



Southern Peninsula Basketball Association Inc.

CONSTITUTION

(Adopted October 2014)

1. Name

This association shall be called “**Southern Peninsula Basketball Association Inc**”.

2. Definitions and Interpretation

In this Constitution, unless the context otherwise requires:

Act means the *Associations Incorporation Act 1981* (Vic).

Annual General Meeting means the annual general meeting of Members held each year in accordance with Article 11.1.

Associate Member means any person or club, body, association or organisation (whether incorporated or unincorporated) which has been admitted as an Associate Member In accordance with Article 5.5.

BA means Basketball Australia.

BV means Basketball Victoria.

BOM means Basketball Operations Manager

BAM means Basketball Administration Manager

Board means all or some of the Board of Management Member acting as the committee of management of SPBA pursuant to Article 7.

Board Member means a person appointed to the position of the Board of Management under Article 6.

Constitution means this constitution.

Committee means any committee, advisory board, council or tribunal or other ad-hoc body established by the Board pursuant to this Constitution.

Club Member means a club, body, association or organisation (whether incorporated or unincorporated) which has joined as a Member in accordance with Article 5.4; and **Club Nominee** means a person appointed as the nominee of a Club Member in accordance with Article 5.4(c).

Elected Board means a Board Member elected under Article 6.4.

FIBA means the International Basketball Federation.

General Meeting means a meeting of Members.

Instantaneous Communication Device includes telephone, television or any other audio or visual device which permits instantaneous communication.

Life Members means those persons who are appointed as life members of SPBA in accordance with Article 5.3.

Majority of Votes means that more votes are cast by those people entitled to vote in favour of the resolution than against it.

Member means an Ordinary Member, Life Member, Club Member or Associate Member.

Official means any office bearer, employee or representative of a Club Member in any official capacity.

Official means any office bearer, employee or representative of a Club Member in any official capacity.

Ordinary Member means those persons who are Board Member from time to time.

Ordinary Resolution means a resolution that has been passed by at least 50% of the votes cast by Members entitled to vote on the resolution.

President means the person appointed as chairperson of the Board in accordance with Article 8.1

Player means a person playing in any basketball event or competition administered, run or managed (how so ever described) by SPBA.

Public Officer means the person appointed by the Board to the Public Officer for the purposes of the Act.

Rules mean all rules, by-laws, regulations, policies or determinations made by the Board pursuant to this Constitution.

SPBA means Southern Peninsula Basketball Association Inc.

SPBA means the Southern Peninsula Basketball Association Incorporated.

Secretary means the secretary appointed by the Board.

Special Resolution has the same meaning as in section 29 of the Act.

2.1 Interpretation

Except where the contrary intention appears, words defined in the Act have the same meaning in this Constitution.

3. Office and place of business

The office and principal place of business of SPBA shall be at such places as determined by the Board from time to time.

4. Objectives

(a) The broad objectives of SPBA are:

- (1) to foster, encourage and administer the development and playing of basketball in the Southern Peninsula region and surrounding areas;
- (2) to encourage and assist in the formation of clubs and teams to take part in competitions conducted by SPBA ;
- (3) participate as a member of BV through and by which basketball can be conducted, encouraged, promoted, advanced and administered;
- (4) assist FIBA, BA and BV in the promotion of the sport of basketball where such assistance or activities will promote the broad objectives of SPBA;
- (5) to select and manage teams of basketball players to represent SPBA at local, national and international level;
- (6) to encourage and assist in obtaining the highest possible standard of competition and refereeing by co-operating with other related organisations;
- (7) to recognise, support and sponsor the activities of other companies or business activities formed by the SPBA from time to time in order to promote the objectives of the SPBA;
- (8) to co-operate or join with or support an association, organisation, society or individual whose activities or purposes are similar to those of SPBA or which advances the sport of basketball directly or indirectly;
- (9) to establish, manage, promote and sanction competitions;

(10) to promote and sanction clinics, coaching schools, intrastate and international matches and competitions which will create or heighten public interest in basketball in general and in SPBA in particular; and

(11) to pursue through itself or other such entities any commercial, business or trading arrangements or activities which will assist SPBA to advance the sport of basketball directly or indirectly.

(b) Without intending to limit the objectives of SPBA or the powers of the Board on under clause 7, SPBA shall have the power to:

(1) provide social, dining, entertaining and associated facilities for its Members;

(2) raise money by subscription or otherwise from Club Members or the members thereof;

(3) render assistance, pecuniary or otherwise, to any Club Member;

(4) charge entrance fees or other amounts reasonably necessary to enable its objectives to be achieved and to enable Members to receive the benefits which its objectives are intended to achieve;

(5) hear and determine and settle all questions and disputes on any matter relating to Basketball, any basketball competitions administered or run by SPBA or between club members.

(6) hear and enquire into any allegation, complaint or charge which may be made or laid against any Member, player or Official or umpire or official of SPBA involving a breach of this Constitution or the Rules;

(7) inflict fines or other penalties (by way of suspension, expulsion or otherwise) for any breach of this Constitution or the Rules on any Member, Official, Player or volunteer of SPBA;

(8) grant, suspend, exclude or forfeit the rights of Members of SPBA subject to this Constitution;

(9) acquire, lease, occupy and maintain suitable premises and facilities for the proper functioning of SPBA;

(10) adopt, formulate, issue, interpret, implement and amend from time to time by-laws, rules and such other policies and regulations as are necessary for the control and conduct of its basketball activities;

(11) pursue through itself or other such entities any commercial, business or trading arrangements or activities (whether under its own name or under a different trading/business name), including sponsorship and marketing opportunities, as are appropriate to further the objectives of SPBA;

(12) formulate or adopt or implement appropriate policies, including policies in relation to sexual harassment, equal opportunity, equity, drugs in sport, health, and other matters as arise from time to time as issues to be addressed in basketball;

(13) do all things reasonably necessary to enable its objectives to be achieved and to enable SPBA members to receive the benefits which its objectives are intended to achieve;

(14) apply for, hold and renew any licence, permit or authority issued, including (if applicable) any such licence, permit or authority issued under the *Liquor Control Act 1987* (Vic); and

(15) undertake and do all such things or activities as are necessary, incidental or conducive to the advancement of the objectives of SPBA.

5. Membership of SPBA

5.1 Class of Members

There shall be four classes of membership of SPBA known as Ordinary Members, Life Members, Club Members and Associate Members.

5.2 Ordinary Members

Ordinary Members shall be those persons who are Board Members from time to time. Ordinary members have the right to receive notice, attend and vote at, General Meetings.

5.3 Life Members

(a) Life Membership is the highest honour which can be bestowed by SPBA for longstanding and valued service to SPBA and/or basketball in the Southern Peninsula region and surrounding areas.

(b) On the nomination of the Board Member, any individual may be elected as a Life Member at any annual general meeting by Special Resolution.

(c) Nominations for Life Membership shall include a written report outlining the history of services of any nominee, together with commentary on the suitability of the honour.

(d) The Board shall create Rules which sets out:

- (1) the categories of Life Membership that exist;
- (2) the criteria to be met by each category of Life Member; and
- (3) the privileges and benefits of each category of Life Member.

(e) Life Members have the right to receive notice, attend and vote at, General Meetings.

5.4 Club Members and Club Nominees

(a) Any club, body, organisation, association or the like (incorporated or unincorporated) (“**Club**”) which have objectives that promote, develop, to encourage participation in and support the game of basketball is eligible to apply to the Board to be a Club Member.

(b) Applications by any Club for membership will be granted by the Board following a formal application for admission as a member accompanied by an up-to-date copy of the Club’s constituent documents and such other information as the Board may require for the purposes of the membership application.

(c) Each Club Member must appoint:

(1) one person to be the Club Nominee who must be an officer for the time being of the committee which has the power to manage and control the affairs of the Club Member;

(2) one person as an alternate Club Nominee for the nominee appointed under Article 5.4(c)(1) who must be an elected member for the time being of the committee which has the power to manage and control the affairs of the Club Member.

(d) Clubs Members, through their Club Nominee, have the right to receive notice, attend and vote at, General Meetings.

5.5 Associate Members

(a) Associate Membership status may be granted by the Board on such terms and conditions as the Board may see fit.

(b) Associate Membership may be suspended or cancelled by the Board as it may see fit.

(c) The Board shall create Rules which sets out:

(1) the categories of Associate Membership that exist;

(2) the criteria to be met by each category of Associate Member;

(3) the privileges and benefits of each category of Associate Member;

(4) the rights of Associate Members to receive, attend and vote at, General Meetings.

5.6 Fees

(a) The Board may from time to time determine whether any entrance fees, subscriptions or other amount is to be paid by any Member.

(b) Each Member must pay to the SPBA entrance fees, subscriptions or other amount as determined by the SPBA.

(c) A Member whose subscription is not paid within 3 months after the relevant date fixed for payment by the SPBA ceases in the expiry of that period to be a Member, unless the SPBA decides otherwise.

5.7 Register

(a) The BAM, on behalf of the Board, must keep and maintain an up to date condition of register of the Members and their postal or residential address and, upon a request from a Member, shall make the register available for the inspection of the Member and the Member may make a copy of or take an extract from the Register but shall have not right to remove the register for that purpose.

(b) The register must be kept and maintained at SPBA's place of business.

(c) The BAM must cause the name of a person who dies or who ceases to be a Member to be deleted from the register of Members.

6. Board Members

6.1 Board Members

The business of SPBA shall be managed by the Board which shall consist of the Board Members appointed pursuant to this Article 6.

6.2 Number and type

(a) The total number of Board Members will be seven, of which:
Seven (7) must be Elected Board Members.

6.3 Eligibility of Elected Board Members

A person who is:

- (a) an employee of SPBA; or
- (b) is an Official; or
- (c) or was a Board Member and Article 6.6 applies

(each a disqualifying position) may not hold office as a Board Member.

6.4 Election

(a) Each annual general meeting must elect two Elected Board Members.

(b) Nominations must be:

- (1) in the form prescribed by the Board;
- (2) signed by the candidate and the nominator and seconder, both of whom must be Members; and

(3) received at the SPBA office no later than 4.00pm fourteen (14) days before the date of the Annual General Meeting.

(c) Nominations may be accompanied by a statement of up to 200 words setting out the qualifications of the candidate.

(d) Elections for Elected Board Members shall be by exhaustive ballot in accordance with clause 6.4(e) and conducted at the relevant Annual General Meeting.

(e) Save where there is only one nominee for each position of Elected Board Members to be filled, the exhaustive ballot will be conducted as a poll as follows:

(1) rounds of voting for each position of Elected Board Member to be filled will be held, the first of which will include all nominees for that position;

(2) the nominee with the fewest number of votes will be eliminated from the second and each subsequent round;

(3) in the event that more than 1 nominee has equal number of votes and that number of votes is the least number of votes; then:

(i) provide that there remains at least 1 other nominee for the subsequent round, all of those nominees with the least amount of votes will be eliminated from each of the subsequent rounds of voting;

(ii) if eliminating all nominees with the least number of votes would result in there being no nominees remaining then, subject to the direction of the Chair (who may call for a re-vote of the last round of voting), the position up for elected will be treated as a casual vacancy to be dealt with in accordance with Article 6.8.

(4) rounds of voting will be continued with 1 or more nominees being eliminated from each round until only 2 nominees remain;

(5) in the last round of 2 nominees, a resolution is passed in favour of the election of the nominee who receives the majority of the votes; and

(6) in the event that the last round of voting has only 1 nominee remaining, then a resolution is passed in favour of the election of that nominee.

(f) The weighted voting system set out in Article 12.4 of this Constitution will be used to determine the number of votes each Club Member has in respect to the election of Board under this Article 6.4(e).

6.6 Term of office

(a) Elected Board Members hold office from the end of the annual general meeting at which they are elected until the end of the second annual general meeting after they were elected and shall be eligible for reappointment.

6.7 Cessation and termination from office

- (a) Board Members may resign from office by writing to the Secretary.
- (b) Board Member cease to hold office if the Board Member ceases to be a Member.
- (c) Board Members also cease to hold office if they:
 - (1) fail to attend three consecutive meetings of the Board without leave of absence from the Board ;
 - (2) receive any payment from SPBA otherwise than in accordance with this Constitution.
- (d) The appointment of a Co-opted Board Member may be terminated by a vote of three quarters of the Board in office. A Co-opted Board Member the subject of a motion to remove is entitled to vote.

6.8 Casual vacancy

- (a) The Board may at any time appoint a person to be a Board Member to fill a casual vacancy created by an Elected Board Member.
- (b) If the casual vacancy relates to an Elected Board Member position, then:
 - (1) the Elected Board Member appointed under Article 6.8(a) must have their position as Elected Board Member confirmed by resolution at the next Annual General Meeting; and
 - (2) if so confirmed, will hold office until the end of the term of the Elected board Member in whose place they were appointed.

7. Duties and Powers of the Board

7.1 Duties and powers

- (a) The management and control of the affairs of SPBA are vested in the Board who, without limiting the generality of the foregoing, shall be solely responsible for exercising the powers specified in Article 4(b) and in this Article 7 and shall have the following powers and duties:
 - (1) to grant approval to any person, club, body, association, organisation or team to compete in any basketball competitions conduct by SPBA or any of its Committees;
 - (2) to faithfully and diligently fulfil any duties and obligations delegated to the Board by SPBA in writing from time to time;
 - (3) to appoint, dismiss and fix the salary and terms and conditions of employment of such employees as the Board may from time to time determine and to delegate to any person so appointed any of its powers or duties other than this power of delegation;

- (4) to appoint Committees composed of such persons as the Board may think fit to investigate any matter in any way relating to the affairs of SPBA or to perform such duties as the Board may determine and the Board may regulate the proceedings of all such Committees;
- (5) to ensure that minutes are kept of all meetings of the Board and Committees;
- (6) to keep a correct account of all moneys and other assets belonging to SPBA;
- (7) to ensure that all moneys received by SPBA are banked in bank accounts approved by the Board and to authorise persons to sign cheques or authorise electronic payments on such bank accounts and endorse cheques/electronic payments and other documents on behalf of SPBA;
- (8) to maintain proper books of accounts for SPBA and balance them for the purposes of annual audit and otherwise as decided by the Board and to prepare and submit annual accounts to auditors appointed by the Board;
- (9) to invest moneys of SPBA not immediately required for the purposes thereof in any form of investment thought appropriate by the Board and from time to time to vary or realise such investments;
- (10) to sell any real or personal property of SPBA whether for cash or on terms and by action or by private contract;
- (11) to relinquish any rights to occupy stadium or grounds;
- (12) to enter into any arrangement to occupy, lease or licence stadium or grounds;
- (13) to exchange any real or personal property of SPBA for any other property and to buy to take on exchange or otherwise acquire any real or personal property for SPBA and do any such thing on such terms and conditions as the Board thinks fit;
- (14) to alter, amend, renovate, demolish, rebuild or otherwise deal with any real or personal property of SPBA on such terms and conditions as the Board thinks fit;
- (15) to borrow money for SPBA and give security therefore by mortgage or charge over any property of SPBA;
- (16) to set and charge such fees, charges and other amounts as may be necessary or required to further any of the objectives stated in Article 4;
- (17) to make and give receipts, releases and other discharges for money payable to SPBA or any other claims or demands of SPBA;
- (18) to institute, conduct, defend, compound or abandon any legal proceedings by or against SPBA or against any other person refer any claims or demands by or against SPBA to arbitration and observe and perform the awards;

(19) to enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things as the Board may consider desirable for the proper performance of their duties;

(20) to convene meetings of the Board when thought fit;

(21) to appoint representatives of SPBA (who may be a Board member) to represent SPBA in discussions with SPBA or any other association or body related to Basketball.

(22) to make decisions and do all such things as the Board its judgment thinks necessary or desirable for the fulfilment of the objectives stated in Article 4; and

(23) to exercise its own judgment, which judgment will be final, as to how best to achieve the objects of SPBA.

(b) Each Board member also has the duties prescribed by the Act including under section 29A those of proper use of information and proper use of position.

7.2 Disclosure of interests

(a) Each Board Member has the obligation described by the Act including:

(1) under section 29B of the Act disclosing any direct or indirect pecuniary interest in a contract or proposed contract with SPBA; and

(2) under section 29C of the Act to refrain from taking part in any decision of the Board with respect to a contract in which the Board Member has any direct or indirect pecuniary interest.

8. Proceedings of the Board

8.1 Election of President

(a) The Board must elect one of the Elected Board Members to the office of President which will be also known as the Chairperson of the Board.

(b) The Board Member elected to the office of Chairperson will remain Chairperson for the duration of their term of office as an Elected Board Member and shall chair any meetings of the Board.

8.2 Other office bearer positions

The Board must at its first meeting after each annual general meeting determine what other office bearer positions are required and elect one or more of its Board Members to fill those office bearer positions.

8.3 Convening of meetings

(a) The Board shall meet at such times and places as they shall from time to time determine but they shall meet at least once in every two calendar months period or whenever a meeting is called by the Chairperson on the giving (where practicable) of at least 3 days' notice.

(b) The Board may adjourn and otherwise regulate their meetings as they think fit.

8.4 Determinations by the Board

(a) Except as otherwise provided in this Constitution, questions arising at any meeting shall be decided by a majority of votes and a determination by a majority of the Board shall be for all purposes a determination of the Board.

(b) In the case of an equality of votes on a resolution at a Board meeting, the Chairperson must declare the resolution lost.

8.5 Exclusion from voting

A Board Member may not vote in respect of any contract or proposed contract with SPBA in which he or she has any direct or indirect pecuniary interest which has been disclosed by the Board under Article 7.2 and if he or she does so vote his or her vote shall not be counted.

8.6 Quorum

A quorum for a meeting of Board Members shall be not less than half of the number of Board Members for the time being, either personally present at a meeting or participating in the meeting by way of an Instantaneous Communication Device.

8.7 Resolutions without meeting

(a) A resolution in writing signed by all Board Member shall be as valid and effectual as if it has been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Board Members. Any resolution shall be effective from the date the last of the Board Members have signed the resolution. Every resolution so signed shall be as soon as practicable entered into the books provided for the purpose of recording, inter alia, resolutions of the Board.

(b) A resolution shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held if:

- (1) each Board Member has previously notified SPBA of the electronic mail address to which electronic mail addressed to that Board Member should be delivered; and
- (2) all of the Board Members send an electronic mail message to every other Board Members (to those Board Member's relevant electronic mail addresses) confirming that the Board Member sending the electronic mail message votes in favour of the resolution; and

(3) the Secretary subsequently confirms that all Board Members have voted in favour of the resolution.

(c) A resolution passed under Article 8.7(b) shall be effective from the date of the last electronic mail message referred to in Article 8.7(b)(2) and has been delivered to the Secretary. A copy of all electronic mail messages sent by the Board Members in respect of a resolution referred to in Article 8.7(b), and a copy of all signed statements referred to in Article 8.7(a), shall be as soon as practicable entered into the books provided for the purpose of recording, inter alia, resolutions of the Board.

(d) The Board may from time to time determine the rules and procedures (including not limited to any security and verification measures and the circumstances under which an electronic resolution is valid or invalid) which will apply to the passing of any resolution under Article 8.7(b).

(e) A facsimile, email or such similar means of communication addressed to or received by SPBA and purporting to be signed by a Board member is for the purposes of Articles 8.7(a), 8.7(b) and 8.7(c) deemed to be in writing signed by such Board Member.

8.8 Instantaneous Communication Devices

(a) For the purposes of this Constitution, the contemporaneous linking together by Instantaneous Communication Devices of a number of consenting Board Members not less than the quorum, whether or not any one or more of the Board Members is out of Australia, is deemed to constitute a Board meeting and all the provisions of the Constitution as to Board meetings shall apply to such meetings held by Instantaneous Communication Devices so long as the following conditions are met:

(1) all the Board Members receive notice of the Board meeting and are able to be linked by Instantaneous Communication Devices and for the purposes of such meeting, Notice of any such meeting may be given on the Instantaneous Communication Device or in any other manner permitted by the Constitution;

(2) at the commencement of the meeting each of the Board Members is taking part in meeting by Instantaneous Communication Device is able to hear each of the other Board Members taking part; and

(3) at the commencement of the meeting each Board Member acknowledges his or her presence for the purposes of the Board meeting to all the other Board Members taking part.

(b) A Board Member shall not leave a meeting held in accordance with Article 8.8 by disconnecting that Board member's Instantaneous Communication Device unless that Board member has previously obtained the express permission of the Chairperson. A Board Member is conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by Instantaneous Communication Device unless the Board Member has previously obtained the express consent of the Chairperson to leave the meeting.

8.9 Validity of acts of the Board

Everything done at a Board meeting or a by person acting as a board Member , is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

9. Basketball Operations Manager and Basketball Administration Manager

9.1 Appointment

The Board may appoint a BOM and BAM of SPBA for such period and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case the Board may revoke or terminate any such appointment.

9.2 Attendance at meetings

The BOM and BAM shall be entitled to notice of and to attend and subject to any issues of confidentiality take part in all meetings of the Board and of Committees, unless otherwise determined by the Board.

9.3 Duties

(a) The duties of the BOM and BAM shall be to attend all meetings of the Board and all other meetings at which the BOM and BAM attendance is by this Constitution required or at which the BOM and BAM attendance is required by the Board. Duties are also to generally control and manage the day to day running of SPBA on behalf of the Board and to comply with all directives and any duty statement from time to time given to the BOM and BAM by the Board.

(b) In addition the BOM and BAM shall be responsible to the Board for the proper performance of their duties by all employees of SPBA and for advice to the Board as to the best means of administering and promoting the affairs of SPBA.

9.4 Cannot be a Board Member

The BOM and BAM shall not be a Board Member while that person holds the office of BOM and BAM.

10. Secretary and other Officers

10.1 Appointments

(a) The Board may appoint a Secretary and other Officers of SPBA (including the Public Officer) who shall carry out such duties as are specified by this Constitution or determined by the Board. In the performance of their duties such persons shall be under the control of and comply with the directions of the board.

(b) The Board may in its discretion appoint and replace the Public Officer.

10.2 Notification to Registrar

The Public Officer must, within 14 days after his/her appointment, give notice in writing of his full name and address in Victoria to the Registrar, as required by section 28 of the Act.

11. General Meetings

11.1 Annual General Meeting

(a) The Board must convene an Annual General Meeting to be held within 5 months' after the end of SPBA s financial year at such time and place as shall be determined by the Board and shall be specified in the notice convening it.

(b) The ordinary course of business at the Annual General Meeting is:

(1) to verify the minutes of:

(i) the last Annual General Meeting; and

(ii) any General Meetings held since the last Annual General Meeting.

(2) to consider the annual financial report, the Boards report and auditors report and any statement relating to the finances which must be received by the members in accordance with the Act (including questions and comments from members on the management of SPBA);

(3) to appoint an Auditor (if required); and

(4) to elect Board Members in accordance with Article 6.4.

(c) The Annual General Meeting may only consider other business of which notice has been given in accordance with Article 11.3.

11.2 Power to convene General Meeting

(a) The Board may convene a General Meeting when they think fit and must do so if required by this Constitution or by the Act.

(b) The Board must convene a special general meeting if requested by not less than 10% of the Members entitled to vote.

(c) General Meetings may only consider business of which notice has been given in accordance with Article 11.3.

11.3 Notice of General Meetings

(a) At least 21 days' notice in writing of General Meetings must be given to all Members entitled to receive notice and SPBAs auditor.

(b) The notice must state:

(1) the date, time and place (or places) of the meeting;

- (2) the general nature of each item of business to be considered; and
- (3) if a special resolution is to be proposed:
 - (i) the proposed resolution; and
 - (ii) that it is intention that the resolution be proposed as a special resolution as required by section 29 of the Act.
- (c) The notice must include any business that any Member has requested in writing be considered.
- (d) If a General Meeting is adjourned for one month or more, new notice of the resumed meeting must be given.

11.4 Non receipt of notice

- (a) The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

11.5 Proxy

- (a) A Member entitled to attend and vote at a General Meeting is entitled to appoint the Chairperson as their proxy and has the right to direct how the Chairperson is to cast their proxy vote in respect of any or all of the resolutions being considered at the General Meeting.
- (b) If a Member fails to direct how the Chairperson is to cast their proxy vote, the Chairperson will cast the proxy vote in favour of all resolutions being considered at the General Meeting.

11.6 Form of proxy

The instrument appointing a proxy may be in a common form or usual form, as determined by the Board from time to time.

11.7 Other meetings or forums

The Board may at any time convene any meeting or any forum of Members and other interested parties, upon such terms and conditions as it determines desirable.

12. Proceedings at General Meetings

12.1 Quorum

- (a) The quorum for consideration of:
 - (1) the ordinary business of the Annual General Meeting;
 - (2) any special resolution recommended by the Board ; and

(3) all other business for which notice has been given in accordance with Article 11.3, is the presence in person or by representative of at least 5 Members entitled to vote.

(b) If a quorum is not present within 30 minutes of the time of which notice has been given, the meeting must not proceed.

12.2 Chairing

(a) The Chairperson is entitled to chair general meetings.

(b) If the Chairperson is not present, or does not wish to chair the meeting, the Deputy Chairperson is entitled to chair.

(c) If neither the Chairperson nor the Deputy Chairperson is present, or if neither wishes to chair the meeting, the meeting must elect another board Member to chair the meeting.

(d) The chair of the meeting has a deliberative vote, but does not have a casting vote.

12.3 Voting

(a) All Members are entitled to vote at General Meetings

(b) All Ordinary Members and Life Members are entitled to 1 vote each. A person who is both an Ordinary Member and a Life Member is only entitled to 1 vote.

(c) Associate Members shall have such voting rights as determined by the Board in accordance with Article 5.5.

(d) Unless a poll is demanded, voting is by show of hands.

(e) If an equal number of votes are cast for and against a proposed resolution or amendment, the chair of the meeting must declare the proposed resolution or amendment lost.

(f) If the Chairperson rules that there is a significant division of opinion then a vote according to the weighted voting system shall be taken. Any Member of the General Meeting may draw the attention of the Chairperson to a significant division of opinion.

12.4 Calculation of weighted voting system

(a) The number of votes to be allocated to an Ordinary Member, Life Member and Associate Member (if applicable) for the purposes of the weighted voting system shall be the same number of votes as specified in Article 12.3.

(b) The number of votes to be allocated to a Club Member for the purposes of the weighted voting system shall be calculated by reference to the number of teams entered and paid for at the last registration period before the General Meeting.

(c) The number of votes shall be determined as follows:

- (1) 1 vote for each Club Member with less than 10 teams;
- (2) 2 votes for SPBA and for each Club Member with between 10 – 25 teams;
- (3) 3 votes for each Club Member with between 26 – 40 teams; and
- (4) 4 votes for each Club Member with greater than 40 teams.

(d) The number of votes to be allocated to a Club Member will be determined by the Chair of the meeting on the advice of the Secretary, whose decision is final.

12.5 Challenge to right to vote

(a) Any challenge to a right to vote may only be made at the meeting and must be determined by the Chair of the meeting, whose decision is final.

12.6 Conduct at General Meetings

(a) The Chair:

- (1) subject to Article 12.7, has charge of the general conduct of the meeting and of the procedures to be adopted;
- (2) may require the adoption of any procedure which in his opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
- (3) may, having regard where necessary to the Act, terminate discussions or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the Chair under this Article 12.6 is final.

12.7 Power of Board

The Board has the right to create any Rules relating to the procedure to be adopted and applied at any General Meetings which are not inconsistent with the terms of this Constitution or the Act.

13. Finances and Use of Income, Assets and Profit

13.1 Use of Income, Assets and Profit

- (a) SPBA may only use its income, assets and profits for its Objects as set out in Article 4.
- (b) SPBA must not distribute any of its profits, income or assets directly or indirectly to its Members.
- (c) SPBA may not pay fees directly or indirectly to its Board members unless such fees have been approved by the Members in General Meeting.
- (d) For the avoidance of doubt, Articles 13.1(b) and 13.1(c) does not prevent SPBA from paying its members or Board Member for:

- (1) reimbursement for expenses properly incurred by them; and
- (2) for goods supplied and services provided by them; if this is done in good faith on terms no more favourable than if the Member was not a Member.

13.2 Source of Funds

The funds of SPBA may be derived from fees, subscriptions, grants, donations, sponsorship, fundraising activities, profit making business enterprises, interest and any sources approved by the Board.

13.3 Financial Year

The financial year of SPBA is from 1 July to the following 31 June, unless the Board otherwise determines.

13.4 Financial Records

SPBA must maintain adequate and accurate financial records as required by section 30A of the Act.

13.5 Audit

(a) SPBA will have its annual financial report audited in accordance with section 30B of the Act if it is a prescribed association within the meaning of section 3(1) of the Act.

(b) If Article 13.5(a) applies then an auditor must be elected each year at the Annual General Meeting.

14. Legal

14.1 Seal

The Board shall provide for the safe custody of the seal, which shall only be used by authority of the Board, or of a committee of the Board Members authorised by the Board, and every instrument to which the seal is affixed shall be signed by a Board Member and shall be countersigned by the Secretary or a second Board Member or by some other person appointed by the Board for that purpose.

14.2 Rules

The Board may from time to time make Rules and amend or vary such Rules as they think fit and all such Rules shall bind Members and their respective Officials and any Players, parents/guardians, umpires, volunteers, visitors and other such persons as the Board so declares provided that in the event of inconsistency between the Rules and this Constitution the provisions of this Constitution shall prevail.

14.3 Indemnity

Every person who is or has been a Board Member, BOM, BAM and or other officer or employee of SPBA is entitled to be indemnified out of the property of SPBA against any liability incurred by that person while acting in good faith in that capacity (including any legal costs incurred in defending any

civil or criminal proceedings, in which that person becomes involved by reason of his or her acting in that capacity) unless SPBA is prevented from giving that indemnity in a particular case, or the proceedings have been brought against that person by or on the complaint of SPBA.

15. Transitional arrangements

15.1 Scope of this section

(a) The transitional arrangements set out in this Article 15 are designed to ensure a smooth transition from to this Constitution and will override any terms to the contrary as set out in this Constitution.

(b) These transitional arrangements cease to have any affect once the transitional arrangement has taken place and been completed.

15.2 Board Member appointments

(a) On adoption of this Constitution, the Board Members will be as follows:

(1) for the purposes of Articles 6.2(a)(1) and 6.4(e) the elected Board Members will be:

(i) President (Board Member A)

(ii) Vice President (Board Member B)

(iii) Treasurer (Board Member C)

(iv) Secretary (Board Member D)

(v) General (Board Member E)

(vi) General (Board Member F)

(vii) General (Board Member G)

(b) Notwithstanding anything else in this Constitution:

(1) at the Annual General Meeting to be held following the end of the 30 June financial year:

(i) each of Board Member A to and Board Member G will resign (but each are eligible for re-election in accordance with Article 6.6(a); and

(2) Any period during which a Board Member holds office prior to their resignation in accordance with this Article 15.1 shall be deemed to be one term for the purposes of Article 6.6.

15.3 Disqualification positions do not apply

The disqualifying exclusions set out in Article 6.3 do not apply to those persons appointed as Board Member under the transitional arrangements in Article 15.2 in respect to their first term only.

15.4 No right to call for elections or remove a Board Member

On adoption of this Constitution any right of a Member or group of Members to call special general meeting under Article 11.2 or the Act to remove a Board Member or to call for elections under Article 6.4 is null and void until such time as the transitional arrangements in Article 15.2 have been completed.

15.5 Life Members

For the avoidance of doubt at the time of adoption of this Constitution all previous Life Members of SPBA will continue to be Life Members of SPBA.



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Our Ref: 8615619

SOUTHERN PENINSULA BASKETBALL ASSOCIATION INC.

3 November 2014

Dear Sir/Madam,

Rule Changes by Special Resolution

SOUTHERN PENINSULA BASKETBALL ASSOCIATION INC. – A0001661M

Thank you for the submission of the special resolution passed on **26 October 2014** for the above association incorporated under the *Association Incorporations Reform Act 2012* (the Act).

The special resolution has been approved by Consumer Affairs Victoria.

However, it is noted that the following rule(s) has not been included in the new rules of your association as required under the Act.

▪ **Schedule 1 – Matter 6**

Provisions for the resignation of a member or cessation of membership

Model Rule 16 – Ceasing membership

- (1) The membership of a person ceases on resignation, expulsion or death.
- (2) If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

Model Rule 17 – Resigning as a member

- (1) A member may resign by notice in writing given to the Association.
- (2) A member is taken to have resigned if—
 - (a) the member's annual subscription is more than 12 months in arrears; or
 - (b) where no annual subscription is payable—
 - (i) the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and
 - (ii) the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member.

▪ **Schedule 1 – Matter 7**

The procedure (if any) for the disciplining of members and the mechanism (if any) for appearances by members in respect of disciplinary action taken against them

Model Rule 19 – Grounds for taking disciplinary action

The Association may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- (a) has failed to comply with these Rules; or
- (b) refuses to support the purposes of the Association; or
- (c) has engaged in conduct prejudicial to the Association.

Model Rule 20 – Disciplinary Sub-committee

- (1) If the Committee is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Committee must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- (2) The members of the disciplinary subcommittee—
 - (a) may be Committee members, members of the Association or anyone else; but
 - (b) must not be biased against, or in favour of, the member concerned.

Model Rule 21 – Notice to member

- (1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member—
 - (a) stating that the Association proposes to take disciplinary action against the member; and
 - (b) stating the grounds for the proposed disciplinary action; and
 - (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the *disciplinary meeting*); and
 - (d) advising the member that he or she may do one or both of the following—
 - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
 - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
 - (e) setting out the member's appeal rights under rule 23.
- (2) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

Model Rule 22 – Decision of committee

- (1) At the disciplinary meeting, the disciplinary subcommittee must—
 - (a) give the member an opportunity to be heard; and
 - (b) consider any written statement submitted by the member.
- (2) After complying with subrule (1), the disciplinary subcommittee may—
 - (a) take no further action against the member; or
 - (b) subject to subrule (3)—
 - (i) reprimand the member; or
 - (ii) suspend the membership rights of the member for a specified period; or
 - (iii) expel the member from the Association.
- (3) The disciplinary subcommittee may not fine the member.
- (4) The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

Model Rule 23 – Appeal rights



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- (1) A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given—
 - (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
 - (b) to the Secretary not later than 48 hours after the vote.
- (3) If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the Committee as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (4) Notice of the disciplinary appeal meeting must be given to each member of the Association who is entitled to vote as soon as practicable and must—
 - (a) specify the date, time and place of the meeting; and
 - (b) state—
 - (i) the name of the person against whom the disciplinary action has been taken; and
 - (ii) the grounds for taking that action; and
 - (iii) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

Model Rule 24 – Conduct of disciplinary appeal action

- (1) At a disciplinary appeal meeting—
 - (a) no business other than the question of the appeal may be conducted; and
 - (b) the Committee must state the grounds for suspending or expelling the member and the reasons for taking that action; and
 - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- (3) A member may not vote by proxy at the meeting.
- (4) The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

▪ Schedule 1 - Matter 8

The grievance procedures for settling disputes under the rules between the incorporated association and any members or between a member and other member

Model Rule 25 - Grievance Procedure – Application

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
 - (a) a member and another member;

- (b) a member and the Committee;
 - (c) a member and the Association.
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

Model Rule 26 - Parties must attempt to resolve the dispute

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

Model Rule 27 - Appointment of mediator

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, the parties must within 10 days—
- (a) notify the Committee of the dispute; and
 - (b) agree to or request the appointment of a mediator; and
 - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be—
- (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement—
 - (i) if the dispute is between a member and another member—a person appointed by the Committee; or
 - (ii) if the dispute is between a member and the Committee or the Association—a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (3) A mediator appointed by the Committee may be a member or former member of the Association but in any case must not be a person who—
- (a) has a personal interest in the dispute; or
 - (b) is biased in favour of or against any party.

Model Rule 28 - Mediation process

- (1) The mediator to the dispute, in conducting the mediation, must—
- (a) give each party every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) The mediator must not determine the dispute.

Model Rule 29 - Failure to resolve dispute by mediation

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

▪ **Schedule 1 – Matter 10**

Procedures for the appointment and removal of the secretary of the incorporated association

Model Rule 55(3) –

A general meeting of the Association may—

- (a) by special resolution remove a committee member from office; and
- (b) elect an eligible member of the Association to fill the vacant position in accordance with this Division.

▪ **Schedule 1 – Matter 11**

The custody of records, securities and other relevant documents

Model Rule 47(2) - Secretary

The Secretary must—

- (a) maintain the register of members in accordance with rule 18; and



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- (b) keep custody of the common seal (if any) of the Association and, except for the financial records referred to in rule 70(3), all books, documents and securities of the Association in accordance with rules 72 and 75; and
- (c) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and
- (d) perform any other duty or function imposed on the Secretary by these Rules.

Model Rule 48(2) & (3) - Treasurer

(2) The Treasurer must—

- (a) ensure that the financial records of the Association are kept in accordance with the Act; and
 - (b) coordinate the preparation of the financial statements of the Association and their certification by the Committee prior to their submission to the annual general meeting of the Association.
- (3) The Treasurer must ensure that at least one other committee member has access to the accounts and financial records of the Association.

▪ Schedule 1 – Matter 14

The preparation and retention of accurate minutes of general meetings of the association and meetings of the committee or other body having the management of the incorporated association

Model Rule 41 – Minutes of general meeting

- (1) The Committee must ensure that minutes are taken and kept of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must include—
 - (a) the names of the members attending the meeting; and
 - (b) proxy forms given to the Chairperson of the meeting under rule 34(6); and
 - (c) the financial statements submitted to the members in accordance with rule 30(4)(b)(ii); and
 - (d) the certificate signed by two committee members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
 - (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

Model Rule 47(2) – Secretary

(2) The Secretary must—

- (a) maintain the register of members in accordance with rule 18; and

- (b) keep custody of the common seal (if any) of the Association and, except for the financial records referred to in rule 70(3), all books, documents and securities of the Association in accordance with rules 72 and 75; and
- (c) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and
- (d) perform any other duty or function imposed on the Secretary by these Rules.

▪ **Schedule 1 – Matter 13**

Provision for members to have access to, and be able to obtain copies of, the records, securities and other relevant documents of the incorporated association

▪ **Schedule 1 – Matter 15**

Provision for members to have access to, and to be able to obtain copies of, minutes of general meetings, including financial statements submitted at general meetings

▪ **Schedule 1 – Matter 16**

Rights of access (if any) by members to minutes of meetings of the committee, including any terms and conditions subject to which access may be granted

Model Rule 75 - Custody of inspection of books and records

(1) Members may on request inspect free of charge—

- (a) the register of members;
- (b) the minutes of general meetings;
- (c) subject to subrule (2), the financial records, books, securities and any other relevant document of the Association, including minutes of Committee meetings.

(2) The Committee 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.

(3) The Committee must on request make copies of these rules available to members and applicants for membership free of charge.

(4) Subject to subrule (2), 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.

(5) For 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—

- (a) its membership records;
- (b) its financial statements;
- (c) its financial records;
- (d) records and documents relating to transactions, dealings, business or property of the Association.

▪ **Schedule 1 – Matter 22**

The manner of altering and rescinding the rules of the incorporated association and of making additional rules

Model Rule 38 – Voting at general meeting

(1) On any question arising at a general meeting—

- (a) subject to subrule (3), each member who is entitled to vote has one vote; and
- (b) members may vote personally or by proxy; and
- (c) except in the case of a special resolution, the question must be decided on a majority of votes.



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- (2) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (3) If the question is whether or not to confirm the minutes of a previous meeting, only members who were present at that meeting may vote.
- (4) This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 24.

▪ **Schedule 1 – Matter 23**

The disposition of any surplus assets on the winding up or dissolution of the incorporated association

Model Rule 76 – Winding up and cancellation

- (1) The Association may be wound up voluntarily by special resolution.
- (2) In the event of the winding up or the cancellation of the incorporation of the Association, the surplus assets of the Association must not be distributed to any members or former members of the Association.
- (3) Subject to the Act and any court order made under section 133 of the Act, the surplus assets must be given to a body that has similar purposes to the Association and which is not carried on for the profit or gain of its individual members.
- (4) The body to which the surplus assets are to be given must be decided by special resolution.

Therefore, in accordance with Section 48 (3) of the Act, model rule numbers listed above are deemed to be included in the rules of your association. A copy of the Model Rules is available on our website.

Please advise members that the association's rules are to be read in conjunction with this letter and the relevant model rules.

It is also noted that under Section 46 of the Act, the rules of an incorporated association constitute the terms of a contract between the incorporated association and its members. Therefore, matters concerning the rules are for the incorporated association and its members.

Yours sincerely

STEVEN SCODELLA
Operations Manager
Regulatory Transaction Centre

