



**Canterbury Basketball
Association Incorporated**

Incorporated Society No.220635

Constitution

Canterbury Basketball Association

Constitution

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Canterbury Basketball Association Incorporated

Constitution

1. Definitions and interpretation

1.1 **Definitions:** In this Constitution, unless the context requires otherwise, the following words and phrases have the following meanings:

Act means the Incorporated Societies Act 2022, including any amendments, and any regulations made under that Act.

AGM or Annual General Meeting means a meeting of the Members held once a year convened under this Constitution.

Appointment Panel has the meaning given to it in clause 6.4.

Association means Canterbury Basketball Association Incorporated.

BNZ means Basketball New Zealand Incorporated

Board means the Association's governing body.

Board Member means a member of the Board, including the Chair.

Bylaws means any bylaws, policies, regulations and codes of the Association made under clause 15.

Casual Vacancy is a vacancy which arises when a Board Member does not serve their full term of office.

Chair means the Board Member appointed as chair of the Association under this Constitution.

General Manager means the person in the highest-ranking management position in the Association.

Club means a group of individuals with an interest in basketball that meets the requirement for membership set out in clause 4.4.

Constitution means this Constitution, including any amendments and any schedules to this Constitution.

Contact Details means a physical or an electronic address and a telephone number.

Diversity, Equity and Inclusion means ensuring fair and equitable opportunities are available to everyone to participate in sport and recreation irrespective of age, ability, ethnicity, gender, national origin, race, religion, sexual orientation, beliefs, or socio-economic status.

General Meeting means an AGM or SGM of the Association.

Interested has the meaning given in section 62 of the Act. Which states that an officer **(A)** is **interested** in a matter if A:

(a) may obtain a financial benefit from the matter; or

- (b) is the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, or first cousin of a person who may obtain a financial benefit from the matter; or
- (c) may have a financial interest in a person to whom the matter relates; or
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
- (e) is interested in the matter because the society's constitution so provides.

However, A is not interested in a matter:

- (f) merely because A receives an indemnity, insurance cover, remuneration, or other benefits authorised under the Inc Soc Act; or
- (g) if A's interest is the same or substantially the same as the benefit or interest of all or most other members of the society due to the membership of those members; or
- (h) if A's interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence A in carrying out A's responsibilities under the Inc Soc Act or the society's constitution; or
- (i) if A's interest is of a kind that is specified in the society's constitution.

Matter has the meaning given in section 62(4) of the Act.

Member means each person who for the time being is a member of the Association and includes all classes of members described in clause 4.3.

National Organisation means BBNZ.

Officer means a Board Member and any natural person occupying a position in the Association that allows the person to exercise significant influence over the management or administration of the Association.

Ordinary Resolution means a resolution passed by a majority of votes cast.

Purposes means the purposes of the Association described in clause 3.1.

Region means the geographical area as determined by BBNZ to be the region represented by the Association and within which the primary base of activities of the Association is located and is at the date of adoption of this Constitution, the respective territories of Christchurch City Council and Selwyn District Council.

SGM or **Special General Meeting** means a meeting of the Members, other than an AGM, called for a specific purpose or purposes.

Special Resolution means a resolution passed by a 75% majority of votes cast.

Working Day means as defined in the Legislation Act 2019. Examples of days that are not Working Days include, but are not limited to, the following – a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day.

1.2 **Interpretation:** Unless the context otherwise requires:

- (a) Words referring to the singular include the plural and vice versa.
- (b) Clause headings are for reference only.
- (c) Expressions referring to writing include references to words visibly represented, copied, or reproduced, including by email.
- (d) Reference to a person includes any other entity or association recognised by law and vice versa and any reference to a particular entity includes a reference to that entity's successors.
- (e) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, re-enactment of, or replacement of, that legislation.
- (f) All periods of time or notice exclude the days on which they are given.

1.3 **Notices:** Subject to any other notice requirements in this Constitution, any notice or other communication given under this Constitution must be in writing and will be given to:

- (a) a Member if sent to the address set out in their Contact Details;
- (b) the Association if sent to gm@canterbury.basketball or by post to the Association's registered office set out on the Register of Incorporated Societies.

1.4 **Receipt of notices:** A notice is deemed to have been received:

- (a) if given by post, when left at the address of that party or five (5) Working Days after being put in the post; or
- (b) if given by email, upon production of a physical copy of the email detailing the time and the date the email was sent (provided that the sender does not receive any "out of office" auto-reply or other indication of non-receipt),

provided that any notice or communication received or deemed received after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed not to have been received until the next Working Day.

2. **Details of the Association**

- 2.1 **Name:** The name of the association is "Canterbury Basketball Association Incorporated".
- 2.2 **Charitable status:** The Association is already registered as a charitable entity under the Charities Act 2005.
- 2.3 **Status:** The Association is the regional association for BBNZ and related activities in the Region and is bound by and must observe the rules of BBNZ.
- 2.4 **Registered office:** The registered office of the Association is at the place the Board decides.
- 2.5 **Contact person:** At its first meeting following an AGM, the Board must appoint or reappoint at least one, and a maximum of three, persons to be the contact person,

subject to those persons meeting the eligibility criteria set out in the Act. The Board must advise the Registrar of Incorporated Societies of any change in the contact person or their Contact Details.

3. Purpose and powers

3.1 **Purpose:** The purposes of the Association are to:

- (a) be a member of BBNZ for the Region;
- (b) lead the promotion, development and administration of basketball within the Region and to do so in a manner that is consistent with the requirements of BBNZ, as an amateur community sport for the well-being, benefit and recreation of the general public;
- (c) support and assist its Members to deliver basketball in the Region;
- (d) promote opportunities and facilities to enable, assist and enhance the participation, enjoyment, and performance in basketball in the Region and to develop and train players, officials, and other personnel involved in the sport of basketball.
- (e) lead, promote and enable Diversity, Equity and Inclusion across the whole organisation including governance of the Association and participation in basketball;
- (f) promote, develop and co-ordinate basketball competitions in the Region;
- (g) publish and enforce the rules of basketball in the Region in a manner consistent with the requirements of BBNZ;
- (h) protect the integrity of basketball and the Association by developing and enforcing standards of conduct, ethical behaviour and implementing good governance in the Region;

3.2 **Tikanga:** The tikanga, kawa and culture of BBNZ is as follows: We believe in and live by our values of Mana (Respect), Tika (Integrity), Hono (Connected). These values underpin how we treat each other, the way we work and the environment we work in, and this Constitution is to be interpreted having regard to that tikanga, kawa and culture.

3.3 **Capacity and powers:** The Association has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any activity, do any act, or enter into any transaction, subject to this Constitution, the constitution of BBNZ, the Act, any other legislation, and the general law.

4. Members

4.1 **Application:** An application to become a Member (**Application**) must be in the form required by the Association. All Applications are decided by the Board or by a delegated subcommittee, which may accept or decline an Application in its absolute discretion. A person becomes a Member when their Application has been accepted and they have paid any required membership fees and satisfied any other preconditions.

- 4.2 **Member consent:** A person or entity consents to become a Member by submitting an Application to the organisation or by paying any fees required to be paid to the Association by a Member, unless otherwise specified in this Constitution.
- 4.3 **Membership Categories:** The categories of membership of the Association, (collectively called “Members”) shall be:
- (a) **Clubs:** as described in clause 4.3.2 and 4.4 below (Member Clubs);
 - (b) **District Associations:** (District Associations) as defined in clause 4.3.4 below;
 - (c) **Life Members:** as described in clause 4.5 below (Life Members);
 - (d) **Associated Organisations:** as described in clause 4.3.1 below (Associated Organisations); and
 - (e) **Other Categories:** any other category or categories of membership of the Association as determined by the Board.
- 4.3.1 **Associated Organisations:** The following organisations are eligible for membership as an Associated Organisation member category:
- (a) Secondary School Sport Canterbury; and
 - (b) Canterbury Basketball Officials Association.
- 4.3.2 **Member Clubs**
- (a) **Existing Clubs:** Every Member Club that was a member of the Association immediately prior to the commencement of this Constitution is deemed to be a Member of the Association (as a Club) from the date this Constitution comes into force.
 - (b) **New Clubs:** Any club not included within the provisions of Existing Clubs and who wishes to be a member of the Association shall make an application in writing in accordance with clause 4.4 below to the Association’s Executive Officer.
 - (c) **Consideration of Application:** Upon receiving an application, the Board shall consider the application. If it is approved by the Board, the Chairperson of the Association shall then countersign the application confirming that the application has been approved by the Board.
 - (d) **Club Members:** A Club shall have its own members provided that such membership is consistent with the Constitution and Regulations.
 - (e) **No playing with Non-Affiliated Members:** Each Member Club must ensure that no team or player under its control or jurisdiction plays any other team under the control or jurisdiction of an entity which is not a CBA/BBNZ member, including without limitation any team or player under the control of an overseas entity, without the prior written consent of the Board.
- 4.3.3 Schools entering teams into the week-end competitions are represented through the Associated Organisation Secondary School Sport Canterbury.

- 4.3.4 **District Association:** Any BBNZ Association entering the week-end competitions. District Associations entering week-end teams shall have the same voting rights as clubs as detailed in clause 5.16 below.
- 4.3.5 **Binding Agreement:** Each member acknowledges and agrees that for the duration of their membership, this constitution constitutes a contract between each of them and the Association and they are bound by this Constitution, the Regulations and any policies, procedures or decisions of the Board. Each Member shall include a rule identical to this rule in its constitution so that its members are bound by this rule.
- 4.4 **Clubs:** A Club that wishes to be a new Member must make an Application under clause 4.1. In addition to the obligations as a Member under clause 4.6, each Club that is a Member will:
- (a) administer, promote, and develop basketball in the Club in a manner that is consistent with the Purposes, this Constitution and any Bylaws;
 - (b) maintain registration as an incorporated society under the Incorporated Societies Act 1908 or the Act;
 - (c) ensure its constitution is not inconsistent with this Constitution, provide the Association with a copy of its constitution and all proposed amendments to it. The Board may require a Club to amend its constitution if it, or any proposed amendment, is inconsistent or in conflict with, this Constitution, any Bylaws or the constitution of its Regional Body;
 - (d) maintain an updated register of members and, on request, provide the Association with full access to that register, in compliance with the privacy laws;
 - (e) lead, promote and enable Diversity, Equity and Inclusion across the whole Club including governance of the Club and participation in basketball;
 - (f) act in good faith with loyalty to the Association to ensure the maintenance and enhancement of the Association and basketball, and its reputation.
- 4.5 **Life Members:** Life Membership may be granted in recognition and appreciation of outstanding service by an individual to the Association. Any Member may nominate an individual to become a Life Member by giving notice to the Board setting out the grounds for the nomination. The Board must then determine whether the nomination should be forwarded to a General Meeting for determination by the Members. A person may only be elected as a Life Member by an Ordinary Resolution at a General Meeting. A person consents to becoming a Life Member on acceptance of their life membership. Life Members have such rights and benefits as determined by the Board.
- 4.6 **Member rights and obligations:** Members acknowledge and agree that:
- (a) they are bound by, and will comply with, this Constitution and the Bylaws, and to the extent they apply, the rules, procedures or policies of BBNZ
 - (b) they are subject to the jurisdiction of the Association;
 - (c) they are entitled to all rights and entitlements granted by this Constitution or as determined by the Board;

- (d) to receive, or continue to receive or exercise member rights, they must meet all the member requirements set out in this Constitution and the Bylaws or as otherwise set by the Board, including payment of any membership or other fees within the required time period;
 - (e) if they fail to comply with sub-clause (d) the Board may terminate their membership, but the Member continues to be bound by this Constitution;
 - (f) they do not have any rights of ownership of, or the automatic right to use, the Association's property; and
 - (g) they will promote the interests and Purposes of the Association and must not do anything to bring the Association into disrepute.
- 4.7 **Suspension of Member:** If a Member is, or may be, in breach under clause 4.6, and the Board believes it is in the best interests of the Association to do so, the Board may suspend the Member until final determination of the matter under the dispute resolution process applicable to the matter. Before invoking any such suspension, the Member must be given notice of the suspension.
- 4.8 **Suspension of Member rights:** Unless otherwise determined by the Board, while a Member is suspended the Member is not entitled to attend, speak or vote at a General Meeting, or to any other rights or entitlements as a Member and is not entitled to continue to hold office in any position within the Association until such time as the alleged breach is resolved or determined.
- 4.9 **Ceasing to be Member:** A Member ceases to be a Member:
- (a) if an individual on death, or if a body corporate on liquidation; or
 - (b) by giving notice to the Board of their resignation; or
 - (c) if their membership is terminated under clause 4.6(e); or
 - (d) if their membership is terminated following a dispute resolution process or such other process set out or referred to in this Constitution.
- 4.10 **Consequences of ceasing to be a Member:** A Member who ceases to be a Member:
- (a) remains responsible to pay all their outstanding membership and other fees to the Association;
 - (b) must return all of the Association's property if required;
 - (c) ceases to be entitled to any rights of a Member.
- 4.11 **Membership fees:** The Board will decide any membership and other fees payable by Members and the due date for those fees. The Board may determine different levels of membership fees and other fees for different types of Members.
- 4.12 **Member register:**
- (a) **Register:** The Association shall keep and maintain a register of Members in accordance with the Act and for the purpose of:
 - (i) complying with the Association's obligations to BBNZ;

- (ii) determining the exact number of Members;
 - (iii) determining the Membership Fee(s) and any Levy(s) payable by each Member; and
- (b) **Requirements of Members and Clubs:** Clubs will be required to keep and maintain its own Register of Members in accordance with the Incorporated Societies Act. Should any Member (and in relation to Clubs, the information related to its Members) fail to forward its details in the format and by the date determined by the Board, the Executive Officer will notify the Member that its membership will be suspended of the Association pending the completion of the return.

5. General Meetings

- 5.1 **AGM:** An AGM must be held once a year at the time, date and place as the Board decides, but not more than 6 months after the balance date of the Association (31 December) and not more than 15 months after the previous AGM.
- 5.2 **Notice of AGM:** The Members must be given at least 42 days notice of the AGM. Notice to Members of an AGM may be given by posting on the Association's website and by giving written notice by email to the email address of members on the register
- 5.3 **Business of AGM:** The following business will be discussed at the AGM:
- (a) confirmation of the minutes of the previous AGM;
 - (b) the Board's presentation of the following information during the most recently completed accounting period:
 - (i) the annual report;
 - (ii) the annual financial statements;
 - (iii) the auditor's report to members on the financial statements audited by a qualified auditor or the review report of the financial statements;
 - (iv) notice of any disclosures of conflicts of interest made by Officers (including a brief summary of the Matters, or types of Matters, to which those disclosures relate);
 - (c) the election of any Board Members;
 - (d) the appointment or announcement of any Appointed Board Members;
 - (e) consideration of any motions proposing to amend this Constitution that have been properly submitted for consideration at the AGM;
 - (f) consideration of any other items of business that have been properly submitted for consideration at the AGM.
- 5.4 **Notice of proposed motions:** Members must give notice of any proposed motions and other items of business to the Association at least 14 days before the date of the AGM.

- 5.5 **Notice of agenda:** Notice of the agenda containing the business to be discussed at the AGM must be sent to all persons entitled to attend the AGM at least 7 days before the date of the AGM.
- 5.6 No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree by Special Resolution to discuss any other items.
- 5.7 **Calling of SGM:** The Board must call a SGM if it receives a written request stating the purpose of the SGM from the Board itself; or by 25% of Members.
- 5.8 **Notice of SGM:** Members must be given at least 21 days notice of the SGM, unless the Board, in its discretion, decides that the nature of the SGM business is of such urgency that a shorter period of notice is to be given to Members. A SGM may only consider and deal with the business specified in the request for the SGM.
- 5.9 **Method of holding meeting:** A General Meeting may be held by a quorum of people being assembled at the time and place appointed for the meeting, participating by audio link, audio-visual link or other electronic communication or by a combination of those methods.
- 5.10 **Quorum:** No business may occur at any General Meeting unless a quorum is present at the meeting's start time. The quorum for a General Meeting is a minimum of 15 votes of the Members who are entitled to vote, including Members present by casting votes by electronic means or by proxy. The quorum must always be present during the General Meeting.
- 5.11 **No quorum at AGM:** If a quorum is not met within 30 minutes of the AGM's scheduled start time, the AGM is adjourned to a day, time and place set by the chair of the AGM. If no quorum is met at the further AGM, the Members present, in person or through audio, audio visual link or other electronic communication, 15 minutes after the further AGM's scheduled start time are deemed to constitute a valid quorum.
- 5.12 **No quorum at SGM:** If a quorum is not met within 30 minutes of the scheduled start time of the SGM, the SGM is cancelled.
- 5.13 **Control of General Meetings:** The Chairperson chairs General Meetings. If that person is unavailable, a Board Member (appointed by the Board) will preside. In the absence of both of those persons, the Members present will elect a person to chair the General Meeting.
- 5.14 **Omissions and irregularities:** The General Meeting and its business will not be invalidated if one or more Members do not receive notice of the meeting. The General Meeting and its business will not be invalidated by an irregularity, error or omission in notices, agendas and papers of the meeting or the giving of notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the meeting if:
- (a) the Chairperson of the meeting in their discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error, or omission; and
 - (b) a motion to proceed is put to the meeting and a majority, of two-thirds of votes cast, is obtained in favour of the motion to proceed.

- 5.15 **Attendance:** Members and any other persons invited by the Board are eligible to attend and speak at General Meetings.
- 5.16 **Voting:** The voting entitlement for each Member eligible to vote is as follows:
- (a) Clubs represented by its delegate will have the following voting entitlements:-
 - (i) Clubs represented by its Delegate with less than 5 teams (as at the date of the General Meeting) shall be entitled to one vote;
 - (ii) Clubs represented by its Delegate with 5-10 teams (as at the date of the General Meeting) shall be entitled to two votes;
 - (iii) Clubs represented by its Delegate with 11-15 teams (as at the date of the General Meeting) shall be entitled to three votes;
 - (iv) Clubs represented by its Delegate with 16-20 teams (as at the date of the General Meeting) shall be entitled to four votes; and
 - (v) Clubs represented by its Delegate with more than 20 teams (as at the date of the General Meeting) shall be entitled to five votes;
 - (b) each Life Member will be entitled to one vote;
 - (c) each Associated Organisation will be entitled to five votes; and
 - (d) each Board Member will be entitled to one vote.”
- 5.17 **Voting by electronic means:** Voting by electronic means is permitted, subject to any requirements or electronic voting policy as determined by the Board.
- 5.18 **Voting by proxy:** Proxy voting is permitted. The chair of the General Meeting must receive notice of the proxy signed by the Member prior to the start of the meeting.
- The form of the proxy is: *I [insert name] of [insert address] being a member of [organisation] appoint [insert name of proxy] as my proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting. I direct my proxy to vote in the following manner [insert resolutions and whether the proxy is to vote for or against].*
- 5.19 **Conduct of voting:** Voting is conducted by voices or a show of hands as determined by the chair of the meeting, unless a secret ballot is called for and approved by the chair or 50% of Members or as otherwise required under this Constitution.
- 5.20 **Minutes:** Minutes must be kept of all General Meetings.
- 5.21 **Resolution:** An Ordinary Resolution of Members at a General Meeting is sufficient to pass a resolution, except as specified in the Act or this Constitution.
- 5.22 **Resolution passed in lieu of meeting:** A resolution in writing signed or consented to by email or other electronic means by a 75% majority of Members is valid as if it had been passed at a General Meeting provided the requirements under sections 89 to 92 of the Act are complied with. Any resolution may consist of several documents in the same form each signed by one or more Members.

6. Board

- 6.1 **Functions and powers:** Subject to any modifications, exceptions, or limitations contained in the Act or in this Constitution the Board is responsible for governing the Association. The Board may exercise all the powers of the Association and do all things that are not expressly required to be undertaken at a General Meeting.
- 6.2 **Composition:** The Board consists of:
- (a) up to 4 persons elected at the AGM under (**Elected Board Members**); and
 - (b) up to 3 persons appointed under clause 6.3 (**Appointed Board Members**).
- 6.3 **Election and appointment of Board Members:** Board Members are appointed and elected as follows:
- (a) The Appointment Panel must call for nominations for any Elected Board Member positions, and applications for any Appointed Board Member positions, in each case that are to be vacated by a date set by the Board and if no date is set, at least 42 days before the AGM.
 - (b) Applications and nominations are made in the forms decided by the Appointment Panel and must be received by the Appointment Panel by the date set by the Board and if no date is set, at least 21 days before the AGM.
 - (c) The Appointment Panel must undertake its responsibilities as set out in the sub-clause headed "**Appointment Panel**".
 - (d) At least 7 days before the AGM, the Appointment Panel:
 - (i) must notify the Board of the Appointed Board Member(s) who are to assume office; and
 - (e) In turn, the Board must, at least 3 days before the AGM, notify the Members of:
 - (i) the Appointment Panel's decision regarding any Appointed Board Members it has appointed;
 - (ii) the names of any other nominations for the vacant positions of Elected Board Members.
 - (f) Elections of the Elected Board Members at the AGM will take place as follows:
 - (i) if there are more nominees than number of positions available, the election is by secret ballot, unless otherwise decided by the Chair of the General Meeting and approved by a Special Resolution of Members. If a secret ballot is held, two scrutineers must be appointed at the General Meeting to count the votes;
 - (ii) those nominees who have the highest number of votes in their favour to fit the number of vacant positions are declared elected;
 - (iii) if the number of votes for one or more nominees is equal to another nominee, a further vote will be held between the tied nominees;

- (iv) if there is only one nominee for a vacant position, that person is declared to be elected without the need for a vote.

6.4 **Appointment Panel:**

- (a) There will be a Board Appointment Panel (**Appointment Panel**) comprising of the following people (each a **Panel Member**):
 - (i) the Chair, or if the Chair is not eligible or willing to serve on the Appointment Panel or is seeking reappointment or re-election to the Board, then another Board Member who is eligible to serve on the Appointment Panel and is not seeking re-appointment or re-election to the Board as determined by the Board;
 - (ii) a nominee who is independent of the Association and is experienced in governance and the functions and appointment process of board members in New Zealand, as determined by the Board;
 - (iii) a nominee from the Board

and the Appointment Panel must be diverse and inclusive and as a minimum must always have diversity of gender among its people.

- (b) A person will not be eligible to be a Panel Member or remain as a Panel Member if any of the circumstances listed in the sub-clause headed "**Disqualification**" have occurred or occur.
- (c) If the Board as a whole has been removed, resigns en masse, or does not have a quorum and is unable to appoint the Appointments Panel, it will be appointed by Sport Canterbury.
- (d) The convenor of the Appointment Panel is the person who is the Chair or the Board member referred to in category (i) of the composition of the Appointment Panel above.
- (e) Panel Members remain in office for the period necessary to fulfil their responsibilities in relation to each vacancy of a Board Member for which the Appointment Panel was established. A person is not eligible to serve on the Appointment Panel following the sixth anniversary of their first appointment to the Appointment Panel.
- (f) The Appointment Panel is independent of the Board and is responsible for:
 - (i) advertising, identifying and inviting suitable candidates to apply for appointment as an Appointed Board Member;
 - (ii) receiving and assessing applications from candidates for appointment as Appointed Board Members, including undertaking such enquiries and holding interviews and meetings as it sees fit;
 - (iii) deciding the candidates to be appointed as Appointed Board Members;
- (g) In determining the Appointed Board Members, the Appointment Panel will do so based on merit and will consider the following factors about the candidate and the Board as a whole:

- (i) prior experience as a director, trustee, officer or experience in any other governance role;
 - (ii) knowledge of, and experience in basketball organisations generally;
 - (iii) understanding of the legal, regulatory, fiduciary and ethical obligations of Board Members;
 - (iv) the desire for conflicts of interest on the Board to be minimised;
 - (v) the desire for a wide range of knowledge, skills, and experience on the Board; and
 - (vi) the desire for diversity and inclusion on the Board.
- (h) No Panel Member may seek to become a Board Member while a Panel Member.
- (i) Unless otherwise set out in this Constitution, the Appointment Panel may decide its own process.
- (j) The quorum for a meeting of the Appointment Panel is 3 Panel Members.
- (k) Any decision of the Appointment Panel regarding the appointment of Appointed Board Members must be a majority of panel members.
- (l) All information received by the Appointment Panel and its discussions must be kept confidential except to the extent required by law. Panel Members must notify the convenor of any potential conflict of interest in considering any candidate. If the convenor considers it appropriate to do so, they may require that Panel Member to vacate their position. If the convenor considers they may have a potential conflict of interest, they must notify the other Panel Members and the Board. If the Board considers it appropriate to do so, it may require that convenor to vacate their position.
- (m) The Board may remove any Panel Member if the Board considers, in its sole discretion, that:
- (i) that Panel Member has a conflict of interest which has not been satisfactorily resolved to the satisfaction of the Board; or
 - (ii) there are circumstances which may give rise to a question of actual or apparent bias in the Appointment Panel's composition and/or process.
- (n) Before removing any Panel Member, the Board must:
- (i) notify that Panel Member of its proposal to remove them;
 - (ii) give that Panel Member and the other Panel Members the opportunity to make submissions on the proposed removal and the opportunity to be heard.
- (o) Any vacancy in the Appointment Panel will be replaced by the person or organisation that appointed the Panel Member for which the vacancy arises.

6.5 Qualification: Every Board Member must, in writing:

- (a) consent to be a Board Member; and

- (b) certify that they are not disqualified from being elected, appointed or holding office as a Board Member by this Constitution or under section 47 of the Act or under section 36B of the Charities Act 2005.

6.6 **Disqualification:** The following persons are disqualified from being elected, appointed or holding office as a Board Member:

- (a) A person who is an employee of, or independent contractor to the Association.
- (b) A person who is disqualified from being elected, appointed or holding office as a Board Member under section 47 of Act or under section 36B of the Charities Act 2005.
- (c) A person who has been removed as a Board Member following a process under this Constitution or any Bylaw.

If an existing Board Member becomes or holds any position in (a) or (b) above then upon appointment to such a position, they are deemed to have vacated their office as a Board Member. If any of the circumstances listed in (c) above clause occur to an existing Board Member, they are deemed to have vacated their office upon the relevant authority making an order or finding against them of any of those circumstances.

6.7 **Term of office:** The term of office for all Board Members is 3 years, expiring at the end of the relevant AGM. A Board Member may be re-elected or reappointed to the Board for a maximum of 2 consecutive terms of office. Prior to each AGM, the Board will advise the Appointment Panel of the schedule of rotation and the vacancies arising in Board Member positions at the AGM. The term of any period served to fill a Casual Vacancy is disregarded for the purposes of calculating the total term served.

6.8 **Rotation:** The term of office for each Board Member shall be three 3 years commencing at the conclusion of the AGM at which their appointment is made and expiring at the conclusion of the third AGM after their appointment. To ensure rotation on the Board, there must be at least one vacancy (whether by expiry of term of office, retirement or otherwise) on the Board at every AGM. If there are insufficient vacancies to give effect to this requirement the Board shall, prior to the AGM, determine which of its members shall retire and notify the Member of this decision prior to the AGM.

6.9 **Appointed Board Member vacancy:** If a Casual Vacancy of an Appointed Board Member arises:

- (a) six (6) months or more after the last AGM, the remaining Board Members may:
 - (i) refer the appointment to the Appointment Panel to fill with such modifications as to timing and process as it considers appropriate to fill the Casual Vacancy as soon as reasonably practicable;
 - (ii) appoint a person of their choice to fill the Casual Vacancy; or
 - (iii) leave the Casual Vacancy unfilled until the next AGM;
- (b) less than six (6) months after the last AGM, the remaining Board Members must refer the appointment to the Appointment Panel to fill with such modifications as to timing and process as it considers appropriate to fill the Casual Vacancy as soon as reasonably practicable.

A person appointed to fill a Casual Vacancy of an Appointed Board Member continues until the expiry of the term of the person they replace.

6.10 **Elected Board Member vacancy:** If a Casual Vacancy of an Elected Board Member arises, the remaining Board Members may:

- (a) appoint a person of their choice to fill the Casual Vacancy only until the next AGM, at which a person is elected to fill the remainder of the term of the Casual Vacancy;
- (b) leave the Casual Vacancy unfilled until the next AGM, at which a person is elected to fill the remainder of the term of the Casual Vacancy.

6.11 **Suspension of Board Member:** If any Board Member is or may be the subject of an allegation, notice or charge described in the sub-clause headed “**Disqualification**” or any circumstances arise in relation to a Board Member which are or may be of concern to the Board, the remaining Board Members may by Special Resolution suspend the Board Member from the Board and set conditions as it requires pending the final determination of the allegation, notice, charge or circumstances. Before imposing any suspension, the Board Member must be given notice of the suspension.

6.12 **Removal of Board Member:**

- (a) The Board may, by Special Resolution, remove any Board Member from the Board before the expiry of their term of office if the Board considers the Board Member concerned:
 - (i) has seriously breached duties under this Constitution or the Act; or
 - (ii) is no longer a suitable person to be a Board Member; or
 - (iii) is involved with, interested in, or otherwise closely connected to a person or activity which has or may bring the Association or basketball into disrepute or which may be prejudicial to the Purposes or the interests of the Association and/or basketball if they remain as a Board Member.
- (b) The Board Member who is the subject of the motion is counted for the purpose of reaching a quorum but will not participate in the vote on the motion.
- (c) Before considering a motion for removal, the Board Member affected by the motion must be given:
 - (i) notice that a Board meeting is to be held to discuss the motion to remove the Board Member; and
 - (ii) adequate time to prepare a response; and
 - (iii) the opportunity prior to the Board meeting to make written submissions; and
 - (iv) the opportunity to be heard at the Board meeting.

6.13 **Board Member ceasing to hold office:** A person ceases to be a Board Member if:

- (a) their term expires;
- (b) the person resigns by delivering a signed notice of resignation to the Board;

- (c) the person is removed from office under this Constitution;
- (d) the person becomes disqualified from being an officer under section 47(3) of the Act;
- (e) the person becomes disqualified from being an officer under section 36B of the Charities Act 2005;
- (f) the person dies.

7. **Board meetings**

- 7.1 **Calling meetings:** Board meetings may be called at any time by the Chair or by 4 Board Members, but the Board meets a minimum 8 times per year.
- 7.2 **Meeting procedure:** Except to the extent specified in the Act or this Constitution, the Board may regulate its own procedure.
- 7.3 **Quorum:** The quorum for a Board meeting is 4 Board Members. Any Board Member may be counted for the purposes of a quorum, participate in any Board meeting and vote on any proposed resolution at a meeting without being physically present. This may only occur at Board meetings by audio or audio-visual link or other electronic communication provided that all persons participating in the Board meeting can hear each other effectively and simultaneously.
- 7.4 **Chair:** At its first meeting following an AGM, the Board must elect a Chair.
- 7.5 **Voting:** Each Board Member has one vote. Voting is by voices or on request of any Board Member by a show of hands or by a ballot. Proxy and postal votes are not permitted. Voting by electronic means is permitted.
- 7.6 **Resolution in writing:** A resolution in writing signed or consented to by email or other electronic means by a majority of Board Members is valid as if it had been passed at a Board meeting. Any resolution may consist of several documents in the same form each signed by one or more Board Members.

8. **Officers' Duties**

- 8.1 An Officer:
 - (a) when exercising powers or performing duties as an Officer, must act in good faith and in what the Officer believes to be the best interests of the Association;
 - (b) must exercise a power as an Officer for a proper purpose;
 - (c) must not act, or agree to the Association acting, in a manner that contravenes the Act or this Constitution;
 - (d) when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, taking into account, but without limitation the

nature of the Association, the nature of the decision and the position of the Officer and the nature of the responsibilities undertaken by them;

- (e) must not agree to the activities of the Association being carried on in a manner likely to create a substantial risk of serious loss to the Association's creditors or cause or allow the activities of the Association to be carried on in a manner likely to create a substantial risk of serious loss to the Association's creditors;
- (f) must not agree to the Association incurring an obligation unless the Officer believes at that time on reasonable grounds that the Association will be able to perform the obligation when it is required to do so; and
- (g) when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
 - (i) an employee whom the Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) any other Officer or subcommittee of Officers on which the Officer did not serve in relation to matters within the Officer's or subcommittee's designated authority,

if the Officer, acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that the reliance is unwarranted.

9. **Interests**

- 9.1 **Register of interests:** The Board must keep a register of interest disclosures made by Officers.
- 9.2 **Duty to disclose interest:** An Officer who is Interested in a Matter relating to the Association must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) to the Board, as soon as practicable after the officer becomes aware that they are interested in the Matter and include it in the register of interests.
- 9.3 **Consequences of being interested:** A Board Member who is Interested in a Matter:
 - (a) must not vote or take part in a decision of the Board relating to the Matter, unless all non-interested Board Members consent;
 - (b) must not sign any document relating to the entry into a transaction or the initiation of the Matter, unless all non-interested Board Members consent;
 - (c) must not take part in any Board discussion relating to the Matter or be present at the time of the Board decision, unless all non-interested Board Members consent;

(d) may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.

9.4 **Calling of SGM:** Despite clause 9.3, if 4 or more Board Members are Interested in a Matter, an SGM must be called to consider and determine the Matter.

9.5 **Notice of failure to comply:** The Board must notify Members of a failure to comply with section 63 or 64 of the Act, and of any transactions affected, as soon as practicable after becoming aware of the failure.

10. Patrons

10.1 A person may be invited by the Board to be a Patron to show their support for the Association and to help establish or maintain public credibility of the Association. A Patron is entitled to attend and speak at General Meetings but has no right to vote.

11. General Manager

11.1 **Role of General Manager:** A Board may engage a General Manager. The General Manager is under the direction of the Board and is responsible for the day-to-day management of the affairs of the Association under this Constitution and the Bylaws and within any delegated authority from the Board.

11.2 **Board involvement:** The General Manager is to attend Board meetings on and when required by the Board but has no voting rights.

12. Finances

12.1 **Control and management of finances:** The funds and property of the Association are controlled, invested and disposed of by the Board, subject to this Constitution; and devoted solely to the promotion of the Purposes.

12.2 **Balance date:** The Association's balance date is 31 December or on the date as the Board decides.

12.3 **Audit of financial statements:** The Association's financial statements must be audited each year and the audited financial statements must be submitted to the AGM. The auditor will be appointed by the Board.

12.4 **No personal benefit:** The Officers and Members may not receive any distributions of profit or income from the Association. This does not prevent Officers or Members:

- (a) receiving reimbursement of actual and reasonable expenses incurred, or
- (b) entering into any transactions with the organisation for goods or services supplied to or from them, which are at arms' length, relative to what would occur between unrelated parties,

provided no Officer or Member is allowed to influence any such decision made by the Association in respect of payments or transactions between it and them, their direct family or any associated entity.

13. Indemnity and insurance

- 13.1 The Association indemnifies its current and former Officers, and employees as permitted by section 96 of the Act.
- 13.2 With the prior approval of its Board, the Association may effect insurance for its current and former Officers, Members and employees as permitted by section 97 of the Act.
- 13.3 the Association is authorised to indemnify an Officer under section 96 of the Act or effect insurance for an Officer under section 97 of the Act for the following matters:
- (a) liability (other than criminal liability) for a failure to comply with a duty under sections 54 to 61 of the Act or any other duty imposed on the Officer in their capacity as an Officer; and
 - (b) costs incurred by the Officer for any claim or proceeding relating to that liability.

14. Amendments

- 14.1 **Amendments:** This Constitution may only be amended or replaced by Special Resolution of Members at a General Meeting.
- 14.2 **No amendment:** No addition to, deletion from or alteration of this Constitution may be made which would allow personal pecuniary profits to any individuals.
- 14.3 **Minor effect or technical alteration:** If an amendment to this Constitution would have no more than a minor effect or is to correct errors or makes similar technical alterations, then the Board may give notice of the amendment to every Member stating the text of the amendment and the right of Members to object to the amendment. If the Board does not receive any objections from Members within twenty (20) Working Days after the date on which the notice is sent, or any longer period of time that the Board decides, then the Board may make that amendment. If it does receive an objection, then the Board may not make the amendment.

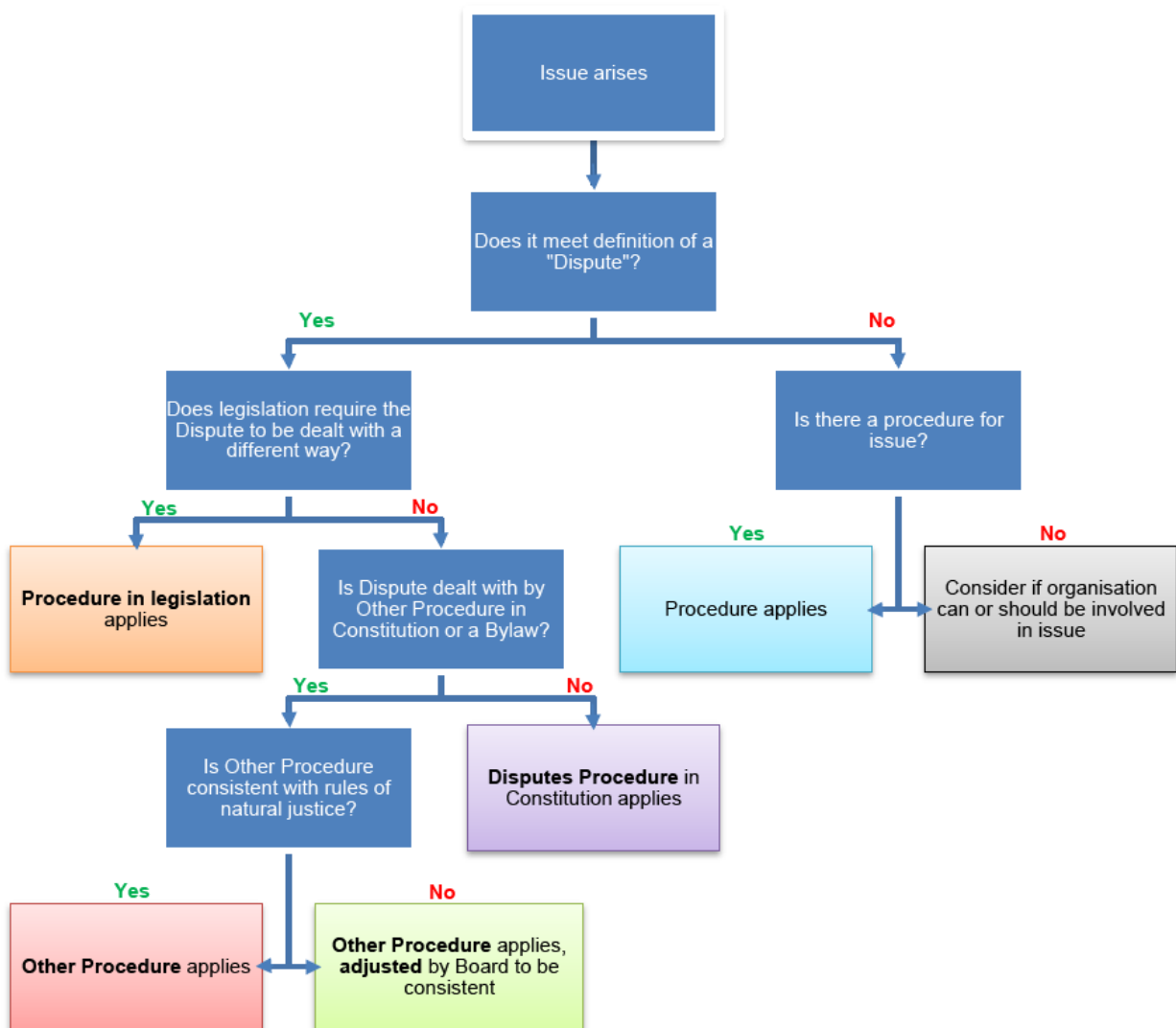
15. Bylaws

- 15.1 The Board may make and amend Bylaws for the conduct and control of the Association's activities and codes of conduct applicable to Members. Any Bylaw must be consistent with the Purposes, the constitution of BBNZ, the Act and any other laws. All Bylaws are binding on the Association and the Members. The making, amendment, revocation, or replacement of a Bylaw is not an amendment of this Constitution.

16. Dispute resolution

- 16.1 **Definitions:** In this Clause
- (a) **Dispute** means a disagreement or conflict between and among any one or more Members, any one or more Officers and the Association, that relates to an allegation that:

- (i) a Member or an Officer has engaged in misconduct; or
 - (ii) a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or
 - (iii) The Association has breached, or is likely to breach, a duty under this Constitution or the Act; or
 - (iv) a Member's rights or interests as a member have been damaged or Members' rights or interests generally have been damaged;
- (b) **Disputes Procedure** means the procedure for resolving a Dispute set out in clauses 16.5 to 16.13;
- (c) a **Member** is a reference to a Member acting in their capacity as a Member;
- (d) an **Officer** is a reference to an Officer acting in their capacity as an Officer.



16.2 **Application of other legislation to a Dispute:** The Disputes Procedure will not apply to a Dispute to the extent that other legislation requires the Dispute to be dealt with in a different way. The Disputes Procedure will have no effect to the extent that it contravenes, or is inconsistent with, that legislation.

16.3 **Application of other procedures under this Constitution or in a Bylaw:**

- (a) If the Dispute is dealt with by a separate procedure under this Constitution or in a Bylaw (**Other Procedure**), that Other Procedure applies to the exclusion of the Disputes Procedure. If any part of the Other Procedure is inconsistent with the rules of natural justice, that part will not apply, but the remainder of the Other Procedure will continue to apply together with adjustments as determined by the Board in its discretion so that the Other Procedure is consistent with the rules of natural justice.
- (b) If the conduct, incident, event or issue does not meet the definition of a Dispute and is managed by any Other Procedure, that Other Procedure applies to the exclusion of the Disputes Procedure.

- 16.4 **Application of the Disputes Procedure:** If the Dispute is not required by other legislation to be dealt with in a different way and it is not dealt with by any Other Procedure, the Disputes Procedure applies to the Dispute.

Disputes Procedure

- 16.5 **Raising a complaint:**

- (a) A Member or an Officer may start the Disputes Procedure (a **Complaint**) by giving written notice to the Board setting out:
- (i) the allegation to which the dispute relates and who the allegation is against; and
 - (ii) any other information reasonably required by the Association.
- (b) the Association may make a Complaint involving an allegation against a Member or an Officer by giving notice to the person concerned setting out the allegation to which the Dispute relates.

- 16.6 The information given must be enough to ensure a person against whom the Complaint is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response. **Investigating and determining Disputes:** Unless otherwise provided, the Association must as soon as is reasonably practicable after receiving or becoming aware of a Complaint, ensure the Dispute is investigated and determined. Disputes must be dealt with in a fair, efficient, and effective manner.

- 16.7 **Decision to not proceed with a matter:** Despite the contents of the Disputes Procedure, the Association may decide not to proceed with a matter if:

- (a) the Complaint is trivial; or
- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) any material misconduct; or
 - (ii) any material breach or likelihood of material breach of a duty under this Constitution or the Act; or
 - (iii) any material damage to a Member's rights or interests or Members' rights or interests generally; or
- (c) the Complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the Complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under this Constitution; or
- (f) there has been an undue delay in making the Complaint; or
- (g) the Complaint involves two Members who are also members of an organisation (**Organisation X**) which is also a Member of the Association and the Complaint

has either been dealt with by Organisation X or is required to be, pursuant to the dispute resolution procedures of Organisation X.

- 16.8 **Complaint may be referred:** The Association may refer a Complaint to:
- (a) a hearing body or person authorised, delegated or appointed by the Board to hear and resolve Disputes, and includes an arbitral tribunal (**Hearing Body**); or
 - (b) a subcommittee or an external person to investigate and report; or
 - (c) any type of consensual dispute resolution with the consent of all parties to the Complaint.
- 16.9 **Hearing Body:** The Board may determine the composition, jurisdiction, functions and procedures of, and any sanctions which can be imposed by, any Hearing Body. Each Hearing Body has delegated authority by the Board to resolve, or assist to resolve, Complaints.
- 16.10 **Bias:** An individual may not be part of a Hearing Body in relation to a Complaint if two or more members of the Board or of the Hearing Body consider there are reasonable grounds to believe that the individual may not be:
- (a) impartial; or
 - (b) able to consider the matter without a predetermined view.
- 16.11 **Complainant's right to be heard:**
- (a) The Member or Officer has a right to be heard before the Complaint is resolved or any outcome is determined. If the Association makes a Complaint, the Association has a right to be heard before the Complaint is resolved or any outcome is determined, and a Board Member may exercise that right on behalf of the Association.
 - (b) A Member or Officer or the Association must be taken to have been given the right if:
 - (i) the Member or Officer or the Association has a reasonable opportunity to be heard in writing or at an oral hearing, if one is held; and
 - (ii) an oral hearing is held if the Hearing Body considers that an oral hearing is needed to ensure an adequate hearing; and
 - (iii) an oral hearing, if any, is held before the Hearing Body; and
 - (iv) the Member's or Officer's or the Association's written statement or submission, if any, are considered by the Hearing Body.
- 16.12 **Respondent's right to be heard:** The Member or Officer who, or the Association which, is the subject of the Complaint (**Respondent**) has a right to be heard before the Complaint is resolved or any outcome is determined. If the Respondent is the Association, a Board Member may exercise the right on behalf of the Association. A Respondent must be taken to have been given the right if:

- (a) the Respondent is fairly advised of all allegations concerning the Respondent, with sufficient details and time given to enable the Respondent to prepare a response; and
- (b) the Respondent has a reasonable opportunity to be heard in writing or at an oral hearing, if one is to be held; and
- (c) an oral hearing is held if the Hearing Body considers that an oral hearing is needed to ensure an adequate hearing; and
- (d) an oral hearing, if any, is held before the Hearing Body; and
- (e) the Respondent's written statement or submissions, if any, are considered by the Hearing Body.

16.13 **Appeals:** There is no right of appeal or right of review of a decision unless specified.

17. Liquidation and removal

17.1 **Notice:** The Board must give notice to all Members at least twenty (20) Working Days of a proposed motion:

- (a) to appoint a liquidator;
- (b) to remove the Association from the Register of Incorporated Societies; or
- (c) for the distribution of the Association's surplus assets.

The notice must comply with section 228 of the Act and include details of the General Meeting at which the proposed motion is to be considered.

17.2 **Special resolution:** Any resolution for a motion set out in clauses 17.1(a) to (c) must be passed by a Special Resolution of Members.

17.3 **Surplus assets:** The surplus assets of the Association, after the payment of all costs, debts and liabilities, must be disposed of to an organisation(s) with charitable status or any other not-for-profit entity which is exclusively charitable and that shares similar purposes to the Association.

18. Matters not provided for

18.1 If any matter arises that, in the opinion of the Board, is not provided for in this Constitution or any Bylaws, or if any dispute arises out of the interpretation of this Constitution or the Bylaws, the matter or dispute will be determined by the Board.

19. Transition

19.1 This clause 19 applies to facilitate transition of the Association from the previous constitution to this Constitution. If this clause is inconsistent with any other clause in this Constitution, this clause applies to the extent of the inconsistency and the other clause will not.

19.2 **Power of Board during transition period:** Subject to the Act, the Board may amend any requirement for and/or the date by which this Constitution requires anything to be done. This clause applies for 12 months and is solely to enable flexibility in the transition of the Association from the previous constitution to this Constitution and to correct any unintended consequences occurring through different wording being used.

19.3 **Transition of Board Members:**

- (a) All Board Members in position (both elected or appointed) under the previous constitution will continue.
- (b) Clause 6.8 above will determine rotation of Board members from the date this constitution is adopted at a General Meeting
- (c) The number of terms served under the previous constitution count towards any maximum number of terms in this Constitution