary Competition Member and Life Member at the address appearing in the register kept by the Association. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) Notice of General Meeting shall be given at least twenty eight days prior to the General Meeting and shall specify the place and day and hour of the General Meeting.
- (c) The agenda for the General Meeting stating the business to be transacted at the General Meeting shall be provided with the Notice of General Meeting, together with any notice of motion received from any Primary Competition Member. If a Special Resolution is proposed, the notice must state in full the

proposed resolution and state the intention to propose the resolution as a special resolution.

#### **14.2 Entitlement to Attend General Meeting**

Notwithstanding any other Rule, no Member shall be represented at, or take part in a General Meeting, unless all monies (set in accordance with rule 7) then due and payable to the Association are paid.

### **15. BUSINESS**

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#### **15.1 Business of General Meetings**

- (a) The business to be transacted at the annual general meeting includes confirming the minutes of the last preceding annual general meeting and of any General Meeting held since that meeting, the consideration of financial statements of the Association for the preceding Financial Year submitted by the Board in accordance with the Act, reports of the Board (including in relation to the activities of the Association during the last preceding Financial Year) and auditors and the election of Directors and Life Members.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the annual general meeting, with the exception of those matters set out in rule 15.1(a) shall be special business. "Special business" is business of which a notice of motion has been submitted in accordance with rule 16.

#### **15.2 Business Transacted**

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

### **16. NOTICES OF MOTION**

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- (a) Subject to rule 7, Members entitled to vote may submit notices of motion as special business at a General Meeting where the subject of such notices of motion relate to a matter which is expressed in this Constitution to be a right or power of the Members in General Meeting.
- (b) Where the subject of a notice of motion relates to a matter which is not expressly stated in this Constitution to be a right or power of the Members in General Meeting, it will not be considered a valid notice of motion and will not be included as special business at a General Meeting.
- (c) The Association must call for notices of motion at least sixty days before the date of the General Meeting.
- (d) All notices of motion for inclusion as special business at a General Meeting must be submitted in writing (in the prescribed form) to the Association not less than thirty five days (excluding receiving date and meeting date) prior to the General Meeting.

## **17. SPECIAL GENERAL MEETINGS**

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### **17.1 Special General Meetings may be Held**

The Board may, whenever it thinks fit, convene a special general meeting of the Association and, where, but for this Rule more than fifteen months would elapse between annual general meetings, shall convene a special general meeting before the expiration of that period.

### **17.2 Requisition of Special General Meetings**

- (a) The Board shall on the requisition in writing of at least ten Primary Competition Members convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Primary Competition Members making the requisition and be sent to the Association. The requisition may consist of several documents in a like form each signed by one or more of the Primary Competition Members making the requisition.
- (c) If the Board does not cause a Special General Meeting to be held within sixty days after the date on which the requisition is sent to the Association, the Primary Competition Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than three months after that date.
- (d) A Special General Meeting convened by Primary Competition Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

## **18. PROCEEDINGS AT GENERAL MEETINGS**

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### **18.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Association shall be ten Primary Competition Members entitled to vote and be represented at the meeting in person through their Delegate.

### **18.2 Chair of Board Preside**

The chair of the Board shall, subject to this Constitution, preside as chair at every General Meeting of the Association. If the chair is not present, or is unwilling or unable to preside, the deputy chair shall preside as chair for that meeting only. If the deputy chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as chair for that meeting only.

### **18.3 Adjournment of Meeting**

- (a) If, within half an hour after the appointed time for the commencement of a General Meeting, a quorum is not present, the meeting:
  - (i) if convened upon the requisition of Primary Competition Members under rule 17.2, shall be dissolved; and

- (ii) in any other case, shall stand adjourned to such other day and at such other time and place as the chair may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.
- (b) The chair may, with the consent of any General Meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in rule 18.3(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

#### **18.4 Use of Technology**

- (a) The Board may from time to time resolve that a Member not physically present at a General Meeting may participate in the meeting by the use of technology that allows that Member and the Members present at the meeting to clearly and simultaneously communicate with each other.
- (b) If the Board resolves to permit a General Meeting to occur as set out at rule 18.4(a), a Member participating in such General Meeting is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.

#### **18.5 Voting Procedure**

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the:

- (a) chair; or
- (b) majority of the Delegates present.

#### **18.6 Recording of Determinations**

Unless a poll is demanded under rule 18.5, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

#### **18.7 Where Poll Demanded**

If a poll is duly demanded under rule 18.5 it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

## **18.8 Resolutions at General Meetings**

Except where a Special Resolution is required, all questions at General Meetings shall be determined by the majority of votes (as set out in rule 19). For the avoidance of doubt, in the case of an equality of votes on a question at a General Meeting that motion is lost.

## **18.9 Minutes**

- (a) The Board must ensure that minutes are taken and kept of each General Meeting.
- (b) The minutes must record:
  - (i) the business considered at the meeting;
  - (ii) proxy and postal forms given to the Secretary under rule 20;
  - (iii) any resolution on which a vote is taken and the result of the vote; and
  - (iv) the names of persons present at all meetings..
- (c) In addition, the minutes of each annual general meeting must include:
  - (i) the financial statements submitted to the members in accordance with the Act;
  - (ii) the certificate signed by two Board members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - (iii) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.
- (d) The minutes of General Meetings shall be available for inspection and copying by the Members.

## **19. VOTING AT GENERAL MEETINGS**

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### **19.1 Members entitled to vote**

- (a) A Primary Competition Member is entitled to one Delegate. Each Delegate shall be entitled to one vote at General Meetings.
- (b) A Life Member is entitled to one vote at General Meetings.

### **19.2 Chairperson does not have a casting vote**

Where voting at General Meetings is equal the chairperson does not have a casting vote. In the case of an equality of votes on a question at a General Meeting that motion is lost.

## **20. PROXY AND POSTAL VOTING**

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- (a) Proxy voting shall be permitted at all General Meetings provided a proxy form in the form approved by the Board from time to time, has been duly completed

and executed and is lodged with the Secretary at least forty-eight hours before the commencement of the meeting.

- (a) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. For the proxy to be valid a Delegate of a Primary Competition Member or a Life Member must instruct the proxy to vote either in favour of or against any proposed resolutions which must be set out in the proxy form.
- (b) Postal voting may be permitted from time to time in such instances as the Board may determine and shall be held in accordance with procedures prescribed by the Board.

## **PART V - THE BOARD**

### **21. POWERS OF THE BOARD**

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- (a) The affairs of the Association shall be managed by the Board constituted under rule 22.
- (b) Subject to this Constitution and the Act, the Board:
  - (i) shall control and manage the business and affairs of the Association;
  - (ii) may exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by this Constitution to be exercised by the members in General Meeting;
  - (iii) has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Association; and
  - (iv) in particular, the Board as the controlling authority of the Association, shall be responsible for acting on all issues in accordance with the Objects and shall operate for the collective and mutual benefit of the Association and Netball.

### **22. COMPOSITION OF THE BOARD**

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#### **22.1 Board Composition**

- (a) The Board shall comprise of eight Elected Directors who shall be elected in accordance with rule 23.
- (b) The Board shall elect an Elected Director to be chair in accordance with rule 22.2.
- (c) The Board shall elect an Elected Director to be deputy chair in accordance with rule 22.2.
- (d) The Board has discretion to appoint Appointed Directors in accordance with rule 24.

#### **22.2 Chair and Deputy Chair**

The positions of chair and deputy chair shall be appointed by the Board from amongst the Elected Directors as soon as practicable after each annual general meeting. The appointees will hold the respective positions until the conclusion of the next annual general meeting following their appointment. Subject to rule 23.3, an Elected Director may be re-appointed to either position.

### **22.3 Portfolios**

If the Board considers it appropriate, in order to further the Objects, it may allocate Directors to specific portfolios, with specific responsibilities, as determined in the discretion of the Board.

## **23. ELECTION OF ELECTED DIRECTORS**

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### **23.1 Qualifications for Elected Directors**

- (a) Nominees for Elected Director positions on the Board must be over the age of 18 years, reside in Australia and meet the qualifications as prescribed from time to time by the Board and set out in the By-Laws.
- (b) Nominees for Elected Director positions on the Board must declare any position they hold in a Primary Competition Member, including as an office bearer, director or a paid appointee.

### **23.2 Elections of Elected Directors**

- (a) The Association shall call for nominations sixty days before the date of the annual general meeting. All Primary Competition Member and Life Member shall be notified of the call for nominations.
- (b) Nominations for Elected Directors must be:
  - (i) in writing;
  - (ii) on the prescribed form (if any) provided for that purpose;
  - (iii) signed by a Primary Competition Member or Life Member; and
  - (iv) certified by the nominee (who must be a Member) expressing his or her willingness to accept the position for which he or she is nominated.
- (c) Nominations must be received by the Association at least forty five days prior to the annual general meeting.
- (d) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall only be elected if they are elected by the Members by secret ballot in such usual and proper manner as the chair directs.
- (e) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the chair directs.
- (f) The voting shall be conducted by preferential ballot or by such other procedure as is determined by the Board and communicated to the Clubs.

### **23.3 Term of Appointment**

- (a) Elected Directors shall be elected in accordance with this Constitution for a term of three years, which shall commence from the conclusion of the annual general meeting at which the election occurred until the conclusion of the second annual general meeting following.
- (b) If an Elected Director has been elected for two terms, upon the conclusion of the Elected Director's second term, the Elected Director must not be elected to the Board for a minimum of one year, which shall commence from the conclusion of the annual general meeting at which the election occurs, until the conclusion of the second annual general meeting following.
- (c) For each three year interval, three Elected Directors shall be elected in the first year, three Elected Directors shall be elected in the second year and two Elected Directors shall be elected in the third year.
- (d) Should any adjustment to the term of Elected Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution.

## **24. APPOINTMENT OF APPOINTED DIRECTORS**

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### **24.1 Appointment of Appointed Directors**

The Elected Directors may appoint up to two Appointed Directors.

### **24.2 Qualifications for Appointed Directors**

- (a) The Appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition, but need not have experience in or exposure to Netball.
- (b) They must be over the age of 18 years, reside in Australia and need not be Members of the Association.

### **24.3 Term of Appointment**

- (a) Appointed Directors may be appointed by the Elected Directors in accordance with this Constitution for a term of twelve months.
- (b) Wherever possible the Board should not appoint two Appointed Directors in the same year so that the terms of office of the Appointed Directors end in the same year. Notwithstanding this rule 1.1(b) the Board may appoint Appointed Directors as it considers appropriate and may adjust the term of Appointed Directors in its sole discretion.

## **25. VACANCIES OF BOARD MEMBERS**

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### **25.1 Grounds for Termination of Director**

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



- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns his office in writing to the Association;
- (e) is absent without the consent of the Board from two consecutive meetings of the Board;
- (f) holds any office of employment of the Association;
- (g) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Association;
- (h) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of his interest;
- (i) is removed from office by Special Resolution under rule 25.2; or
- (j) would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act.

## **25.2 Removal of a Director**

- (a) The Association in a General Meeting may by Special Resolution remove any Director, before the expiration of their term of office. If a Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled in accordance with the procedure set out in rule 25.3.
- (b) Where the Director to whom a proposed resolution referred to in rule 25.2(a) makes representations in writing to the Association and requests that such representations be notified to the Members, the Association may send a copy of the representations to each Primary Competition Member and Life Member or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.

## **25.3 Casual Vacancies**

- (a) The Board may appoint an eligible member of the Association to fill a position as an Elected Director on the Board where the position:
  - (i) has become vacant under rule 25.1 or rule 25.2; or
  - (ii) was not filled by election at the last annual general meeting.
- (b) A director appointed in accordance with rule 25.3 will hold office for the remainder of the period of office of the relevant director whose vacancy is being filled.
- (c) Any Appointed Director casual vacancy may be filled by the remaining Directors from among appropriately qualified persons, for the remainder of the Director's term.

## **25.4 Remaining Directors May Act**

In the event of a casual vacancy or vacancies in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

## **26. MEETINGS OF THE BOARD**

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### **26.1 Board to Meet**

The Board shall meet as often as is deemed necessary in every calendar year (and must meet on at least three occasions in each year) for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate, its meetings as it thinks fit. On the requisition of two Directors a meeting of the Board shall be convened within a reasonable time.

### **26.2 Decisions of Board**

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and all questions so decided shall for all purposes be deemed a determination of the Board. All Directors present at any meeting shall have one vote on any question. The chair shall not have a casting vote where voting is equal. In the case of an equality of votes on a question at a Board meeting that motion is lost. Voting by proxy is not permitted.

### **26.3 Resolutions not in Meeting**

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex, electronic mail or other form of visible or other electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one or more of the Directors is not physically present at the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
  - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
  - (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within fifteen minutes

from the interruption the meeting shall be deemed to have terminated;  
and

- (iv) any meeting held where one or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chair is located.

#### **26.4 Quorum**

- (a) Any five (5) Directors shall constitute a quorum for the transaction of the business of a meeting of the Board.
- (b) No business may be conducted at a meeting of the Board unless a quorum is present.

#### **26.5 Notice of Board Meetings**

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

#### **26.6 Validity of Board Decisions**

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

#### **26.7 Chair of Board Meeting**

The chair appointed under rule 22.12 shall preside at every meeting of the Board. If the chair is not present, or is unwilling or unable to preside, the deputy chair shall preside as chair for that meeting only. If the deputy chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number to preside as chair for that meeting only.

#### **26.8 Minutes of Board Meeting**

- (a) The Board must ensure that minutes are taken and kept of each committee meeting.
- (b) The minutes must record the following:
  - (i) The names of the Board members in attendance at the meeting;
  - (ii) The business considered at the meeting;
  - (iii) Any resolution on which a vote is taken and the result of the vote; and
  - (iv) Any conflict of interest disclosed under rule 27.
- (c) The minutes of Board Meetings shall not be available for inspection or copying by the Members.

## **26.9 Leave of absence**

- (a) The Board may grant a Director leave of absence from committee meetings for a period not exceeding three months on the submission of a written application for such leave to the Board.
- (b) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Director to seek the leave in advance.

## **27. CONFLICTS**

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### **27.1 Directors' Interests**

A Director is disqualified by holding any place of profit or position of employment in the Association, any Affiliate or in any company or incorporated association in which the Association is a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Association in which any Director is in any way interested will be voided for such reason.

### **27.2 Conflict of Interest**

A Director shall declare his/her interest in any:

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

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

### **27.3 Disclosure of Interests**

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

### **27.4 General Disclosure**

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under rule 27.3 as regards such Director and the said transactions. After

such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

## **27.5 Recording Disclosures**

It is the duty of the Board to record in the minutes any declaration made or any general notice given by a Director in accordance with rules 27.3 and 27.4.

## **28. DUTIES**

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### **28.1 General Duties**

- (a) As soon as practicable after being elected or appointed to the Board, each Director must become familiar with this Constitution and the Act.
- (b) The Board is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Committee comply with this Constitution.
- (c) The Board must ensure that the Association complies with all requirements in the Act regarding financial statements.

### **28.2 Secretary**

- (a) The Board will determine from time to time whether the President, Administration Officer or other person acts as the Association's Secretary under the Act.
- (b) The Secretary must give the registrar notice of his or her appointment within fourteen days after the appointment.
- (c) If the position of Secretary becomes vacant, the Board must appoint a person to the position within fourteen days after the vacancy arises.

## **PART VI - MISCELLANEOUS**

## **29. DELEGATIONS**

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### **29.1 Board may Delegate Functions to Committees**

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

### **29.2 Delegation by Instrument**

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board by the Act or any other law, or this Constitution.

### **29.3 Delegated Function Exercised in Accordance With Terms**

A function, the exercise of which has been delegated under this Rule, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

### **29.4 Procedure of Delegated Entity**

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Rule 26. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- (b) A Director shall be ex-officio members of any committee so appointed.
- (c) Within seven days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Board.

### **29.5 Delegation may be Conditional**

A delegation under this rule 29.5 may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

### **29.6 Revocation of Delegation**

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Rule, and may amend, repeal or veto any decision made by such committee under this Rule where such decision is contrary to this Constitution, the By-Laws, the Act, the Objects or the committee's delegation.

## **30. BY-LAWS**

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### **30.1 Board to Formulate By-Laws**

The Board may formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies (**By-Laws**) for the proper advancement, management and administration of the Association, the advancement of the Objects and Netball as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

### **30.2 By-Laws Binding**

All By-Laws made under this Rule shall be binding on the Association and Members.

### **30.3 By-Laws Deemed Applicable**

All by-laws, regulations and policies of the Association in force at the date of the approval of this Constitution under the Act insofar as such by-laws, regulations and policies are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

### **30.4 Notices Binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Affiliates by means of notices approved, prepared and issued by the

Board. Affiliates shall be obliged to draw such notices to the attention of their respective Members. Notices are binding upon all Members.

## **31. RECORDS AND ACCOUNTS**

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### **31.1 Board to Keep Records**

The Board shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board and shall produce these as appropriate at each Board meeting or General Meeting.

### **31.2 Financial Records**

The Association must keep financial records that -

- (a) correctly record and explain its transactions, financial position and performance; and
- (b) enable financial statements to be prepared as required by the Act.

### **31.3 Records Kept in Accordance with Act**

Books, documents, securities and proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. All such records and the books of account shall be kept in the care and control of the Board.

### **31.4 Association to Retain Records**

The Association shall retain such records for seven years after the completion of the transactions or operations to which they relate.

### **31.5 Board to Submit Accounts**

The Board shall submit to the annual general meeting the accounts of the Association in accordance with the Act.

### **31.6 Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two persons appointed in writing by the Board.

### **31.7 Inspection of Records**

- (a) Members may on request inspect free of charge -
  - (i) The minutes of general meetings;
  - (ii) Subject to rule 31.7(b), the financial records, books, securities and any other relevant document of the Association.
- (b) The Board may refuse to permit a member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

- (c) The Board must on request make copies of these rules available to members and applicants for membership free of charge.
- (d) Subject to rule 31.7(b), a member may make a copy of any of the other records of the Association referred to in this rule and the Association may charge a reasonable fee for provision of a copy of such a record.
- (e) For the purposes of this rule -  
  
relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following:
  - (i) its financial statements;
  - (ii) its financial records;
  - (iii) records and documents relating to transactions, dealings, business or property of the Association.

## **32. AUDITOR**

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- (a) A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted accounting principles and/or any applicable codes of conduct.
- (b) Members may remove an auditor from office by resolution made at a General Meeting in accordance with the Act.

## **33. NOTICE**

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### **33.1 Manner of Notice**

- (a) Notices may be given by the Association to any Member by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's registered address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing and posting the notice. Service of the notice is deemed to have been effected two days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.
- (e) Any notice required to be given to the Association or the Board may be given-
  - (i) by handing the notice to a member of the Board;



- (ii) by sending the notice by post to the registered address;
- (iii) by leaving the notice at the registered address;
- (iv) if the Board determinates that it is appropriate in the circumstances -
  - (A) by email to the email address of the Association or the Secretary; or
  - (B) by facsimile transmission to the facsimile number of the Association.

### **33.2 Notice of General Meeting**

Notice of every General Meeting shall be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

### **33.3 Notice to Individual Members**

Notice to Individual Members (where appropriate or required) shall be deemed given by notice being given in accordance with this Constitution to the Member of that Individual Member.

## **34. SEAL**

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- (a) The Association may have a common seal.
- (b) If the Association has a common seal -
  - (i) the name of the Association must appear in legible characters on the common seal:
  - (ii) subject to rule 34(c), the common seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by two Directors.
  - (iii) the common seal must be kept in the custody of the Secretary.
- (c) A Director may not sign a document to which the seal of the Association is fixed where the Director is interested in the contract or arrangement to which the document relates.

## **35. REGISTERED ADDRESS**

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The registered address of the Association is:

- (a) the address determined from time to time by resolution of the Board; or
- (b) if the Board has not determined an address to be the registered address, the postal address of the Secretary.

## **36. ALTERATION OF CONSTITUTION**

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- (a) This Constitution shall not be altered except by Special Resolution.
- (b) In addition, there shall be no alteration or amendment to rules 37 or 38 without the consent of the relevant Minister or other authority under the Act.

## **37. INDEMNITY**

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### **37.1 Directors to be indemnified**

Every Director, auditor, manager, employee or agent of the Association shall be indemnified to the extent provided under the directors and officers insurance policy of the Association against any liability incurred by him/her in his/her capacity as Director, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him/her by the Court.

### **37.2 Association to Indemnify**

The Association shall indemnify its Directors and employees to the extent provided under the directors and officers insurance policy of the Association against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his/her employment by the Association.

## **38. WINDING UP**

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### **38.1 Winding Up of the Association**

Subject to this rule 38, the Association may be wound up in accordance with the provisions of the Act.

### **38.2 Liability of Members**

The liability of the Members of the Association is limited.

### **38.3 Members' Contributions**

Every Affiliate undertakes to contribute to the assets of the Association in the event of it being wound up while a Member, or within one year after ceasing to be a Member for payment of the debts and liabilities of the Association contracted before the time at which he or she ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding \$1.00.

### **38.4 Distribution of Property on Winding Up**

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members of the Association but shall be given or transferred to some body or bodies having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such body or bodies to be determined by the Members of the Association at or before the time of dissolution, and in default thereof by such

judge of the relevant Supreme Court or such other court as may have or acquire jurisdiction in the matter.

### **39. AUTHORITY TO TRADE**

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The Association is authorised to trade in accordance with the Act.

### **40. SOURCE OF FUNDS**

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The funds of the Association may be derived from annual membership subscriptions, fees and levies payable by Members, donations, grants, sponsorships and such other sources as the Board determines.

### **41. APPLICATION OF INCOME**

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#### **41.1 Income and Property Applied to Objects**

The income and property of the Association shall be applied solely towards the promotion of the Objects.

#### **41.2 No Income to Members**

Except as prescribed in this Constitution:

- (a) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.

#### **41.3 Payments in Good Faith**

Nothing contained in rule 41.2 shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Association whether as an employee or otherwise;
- (b) goods supplied to the Association in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Association;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Association; or
- (f) any other reason,

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

## **42. MANAGEMENT OF FUNDS**

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- (a) The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Associations' revenue is deposited.
- (b) The banking account of the Association shall be kept with such bank as is determined by the Board from time to time.
- (c) The Board may authorise one Director to expend funds on behalf of the Association up to a specified limit without requiring approval from the Board for each item on which the funds are expended. This may be as a part of a designated portfolio in accordance with rule 22.3.
- (d) All funds of the Association must be deposited into the financial account of the Association no later than five working days after the receipt.
- (e) With the approval of the Board, one Director may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction. This may be as a part of a designated portfolio in accordance with rule 22.3.

## **43. GRIEVANCE PROCEDURE**

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### **43.1 Grievance by a Member**

- (a) The grievance procedure set out in this rule applies to disputes under this Constitution between a Member and:
  - (i) another Member; or
  - (ii) the Association.
- (b) The parties to the dispute must meet (which may, if agreed by the parties, take place by using any technology that allows the parties to clearly and simultaneously communicate with each other) and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties may, within ten days, refer the dispute to the Dispute Settlement Centre of Victoria (Department of Justice) (or such other similar body in circumstances where the Dispute Settlement Centre of Victoria is no longer in existence) for resolution.
- (d) The Board may prescribe additional grievance procedures in Regulations consistent with this rule 43.