

Basketball SA

Constitution

Amended 20 October 2019

This is the Annexure Marked 'A' referred to in the statutory declaration of PHIL SINNOTT

made on the 20th day of October 2019 before me (Justice of the Peace) _____

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Basketball SA - Constitution

1. Name

The name of the incorporated association is Basketball SA Incorporated (**Basketball SA**).

2. Interpretation

2.1 Definitions

In this Constitution:

Act means the *Associations Incorporation Act 1985 (SA)*.

AGM means the annual general meeting of Basketball SA.

Appointed Commissioner means a Commissioner appointed under clause 19.

Basketball Australia means Australian Basketball Federation Incorporated trading as Basketball Australia.

BA's Constitution means:

- (a) the Constitution of Basketball Australia; and
- (b) any by-laws of Basketball Australia,

in each case as amended from time to time.

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

Basketball Adelaide is the association of all clubs participating in the district basketball competition for the purpose of nominating representative/s on the Basketball SA Council and Commission.

By-Laws have the meaning given in clause 26.

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

Chief Executive Officer means the person who is appointed to carry out the duties set out in clause 24.

Commission means the committee of management of Basketball SA.

Commissioner means a member of the Commission.

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

Council means the Council of Basketball SA.

Councillor means a member of the Council who is appointed from time to time by a Member Association to be its representative on Council.

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

General Meeting means any general meeting of the Council, including the AGM.

Independent Commissioner means a Commissioner appointed under clause 18.

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

Life Member means an individual upon whom life membership of Basketball SA has been conferred under clause 9.4.

Member means a member for the time being of Basketball SA under clause 9.

Member Associations means:

- (a) Basketball Adelaide;
- (b) SA Country;
- (c) SA Church;
- (d) the Recreation Centres; and.
- (e) any other group that may be admitted as a Member Association by the Council from time to time.

For the sake of clarity, for the purposes of this Constitution:

- the Recreation Centres will together comprise a single Member Association.

Membership means membership of Basketball SA.

Membership Agreement means an agreement between Basketball SA and a Member detailing the rights and obligations of each party.

Objects mean Basketball SA's objects, as set out in clause 3.

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

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

but does not include any such facility if it is otherwise a member of, or otherwise represented by, a Member Association. For the 2007/2008 season and until otherwise determined by the Commission, those facilities are:

- Golden Grove Recreation Centre; Turrumurra Recreation Centre; Ingle Farm Recreation Centre; The Gardens Recreation Centre; St Clair Recreation Centre

SA Church means SA Church Basketball Association Inc.

SA Country means SA Country Basketball Council Inc.

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

Special Resolution means a resolution passed:

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

2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) another grammatical form of a defined word or expression has a corresponding meaning;
- (g) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (i) a reference to 'writing' will unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

2.3 Severance

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

2.4 Expressions in Act

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

3. Objects of Basketball SA

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

- (a) regulate, encourage, administer, promote and advance basketball in South Australia through participation, development, competition and commercial means;
- (b) formulate and/or adopt and implement appropriate policies in relation to such matters as arise from time to time as issues to be addressed in basketball;
- (c) adopt, formulate, issue, interpret, implement and amend from time to time such by-laws and regulations as are necessary for the administration and development of basketball in South Australia;

- (d) develop, administer and control the sport of basketball in South Australia in accordance with and having regard to the General Statutes and Internal Regulations and other rules of FIBA and the By-Laws and any Regulations of Basketball Australia;
- (e) hear and adjudicate upon appeals from decisions and/or actions of Member Associations;
- (f) establish and maintain a South Australian basketball judicial system in accordance with this Constitution and the By-Laws so as to facilitate the resolution of disputes involving any Member or any other person in any way associated with the sport of basketball in South Australia;
- (g) use and protect the Intellectual Property;
- (h) pursue through itself or other such entity commercial arrangements, including sponsorship and marketing opportunities and commercial arrangements in relation to the Intellectual Property, as are appropriate to further the Objects;
- (i) provide for the representation of South Australia at national events and championships;
- (j) promote, provide for, regulate and administer basketball competitions and tournaments in SA as shall be determined from time to time;
- (k) develop and foster participation at all levels of basketball in South Australia;
- (l) provide for the participation of South Australian based teams in interstate basketball competitions;
- (m) promote the recognition of basketball as a leading participation sport;
- (n) provide, or encourage the provision of, appropriate facilities for participation in basketball;
- (o) co-operate, join with or support any association, organisation, society or individual whose activities or purposes are similar to those of Basketball SA or which advance basketball in Australia (and particularly in South Australia);
- (p) have regard to the public interest in its operations;
- (q) at all times operate with and promote mutual trust and confidence between Basketball SA, Basketball Australia, the other Constituent Associations and the Members in pursuit of the Objects;
- (r) act as final arbiter on all matters pertaining to the conduct of basketball in South Australia; and
- (s) undertake and/or do all such things or activities as are necessary, incidental or conducive to the advancement of the Objects.

4. Basketball Australia

4.1 Constituent Association for South Australia

As the **Constituent Association** in relation to South Australia for the purposes of BA's Constitution, Basketball SA acknowledges that it is bound by BA's Constitution and that BA's Constitution operates to create uniformity in the way in which BA's Objects and the sport of basketball are to be conducted, encouraged, promoted and administered in Australia;

5. Powers of Basketball SA

Solely for furthering the Objects and in addition to the powers conferred by section 25 of the Act, Basketball SA has power to:

- (a) purchase, take on lease or in exchange or otherwise acquire any real or personal estate which may be deemed necessary or convenient for any of the Objects and to sell, manage, lease, mortgage, give in exchange, dispose of or otherwise deal with any part of the rights or property of Basketball SA, whether subject to any charges or encumbrances or not and to erect, replace, maintain, reconstruct, adapt and furnish any offices or other buildings thereon and to sell, let, alienate, mortgage, charge or deal with all or any such lands, tenements or hereditaments or any part of them;
- (b) construct, maintain and alter any houses, buildings, grounds, playing surfaces, conveniences or works necessary or convenient for the purposes of, or which seem likely to advance, Basketball SA;
- (c) borrow and raise money in such manner as Basketball SA may think fit, including on bonds or mortgage or other security of any property held for or on behalf of Basketball SA or without any such security;
- (d) take, or otherwise acquire and hold shares, debentures or other securities of any company or body corporate;
- (e) take or hold mortgages, liens or charges, to secure payment of the purchase price, or any unpaid balance of the purchase price of any part of Basketball SA's property sold, or any money due to Basketball SA from any purchasers or others;
- (f) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable and transferable instruments;
- (g) receive money on deposit with or without allowance of interest thereon;
- (h) invest and deal with any monies of Basketball SA, not immediately required for the Objects, in such manner as may from time to time be determined by the Commission;
- (i) do all or any of the matters authorised either alone or in conjunction with any person, company or unincorporated body or by or through any factors, trustees or agents;
- (j) take any gift of property whether subject to any special trust or not for any one or more of the objects of Basketball SA, provided Basketball SA will only deal with any such trusts in such manner as is allowed by law;
- (k) lend and advance money to, give credit to, or otherwise assist, any person or body corporate, including to guarantee or indemnify any person's or body corporate's performance;
- (l) take such steps by personal or written appeals, public meetings or otherwise as may from time to time be deemed expedient for the purposes of procuring contributions to the funds of Basketball SA in the form of donations, annual subscriptions or otherwise;
- (m) subscribe to, become a member of or co-operate with any other organisation whether incorporated or not whose objects are similar, in whole or in part, to those of Basketball SA, so long as that other organisation prohibits the distribution of its income and property amongst its members at least to the extent provided under this Constitution;
- (n) print and publish any newspapers, periodicals, books or leaflets and develop and implement any computer system or software package that Basketball SA may think desirable for the promotion of its objects;

- (o) appoint, hire, employ, remove, replace or reinstate secretaries, managers, servants, employees and other persons in and for the carrying out of the Objects and to pay them in return for services rendered to Basketball SA, salaries, wages and gratuities, as appropriate;
- (p) buy, sell and deal in all kinds of articles, commodities and provisions both liquid and solid for Members or other persons frequenting the premises or facilities of or under the control of Basketball SA;
- (q) subscribe to any charities and to grant donations for any public purpose (donations may not be made to political parties or for a political purpose);
- (r) produce, develop, create, licence and otherwise exploit, use and protect the Intellectual Property;
- (s) establish and maintain corporate entities to carry on and conduct the business affairs and undertakings, or any aspect thereof, of Basketball SA and for that purpose, to utilise any of the assets of or held on behalf of Basketball SA;
- (t) promote any other person or company for any purpose calculated to benefit Basketball SA;
- (u) enter into arrangements with any government or authority that are incidental or conducive to the attainment of the objects and the exercise of the powers of Basketball SA, and to obtain rights, privileges and concessions from such government or authority and carry out, exercise and comply with any such rights, privileges and concessions;
- (v) take and effect insurance or seek, obtain and in its discretion act on, any professional advice necessary or appropriate;
- (w) act as final arbiter (where applicable) on all matters pertaining to the conduct of the sport of basketball in South Australia, including disciplinary matters; and
- (x) do all such acts and things as are incidental, conducive or subsidiary to all or any of the objects of Basketball SA.

6. Application of Income

- (a) The funds of Basketball SA may be derived from annual membership subscriptions, fees and levies payable by Members, competition fees, facility hire, donations, grants, sponsorships and such other sources as the Commission determines.
- (b) The income and property of Basketball SA must be applied solely towards the promotion of the Objects.
- (c) Except as prescribed in this Constitution:
 - (i) no portion of the income or property of Basketball SA shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
 - (ii) no remuneration or other benefit in money or money's worth shall be paid or given by Basketball SA to any Member who holds any office of Basketball SA.
- (d) Nothing contained in clauses 6(b) or (c) shall prevent payment in good faith of or to any Member:
 - (i) for any services actually rendered to Basketball SA, whether as an employee or otherwise;
 - (ii) for goods supplied to Basketball SA in the ordinary and usual course of business;

- (iii) of interest on money borrowed from any Member;
- (iv) of rent for premises demised or let by any Member to Basketball SA;
- (v) of any out-of-pocket expenses incurred by the Member on behalf of Basketball SA;
- (vi) of grants to regulate, encourage, administer, promote, advance and manage basketball in South Australia through participation, development and competition programs; or
- (vii) any other reason;

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

7. Constitution

- (a) Basketball SA will take reasonable steps to ensure that this Constitution is amended from time to time so as to be generally in conformity with future amendments made to BA's Constitution, subject to such variations as the Commission or the Council consider being necessary or appropriate.
- (b) This Constitution may only be altered by Special Resolution.
- (c) Basketball SA must provide to Basketball Australia a copy of this Constitution and all amendments to it.

8. Liability of Members

The liability of the Members of Basketball SA is limited.

9. Members

9.1 Category of Members

The Members of Basketball SA shall consist of:

- (a) the Member Associations, which will be represented by their respective nominees who have the right to be present, debate and vote at General Meetings for and on behalf of the Member Associations;
- (b) Life Members, who may attend and in the discretion of the Chair debate at General Meetings, but otherwise have no right to vote at General Meetings; and
- (c) such new categories of Members, created in accordance with clause 9.2 below.

9.2 Creation of New Categories

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

9.3 Obligations of Member Associations

Basketball Adelaide, SA Country and SA Church:

- (a) Upon request are to provide Basketball SA with copies of its audited accounts, annual report and other associated documents (in each case, if any) within 90 days after each of its annual general meetings;
- (b) must, if it is having serious administrative, operational or financial difficulties, advise the Commission as soon as practicable of those difficulties;
- (c) acknowledges that, where the Commission has been advised or otherwise becomes aware of such difficulties, Basketball SA through the Commission may, become involved in whatever means both parties agree, to address such difficulties.

9.4 Life Members

- (a) The Commission or a Member Association may nominate a person who has rendered distinguished or special service to basketball in South Australia for life membership of Basketball SA. The nomination must be on the prescribed form (if any) and must be submitted to the Chief Executive Officer at least 14 days before the date set down for the next AGM.
- (b) A nomination for Life Member will be considered by Special Resolution at an AGM. The vote on such resolution will be taken by secret ballot.
- (c) Conditions, obligations and privileges of life membership shall be as prescribed in the By-Laws.

10. Subscriptions and Fees

- (a) The annual Membership subscription (if any), and any other fees, levies, charges and other amounts payable by Members (or any category of Members) to Basketball SA, the basis of, the time for, and manner of, payment, will be as determined by the Commission from time to time.
- (b) Notwithstanding clause 10 (a), the Commission may not increase the annual Membership subscription by more than 10% above the Membership subscription applicable to the immediately preceding year without the consent of the Council.
- (c) Any Member who has not paid all monies due and payable by that Member to Basketball SA will (subject to the Commission'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 Commission's discretion. In the meantime, the Member will have no automatic right to resign from Basketball SA, and will be dealt with in the Commission'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 Commission considers appropriate.

11. Register of Members

The Chief Executive Officer will keep and maintain a register of Member Associations and their members in which will be entered such information as is required under the Act from time to time.

12. Effect of Membership

Basketball Adelaide, SA Country, SA Church and each of the Recreation Centres acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and Basketball SA and that they are bound by the Constitution and the By-Laws;
- (b) they will comply with and observe the Constitution and the By-Laws
- (c) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of Basketball SA, the Members and the sport of basketball; and
- (d) the Constitution and By-Laws are necessary and reasonable for promoting the objects of Basketball SA and particularly the advancement and protection of the sport of basketball in South Australia; and
- (e) each Member Association must, upon the request of the Commission, enter into a Membership Agreement.

13. Discontinuance of Membership

13.1 Discontinuance of Membership

For the purposes of this Constitution, the Council in General Meeting may by Special Resolution remove:

- (a) Basketball Adelaide in its role as a Member Association;
- (b) SA Country from its role as a Member Association;
- (c) SA Church from its role as a Member Association; or
- (d) any sports club from any role it may otherwise have as a Recreation Centre.

13.2 Membership may be Reinstated

A body that has been removed from a role under clause 13.1 may be reinstated to that role at the discretion of the Council, on application in accordance with this Constitution and otherwise on such conditions as the Council sees fit.

14. Council

14.1 Composition of the Council

- (a) The Council will consist of the Chair and the Councillors nominated by the Member Associations.
- (b) The Member Associations will each nominate the number of Councillors set out below against their name:
 - (i) Basketball Adelaide – 3 nominees;
 - (ii) SA Country – 3 nominees;
 - (iii) SA Church – 2 nominees; and
 - (iv) the Recreation Centres (between them) – 1 nominee.
- (c) A person so nominated will commence his or her role as a Councillor with effect from the conclusion of the Annual General Meeting of the relevant year.
- (d) A Councillor will cease to hold office if he or she resigns from that office, or when and for so long as the Member Association of which he or she is a representative:
 - (i) withdraws his or her appointment; or
 - (ii) is or has been suspended or expelled from Membership as the case may be.

- (e) Subject to death, illness or other incapacity (as determined by the Commission), each Councillor will hold office from the AGM at which his or her appointment commences until he or she ceases to hold office in accordance with clause 14.1(d).
- (f) If a Councillor resigns or ceases to hold office other than at an AGM, the Member Association that appointed that Councillor may appoint his or her replacement, who will hold office only until the next AGM.

14.2 Role of the Council

The Council will:

- (a) appoint the Independent Commissioners to the Commission;
- (b) consider Basketball SA's annual report and accounts as prepared by the Commission and the Auditor;
- (c) review and provide feedback to the Commission in relation to the upcoming year's fee structure for Basketball SA as prepared by the Commission;
- (d) If requested to do so by the Commission, review and if it sees fit approve the Membership subscription requiring approval under clause 10 (b)
- (e) provide feedback and input to the Commission on the development and review of Basketball SA's strategic plan;
- (f) expel Members;
- (g) amend this Constitution (but only by Special Resolution); and
- (h) perform such other acts or functions as are required by the Act or this Constitution to be performed by the Council.

15. Meetings of the Council

15.1 General

There will be two General Meetings in each year, one of which will be treated as, and must comply with the requirements of the Act in relation to, Basketball SA's AGM. The time and venue of these General Meetings will be as determined by the Commission. The Commission will also call further General Meetings if requested by at least three Councillors representing at least two Member Associations, or if requested by the Commission.

15.2 Notice of Meeting

At least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given of any General Meeting.

The notice must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and that the resolution.

15.3 Place of Meeting

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

15.4 Resolutions not in Meeting

(a) Except:

- (i) where prohibited by the Act;
- (ii) in the case of an AGM; or
- (iii) where a Special Resolution is required under this Constitution;

a resolution in writing signed or assented to by facsimile or other form of visible or other electronic communication by a majority of all Councillors entitled to vote shall be as valid and effectual as if it had been passed at a meeting of Councillors entitled to vote duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Councillors entitled to vote.

(b) Without limiting the power of the Council to hold General Meetings in accordance with this Constitution and otherwise as they see fit, a General Meeting may be held where one or more of the Councillors entitled to vote is not physically present at the meeting, provided that:

- (i) notice of the meeting is given to all persons entitled to notice in accordance with this Constitution;
- (ii) 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;
- (iii) in the event that a failure in communications prevents clause 15.4(b)(ii) from being satisfied by a quorum then the meeting shall be suspended until that clause is satisfied again, but if it is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated; and
- (iv) no meeting shall be invalidated merely because no Councillor entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

15.5 Separate documents

Separate copies of the document may be used for signing by Councillors if the wording of the resolution statement is identical on each copy. The resolution is passed when the required majority of Councillors have signed and supported the resolution.

15.6 Quorum

The quorum for a General Meeting is five Councillors entitled to attend, who must represent at least three Member Associations. The quorum must be present at all times during the meeting.

15.7 Adjournment for lack of Quorum

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

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

15.8 Lack of Quorum at Adjourned Meeting

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

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

15.9 Chair of General Meeting

The Chair will chair every General Meeting. If the Chair is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the deputy chairman, appointed in accordance with clause 17.2(b), will act as chair for that meeting. If there is no such deputy chairman or the deputy chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the Councillors present may elect one of their number to be chair of the meeting.

15.10 Adjournment Generally

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

15.11 Putting of Resolutions

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

- (a) at least three Councillors present (in person or by proxy) and entitled to vote on the resolution; or
- (b) the chair of the General Meeting.

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

15.12 Result on show of hands

On a show of hands, a declaration by the chair of the General Meeting is conclusive evidence of the result provided that the declaration reflects the show of hands. Neither the chair nor the minutes need state the number or proportion of the votes recorded in favour or against.

15.13 Demand for poll

Subject to clause 15.11, a poll may be demanded on any resolution including the election of the chair. A poll demanded on a matter other than the election of the chair must be taken when and in the manner the chair directs. A poll on the election of the chair must be taken immediately. A demand for a poll may be withdrawn.

15.14 Voting

- (a) At a General Meeting, each Councillor has one vote.

- (b) When a General Meeting is chaired by either the Chair or the deputy chairman of the Commission, then that chairman will have no voting rights, whether on a show of hands or on a poll.

15.15 Entitlement to vote

- (a) No person can be nominated by a Member Association to stand as a Councillor if the Association or Club with which that person is affiliated is currently deemed to be unfinancial either by the Commission or the Council.
- (b) No Councillor is entitled to vote at any General Meeting if the Association or Club with which that Councillor is affiliated is currently deemed to be unfinancial either by the Commission or the Council.

15.16 Proxy and postal voting

- (a) A Member Association may appoint a proxy to attend and vote at any General Meeting which a Member Association's Councillor is unable to attend. Such proxy must be in writing, given by the Councillor or other authorised representative of the Member Association and must be delivered to the Chief Executive Officer not less than forty eight hours prior to the General Meeting in question.
- (b) Should an issue arise between General Meetings which requires a decision or ratification by Councillors, the Commission may determine that the matter be dealt with by a postal vote or other remote voting method. The Chief Executive Officer will notify all Member Associations and Councillors of the proposition to be answered 'for' or 'against', and set the time for such voting to be considered. After the time fixed has elapsed, votes from Councillors will be counted by the Chief Executive Officer and the Chair and the proposition resolved. The result of a postal vote will be conveyed to all Member Associations and Councillors by the Chief Executive Officer.

15.17 Notices of Motion

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

16. Role of the Commission

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

- (a) act on all issues in accordance with the Objects and shall operate for the collective and mutual benefit of Basketball SA, the Member Associations and the sport of basketball throughout South Australia;
- (b) govern the sport of basketball in South Australia in accordance with the Objects;
- (c) determine major strategic directions of Basketball SA; and
- (d) review Basketball SA's performance in achieving its pre-determined aims, objectives and policies.

17. Composition of the Commission

17.1 Commission Composition

Members and Commissioners must ensure that at the time of appointing Commissioners, requirements around composition of the Commission, such as those issued by relevant State or Federal funding bodies, are taken into account to ensure that the composition of the Commission following the appointment of Independent Commissioners satisfies these requirements.

The Commission will consist of:

- (a) eight Independent Commissioners appointed by the Council in accordance with clause 18;
- (b) up to one (1) Appointed Commissioner appointed by the BSA Commission to fill a skills gap in accordance with Clause 19.
- (c) the Chief Executive Officer (ex officio).

17.2 Chair of Commission

- (a) The position of Chair shall be appointed by the Commission from amongst the Independent Commissioners as soon as practicable after each AGM. The appointee will hold the position until the conclusion of the next AGM following his or her appointment. An Independent Commissioner may be re-appointed as Chair.
- (b) The Commission will elect one Commissioner (other than the Chief Executive Officer) to be the deputy chair of the Commission and who will also deputise for the Chair in his or her absence.

18. Appointment of Independent Commissioners

18.1 Appointment of Independent Commissioners

The Council may appoint up to eight Independent Commissioners. It will make the necessary appointments at each AGM. Each such appointment will be made by ordinary resolution of the Councillors.

18.2 Qualifications for an Independent Commissioner

An independent Commissioner:

- (a) may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Commission composition, but need not have experience in or exposure to basketball;
- (b) must not be on the management committee (or similar body) of or employed by, Basketball SA, Basketball Adelaide, SA Church or SA Country;
- (c) must not be on the management committee (or similar body) of or employed by any affiliate of Basketball Adelaide, SA Church or SA Country specifically including any District Club, Church Club or Country Association or the Adelaide Lightning Basketball Club or the Adelaide 36ers Basketball Club.
- (d) must not receive an honorarium payment exceeding a minimum threshold (to be determined annually by the Commission in its instruction to the Nominations Committee) from any affiliate of Basketball Adelaide, SA Church or SA Country;
- (e) must not have a commercial, financial or legal prejudicial interest in the operations of Basketball SA, declared or perceived.
- (f) must not have held a position detailed in (b) (c) or (d) above anytime within the last 3 years, nor have held a position for such a period that their independence has been compromised.

18.3 Term of a Commissioner

- (a) Commissioners will be elected in accordance with this Constitution for a term of two years. The term of each Commissioner appointed by the Council will commence immediately after the conclusion of the AGM at which he or she is appointed and end immediately after the conclusion of the second AGM following.
- (b) Should any adjustment to the term of a Commissioner appointed under this Constitution be necessary to ensure rotational terms in accordance with this clause 18.3, this will be determined by the Commission. Appointments to subsequent Commissioners will then proceed in accordance with the procedures in this clause 18 with approximately half the Commissioners retiring each year.
- (c) No Commissioner shall serve more than 4 consecutive full terms in office.

19. Appointed Commissioner

19.1 Appointment of Appointed Commissioner

The Basketball SA Commission may appoint one Appointed Commissioner.

19.2 Qualifications for Appointed Commissioner

The Appointed Commissioner shall have the specific skills as determined by the Commission to compliment the Commission composition. An Appointed Commissioner does not need to be a Member.

19.3 Term of Appointment

An Appointed Commissioner (other than to fill a casual vacancy under clause 20.3) may be appointed for a term of up to two years subject to an annual review, which shall commence and conclude at the discretion of the Commission. The Commission has the power to revoke any such appointment.

19.4 Voting Rights

The Appointed Commissioner shall have equal voting rights to the Independent and Nominated Commissioners during their term.

20. Vacancies of Commission Members

20.1 Grounds for Termination of Commissioner

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

- (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 Basketball SA;
- (e) is absent without the consent of the Commission from 2 consecutive meetings of the Commission;
- (f) holds any office of employment of Basketball SA (other than the Chief Executive Officer);
- (g) without the prior consent or later ratification of the Council in General Meeting holds, any office of profit under Basketball SA;
- (h) is directly or indirectly nominated in any contract or proposed contract with Basketball SA and fails to declare the nature of his interest;

- (i) is removed from office by a Special Resolution of the Council under clause 20.2; or
- (j) would otherwise be prohibited from being a director of a corporation under the *Corporations Law* or is disqualified from office under the Act.

20.2 Removal of a Commissioner

- (a) The Council in General Meeting may by Special Resolution remove any Commissioner, before the expiration of his or her term of office. If a Commissioner is so removed, the office of the Commissioner becomes vacant and shall be filled in accordance with the procedure set out in clause 20.3.
- (b) Where the Commissioner to whom a proposed resolution referred to in clause 20.2(a) makes representations in writing to the Chief Executive Officer and requests that such representations be notified to the Council, the Chief Executive Officer must send a copy of the representations to each Councillor or, if they are not so sent, the Commissioner may require that they be read out at the relevant meeting, and the representations shall be so read.

20.3 Casual Vacancies

- (a) Any Commissioner casual vacancy:
 - (i) may be filled by the Commission from among appropriately qualified persons; and
 - (ii) may only be filled for the remainder of the Commissioner's term under clause 19.3.

20.4 Remaining Commissioners May Act

In the event of a casual vacancy or vacancies in the office of a Commissioner, the remaining Commissioners may act but, if the number of remaining Commissioners is not sufficient to constitute a quorum at a meeting of the Commission, they may act only for the purpose of increasing the number of Commissioners to a number sufficient to constitute such a quorum in accordance with clause 15.6.

21. Meetings of the Commission

21.1 Commission to Meet

The Commission may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Commissioner may at any time, and the Chief Executive Officer will on the request of a Commissioner, call a meeting of the Commission by reasonable notice individually to each Commissioner. A Commissioner who is for the time being out of Australia is only entitled to receive notice of a meeting of the Commission if the Commissioner has given written notice to the Chief Executive Officer of an address for the giving of notices of meetings.

21.2 Decisions of Commission

- (a) Subject to clause 21.2(b), each Commissioner will have one vote at Commission meetings. A resolution of the Commission must be passed by a majority of votes of the Commissioners present at the meeting and entitled to vote on the resolution. In the case of an equality of votes, the resolution shall be forfeited.
- (b) The Chief Executive Officer is not entitled to vote at a meeting of the Commission.

21.3 Validity of Commissioners' Acts

All acts done by any meeting of the Commission or of a committee or by any person acting as a Commissioner are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Commissioner or person so acting, or that they or any of them were

disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Commissioner.

21.4 Written Resolution

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

21.5 Manner of Holding Meetings

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

21.6 Quorum

Unless the Commission determines otherwise, the quorum for a Commission meeting is four Independent Commissioners and the quorum must be present at all times during the meeting.

21.7 Notice of Commission Meetings

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

21.8 Validity of Commission Decisions

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

21.9 Chair of Commission Meeting

The Chair will chair Commission meetings. If the Chair is not available within 15 minutes after the time appointed for holding the meeting or declines to act for the meeting or part of the meeting, the deputy chairman elected under clause 17.2 will chair that meeting or part of it. If the Chair and the deputy chairman are not available within ten minutes after the time appointed for holding the meeting or decline to act for the meeting or part of the meeting, the Commission must elect a Commissioner present to chair a meeting or part of it.

22. Recreation Centres

For the purpose of nominating 1 Councillor under clause 14.1(b), one nominee from each affiliated Recreation Centre should meet with each other annually to determine, in such manner as they consider appropriate, the identity of the nominee for that position.

23. Conflicts

23.1 Commissioners' Interests

A Commissioner is disqualified from:

- (a) holding any place of profit or position of employment in Basketball SA or in any company or incorporated association in which Basketball SA is a shareholder;

Any such contract or any contract or arrangement entered into by or on behalf of Basketball SA in which any Commissioner is in any way interested will be voided for such reason.

23.2 Conflict of Interest

A Commissioner must declare his or her interest in any:

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

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

23.3 Disclosure of Interests

The nature of the interest of such Commissioner must be declared by the Commissioner at the meeting of the Commission 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 Commission after the acquisition of the interest. If a Commissioner 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 Commission held after the Commissioner becomes so interested.

23.4 General Disclosure

A general notice that a Commissioner 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 clause 23.3 as regards such Commissioner and the said transactions. After such general notice it is not necessary for such Commissioner to give a special notice relating to any particular transaction with that firm or company.

23.5 Recording Disclosures

It is the duty of the Chief Executive Officer to record in the minutes any declaration made or any general notice as aforesaid given by a Commissioner in accordance with clauses 23.3 and 23.4.

24. Chief Executive Officer

24.1 Appointment of Chief Executive Officer

- (a) The Commission will appoint a Chief Executive Officer for such term and on such conditions as it thinks fit.
- (b) The Chief Executive Officer will act as and carry out the duties of secretary and (unless prohibited by law) public officer of Basketball SA.
- (c) The Chief Executive Officer shall not serve as a Basketball SA Commissioner for at least three years after ceasing employment in the role of Chief Executive Officer.

24.2 Specific Duties

The Chief Executive Officer will:

- (a) as far as practicable attend all Commission meetings and General Meetings;
- (b) prepare the agenda for all Commission meetings and all General Meetings;

- (c) record and prepare minutes of the proceedings of all meetings of the Commission and Basketball SA;
- (d) regularly report on the activities of, and issues relating to, Basketball SA; and
- (e) carry out any other duties as may be deemed necessary by the Commission from time to time.

24.3 Broad Power to Manage

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

24.4 Chief Executive Officer may Employ

The Chief Executive Officer, in consultation with the Commission, may employ such office personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the Chief Executive Officer and the Commission determine.

25. Delegations

25.1 Commission may Delegate Functions

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

25.2 Delegation by Instrument

The Commission 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 Commission or the Chief Executive Officer by the Act or any other law, or this Constitution or by resolution of Basketball SA in General Meeting.

25.3 Delegated Function Exercised in Accordance With Terms

A function, the exercise of which has been delegated under this clause 25, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

25.4 Procedure of Delegated Entity

The procedures for any delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Commission under this clause 25. The quorum shall be determined by the committee, but shall be no less than 50% plus 1 of the total number of committee members.

25.5 Delegation may be Conditional

A delegation under this Rule 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.

25.6 Revocation of Delegation

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

26. By-Laws

- (a) The Commission may from time to time as circumstances dictate, formulate, interpret, adopt, make, alter and amend By-Laws for Basketball SA's proper advancement, management and administration, the advancement of Basketball SA's objects and basketball as it thinks necessary or desirable. The By-Laws must (as far as practicable) be consistent with this Constitution and all policy directives of the Commission. The By-Laws are binding on all Members.
- (b) Any By-Laws so made will be valid unless disallowed or amended by a Special Resolution of the Council at its first meeting held after the particular By-Law is made or amended.
- (c) The Chief Executive Officer must bring to the notice of the Commission and Member Associations all By-Laws and any formulation, interpretation, amendment, alteration and repeal of them. Member Associations must draw such notices to the attention of their own members.
- (d) All rules and regulations of Basketball SA in force at the date of the approval of this Constitution (including existing By-Laws) insofar as such rules and regulations are not inconsistent with, or have been replaced by this Constitution, shall continue in force under this Constitution.

27. Records and Accounts

27.1 Chief Executive Officer to Keep Records

The Chief Executive Officer must:

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

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

27.2 Commission to Submit Accounts

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

27.3 Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to Basketball SA, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two Commissioners or a Commissioner and the Chief Executive Officer, unless otherwise approved by the Commission.

28. Auditor

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

29. Notice

29.1 Giving of Notices

A notice may be given to any Commissioner, Councillor or Member:

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

29.2 Entitlement to Notices

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

- (a) every Councillor, except those who have not supplied to the Chief Executive Officer an address for the giving of notices to them;
- (b) the Member Associations;
- (c) the Commissioners;
- (d) the auditor for the time being of Basketball SA; and
- (e) Life Members whose address is known to the Chief Executive Officer.

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

30. Seal

30.1 Safe Custody of Seal

The Chief Executive Officer shall provide for safe custody of the Seal.

30.2 Affixing Seal

The Seal shall only be used by authority of the Commission and every document to which the seal is affixed shall be signed by 2 Commissioners or a Commissioner and the Chief Executive Officer.

30.3 Commissioner's Interest

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

31. Indemnity

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

- (a) any liability to another person (other than Basketball SA or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
- (b) any liability for costs and expenses incurred by that person strictly in their capacity as a Commissioner:

- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act or the Corporations Act.

32. Dissolution

- (a) Basketball SA may be wound up in accordance with the provisions of the Act.
- (b) If upon winding up or dissolution of Basketball SA there remains after satisfaction of all its debts and liability any assets or property, the same shall not be paid to or distributed amongst the Members but shall be paid to or distributed to an organisation or organisations 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 Basketball SA by clause 6. Such organisation will be determined by the Members at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of South Australia.

33. Interpretation And Definitions

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

then the Commission, having regard to this Constitution , may decide the matter and may direct what shall be done in each particular instance or may interpret the Constitution or direct what shall be done in a particular case.

- (b) Such direction, interpretation or decision of the Commission shall be set out in the agenda for the next General Meeting and, until rescinded or amended by the Commission or disallowed by a resolution of a General Meeting, it shall have the same validity and effect as if specifically included in this Constitution.
- (c) Any such decision, interpretation or direction may be considered at a General Meeting without any notice being given of the intention to consider it.