

# NEWCASTLE BASEBALL ASSOCIATION INC

## CONSTITUTION

### 1. NAME AND OBJECTS

- 1.1 The name of the Association shall be the Newcastle Baseball Association Incorporated (“NBA”).
- 1.2 The objects of NBA shall be:-
- (a) To conduct, encourage, promote and administer the game of baseball in the Hunter region of New South Wales.
  - (b) To participate as a voting affiliate of the Baseball NSW Inc (“the League”), while ever the League is recognised by the Australian Baseball Federation (“ABF”) as the controlling body for baseball in NSW.
  - (c) At all times to act in the interests of its members and of baseball in the Hunter region.
  - (d) To promote mutual trust and confidence between members, voting affiliates and the League.
  - (e) To determine any matters relating to the conduct of baseball in the Hunter region including matters of a disciplinary nature involving members.
  - (f) To pursue such commercial or sponsorship opportunities as are appropriate to furthering the interests of baseball in the Hunter region.
  - (g) To create or adopt policies in connection with the sport of baseball in the Hunter region including but not restricted to policies in relation to sexual harassment, equal opportunity, drug and alcohol use in sport, health and safety, or otherwise.
  - (h) To do or refrain from doing any other act which is conducive to, or reasonably incidental to, these objects.

## **2. MEMBERSHIP**

2.1 The members of NBA shall consist of:

- (a) ***Voting affiliates***: who shall, subject to this constitution, be represented by their delegate(s) and have the right to attend, debate and to vote at any general meeting of NBA.
- (b) ***Affiliated organisations***: who shall, subject to this constitution, be represented by their representative and have the right to attend, debate but not to vote at any general meeting of NBA.
- (c) ***Individual members***: who shall, subject to this constitution, have a right to attend and debate, but not to vote, at any general meeting of NBA.
- (d) ***Life members***: who shall, subject to this constitution, have the right to attend and debate, but not vote at, any general meeting of NBA.

2.2 NBA must consider any application for membership in good faith, but may in its sole discretion accept or reject any such application.

## **3 PROVISIONS RELATING TO VOTING AFFILIATES**

3.1 An application for membership as a voting affiliate must:

- (a) Be in writing and, if applicable, in such form as may be prescribed from time to time by the Board of NBA, from the applicant or its nominated representative.
- (b) Incorporate in writing, all the reasons which, in the applicant's opinion, justify the grant of membership as a voting affiliate.
- (c) Be accompanied by a copy of the applicant's constitution (which must be acceptable to NBA and be substantially in conformity with this constitution) and register of members.
- (d) Be accompanied by the applicable fee, if any.

- 3.2 An applicant for membership as a voting affiliate shall become a voting affiliate on the happening of the last of:-
- (a) The passing of a resolution of the Board of NBA approving the application, and
  - (b) Receipt of payment by NBA of the applicable fee from time to time for a voting affiliate, if any (and in the case of payment by cheque, payment does not occur until the cheque is met on presentation).
- 3.3 Voting affiliates seeking to renew membership with NBA must re-apply in accordance with such procedures as are set down by NBA from time to time.
- 3.4 Upon request by NBA a voting affiliate must lodge with NBA, in a form acceptable to NBA, a current copy of its constitution, a list of its registered members, or any other information reasonably required by NBA.

#### **4 PROVISIONS RELATING TO AFFILIATED ORGANISATIONS**

- 4.1 An application for membership by an affiliated organisation must be:-
- (a) In writing and on such form as may be prescribed by NBA and lodged with NBA, and
  - (b) Accompanied by such fee, if any, as is prescribed for membership of an affiliated organisation from time to time.
- 4.2 An applicant for membership as an affiliated organisation shall become an affiliated organisation of NBA on the happening of the last of:-
- (a) The passing of a resolution of the Board of NBA approving the application, and
  - (b) Receipt of payment by NBA of the applicable affiliated organisation membership fee from time to time, if any (and in the case of payment by cheque, payment does not occur until the cheque is met on presentation).

- 4.3 Affiliated organisations seeking to renew membership with NBA must reapply in accordance with such procedures as are set down by NBA from time to time.
- 4.4 Upon request by NBA an affiliated organisation must lodge with NBA, in a form acceptable to NBA, a current copy of its constitution, a list of its registered members, or any other information reasonably required by NBA.

## **5 PROVISIONS RELATING TO INDIVIDUAL MEMBERS**

- 5.1 An application for membership by an individual member must be:-
- (a) In writing on such form as may be prescribed from time to time by NBA; and,
  - (b) Lodged with a voting affiliate or an affiliated organisation; and,
  - (c) Accompanied by any fee for an individual member of NBA as determined by NBA from time to time.
- 5.2 An applicant for individual membership shall become a member of NBA on the happening of the last of:-
- (a) Lodging an application for individual membership of NBA with a voting affiliate or affiliated organisation (as applicable); and
  - (b) Registration of the applicant, by the voting affiliate or affiliated organisation (as applicable) with the League [using the “MyClub” registration system or any successor thereof utilised by the League].
- 5.3 Individual members seeking to renew membership with NBA must reapply in accordance with such procedures as are set down by NBA from time to time.

**6. DEEMING PROVISIONS IN RELATION TO MEMBERSHIP**

- 6.1 Any playing club that was a voting affiliate (however described) of NBA prior to the approval of this Constitution under the Act shall be deemed to be a voting affiliate from the date of adoption of this Constitution under the Act and subject to all rights and obligations as a voting affiliate under this Constitution.
- 6.2 Any organisation that was an affiliated organisation of NBA (however described) prior to the approval of this Constitution under the Act shall be deemed to be an affiliated organization from the date of adoption of this Constitution under the Act and subject to all rights and obligations as an affiliated organization under this Constitution.
- 6.3 Any individual member (or life member) who was a member of NBA prior to the approval of this Constitution under the Act shall be deemed to be an individual member (or life member) from the date of adoption of this Constitution under the Act, and subject to all rights and obligations as an individual member (or life member) under this Constitution

**7. EFFECT OF MEMBERSHIP**

- 7.1 All members acknowledge and agree that:
- (a) This Constitution constitutes a contract between each of them and NBA, and that members are bound by this Constitution and any bylaws of NBA made from time to time.
  - (b) They shall comply with and observe this Constitution and the bylaws, the NBA Code of Conduct, and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee of NBA.

- (c) By submitting to this Constitution and to the bylaws and/or by applying for membership, or renewal of membership of NBA as applicable, they are subject to the jurisdiction of NBA.
- (d) This Constitution is made in pursuit of a common object namely the mutual and collective benefit of NBA, the members and the sport of baseball and that the Constitution and bylaws are necessary and reasonable for promoting the objects of NBA and particularly for the advancement and protection of the sport of baseball.

## **8. TERMINATION OR CESSATION OF MEMBERSHIP.**

8.1 A voting affiliate, affiliated organisation, or individual member ceases to be a member if:

- (a) He, she or it (as applicable) fails to lodge an application for renewal of membership on such date as may be specified by NBA each year (and accompanied by the applicable fee, if any, from time to time); or
- (b) His, her or its application for renewal of membership is rejected by NBA.
- (c) He, she or it resigns his, her or its membership by notice in writing to NBA; or
- (d) He, she or it is expelled from membership of NBA in accordance with this Constitution and any bylaws.
- (e) In the case of an individual member, they cease to be a member of a voting affiliate or an affiliated organisation (for any reason).

8.2 On the cessation or termination of membership:

- (a) The member forfeits all and any right or claim on NBA and its property (of any kind whatsoever) and must return to NBA any documents, records or other property in the possession, custody or control of the member, forthwith.

- (b) Subject to having paid all money otherwise due and payable to NBA, the member shall have no other liability to NBA.

## **9. DISCIPLINE OF, AND APPEALS BY, MEMBERS**

9.1 Where the Board is advised, or considers, that a member has allegedly:

- (a) Breached, failed refused or neglected to comply with a provision of this Constitution, the by-laws, the NBA code of conduct or any resolution of the board or any duly authorised committee of NBA, or,
- (b) Acted in a manner prejudicial to the objects or interests of NBA or to the sport of baseball, or,
- (c) Brought NBA or the sport of baseball into disrepute,

the Board may commence or cause to be commenced, disciplinary proceedings against that member, and the member shall be subject to the jurisdiction, procedures, penalties and appeal mechanisms of NBA as set out in its by-laws.

9.2 A member disciplined in accordance with the preceding provision, shall have a right of appeal, which shall be exercised as provided in the Constitution and by laws of NBA

## **10. GRIEVANCES BETWEEN MEMBERS**

10.1 Where any member of NBA has a grievance with another member of NBA (not being a grievance arising from any disciplinary proceedings arising under clause 9) and where the member considers the grievance warrants investigation and action by NBA, the member must follow the procedure in this provision:

- (a) The member shall contact the secretary, either orally or in writing, and advise that they have a grievance they wish to have considered by NBA under this provision.
- (b) The secretary shall, as soon as practicable, meet to discuss the grievance with the member. The secretary shall then take such steps as the secretary considers appropriate to determine whether the grievance is legitimate and whether it merits further investigation or action.
- (c) If the secretary is satisfied the grievance merits further investigation or action, he or she shall take such steps as s/he considers reasonable or necessary to try to resolve the grievance.
- (d) If the grievance is not resolved, or if the grievance is of a serious nature, the secretary shall report the grievance to the Board.
- (e) Prior to any report to the Board, the secretary shall keep all information concerning a grievance, including the identity of the member(s) concerned, and the circumstances giving rise to the grievance, confidential; except to the extent it is necessary for the secretary to disclose matters in order to properly investigate or attempt to resolve a grievance.
- (f) If the secretary considers a grievance is not legitimate, or that it does not merit further investigation, the secretary shall inform the member lodging the grievance. The member may then take such action as they consider appropriate.
- (g) If the grievance concerns the secretary, the grievance shall be notified to the Chair but this procedure will otherwise apply, as if the Chair was the secretary.



## **11. REGISTER OF INDIVIDUAL MEMBERS**

- 11.1 Each Voting Affiliate or Affiliated Organisation shall maintain a register containing details of:-
- (a) The name, address, telephone number(s) and email address(es) of all of its own registered members.
  - (b) Whether the registered member is a financial member of the voting affiliate or affiliated organisation.
- 11.2 Such voting affiliate or affiliated organisation shall provide a copy of its register to NBA, in a form acceptable to NBA, on request by NBA.
- 11.3 NBA shall be entitled to make use of any information in a register of a voting affiliate or affiliated organisation in furtherance of its Objects.

## **12. LIFE MEMBERS**

- 12.1 The NBA may appoint life members.
- 12.2 Each year the Board of NBA may call for nominations for appointment as life member, provided that the nominee must have provided distinguished or special service to the sport of baseball in the Hunter Region.
- 12.3 Appointment as a life member shall require approval by a special resolution, on a vote taken by secret ballot.
- 12.4 No more than 2 life memberships may be approved at any one time.
- 12.5 A vote for life membership may only be taken at an annual general meeting.
- 12.6 The by laws shall prescribe the rights, obligations and conditions associated with life membership or with nomination for life membership.

## **GENERAL MEETINGS**

### **13. DELEGATES AND REPRESENTATIVES**

- 13.1 Each voting affiliate which has registered 4 teams or less with NBA in any given season (including junior teams) shall be entitled to appoint one (1) delegate for such term as is considered appropriate by the voting affiliate, but any such appointment terminates automatically at the conclusion of the next annual general meeting after the appointment.
- 13.2 Each voting affiliate which has registered 5 teams or more with NBA in any given season (including junior teams) shall be entitled to appoint two (2) delegates for such term as is considered appropriate by the voting affiliate, but any such appointment terminates automatically at the conclusion of the next annual general meeting after the appointment.
- 13.3 A delegate must be:
- (a) an individual member, or life member
  - (b) duly authorised by the voting affiliate to make decisions and to vote at general meetings of NBA,
  - (c) Not be a director of NBA.
- 13.4 Each affiliated organisation may nominate one (1) representative to attend, debate, but not vote on behalf of the affiliated organisation at any general meetings of NBA.
- 13.5 Voting affiliates may appoint an alternate delegate for each delegate they are otherwise entitled to appoint, but if both a delegate and an alternate delegate attend a general meeting only the delegate, and not the alternate, may debate or vote on behalf of the voting affiliate.

13.6 Affiliated organisations may appoint an alternate representatives, but if both a representative and an alternate representative attend a general meeting only the representative, and not the alternate, may debate on behalf of the affiliated organisation.

#### **14. GENERAL**

14.1 An annual general meeting of NBA shall be held in accordance with the provisions of the Act and this Constitution on a date, and at a venue, to be determined by the Board of NBA; but it shall be held within six (6) months of the end of each financial year.

14.2 All general meetings other than the annual general meeting shall be special general meetings and shall be in accordance with this Constitution.

14.3 Notice of every general meeting shall be given to voting affiliates at the address nominated by the voting affiliate in its most recent membership application or membership renewal. This may include an email address. No other member has an entitlement, as of right, to formal notice of a general meeting.

14.4 Notice of a general meeting shall be given not less than 21 days prior to the meeting and shall:-

- (a) Specify the date, time and location of the meeting, and ,
- (b) Include or be accompanied by an agenda setting out the business to be transacted at the meeting.

14.5 No other business except that stated on the Notice or agenda referred to in the preceding sub-clause shall be transacted at a general meeting, provided that, notwithstanding any other provision in this Constitution, the business of any Annual general meeting shall include, without need to include such items on any agenda or Notice:-

- (a) Receiving and approving the Minutes of the previous annual general meeting.
- (b) Receiving reports from Directors or officers, on the activities of NBA in the preceding year.
- (c) The conduct of elections for Board positions.
- (d) Considering the financial statements of NBA, and its financial position generally, for the period prior to the general meeting.

14.6 Notwithstanding any other Rule or provision of this constitution, no member shall be represented at, shall take part in, or shall vote at any general meeting unless all monies then due to NBA are paid in full (and in the case of payment by cheque, payment does not occur until the cheque is met on presentation).

## **15. SPECIAL GENERAL MEETINGS**

15.1 The Board of NBA may, whenever it thinks fit, convene a special general meeting of NBA.

15.2 The Board of NBA shall, if requisitioned to do so by more than 50% of voting affiliates, convene a special general meeting of NBA.

15.3 Any requisition by voting affiliates:

- (a) Must state the purpose(s) of the meeting,
- (b) Must be signed by each voting affiliate making the requisition,

(c) May consist of several documents in substantially similar form.

- 15.4 If the Board of NBA fails to convene a special general meeting in response to a valid requisition, within 28 days of receipt of the requisition, any one or more of the voting affiliates who signed the requisition may convene a special general meeting, to be held not later than 49 days after the requisition was sent to NBA.
- 15.5 Notice of a special general meeting convened in accordance with clause 15.4 must be given in accordance with this Constitution.

## **16. GENERAL MEETINGS - QUORUM**

- 16.1 No business shall be conducted at a general meeting unless a quorum is present.
- 16.2 Quorum shall be 50% of voting affiliates entitle to vote in accordance with this Constitution.
- 16.3 If a quorum is not present within 30 minutes, the general meeting shall be adjourned to a date 14 days after the date of the meeting, at the same time and location, wherever practicable.
- 16.4 Notice of any adjournment shall be given to all voting affiliates in accordance with clause 14.3.
- 16.5 If no quorum is present within 30 minutes on any such adjourned date, quorum shall be four (4) voting affiliates.

## **17. GENERAL MEETINGS – PROCEDURE**

- 17.1 The Chair of the Board shall preside at any general meeting of NBA, subject to any provision of this Constitution to the contrary. If the Chair is not present, or is unwilling or unable to preside at a particular meeting, the Directors shall choose one of the directors to chair that meeting.

- 17.2 Unless otherwise specified in the Act or this Constitution, at any general meeting any resolution put to a vote shall be decided on a show of hands unless a poll is demanded by the chair, or by a majority of voting affiliates present in person or by authorised delegate, on or before the declaration of the vote by show of hands.
- 17.3 Where a poll is demanded, the resolution subject to the demand shall be put to the meeting forthwith, and determined by poll.
- 17.4 Unless a special resolution is required, all issues to be determined at general meetings shall be determined by majority of votes.
- 17.5 If, but only if, there is an equality of votes for and against a particular resolution in general meeting, the Chair shall have a casting vote.
- 17.6 The Secretary of NBA shall keep:
- (a) full and accurate minutes of all resolutions dealt with at general meetings, and,
  - (b) full and accurate minutes of the proceedings at general meetings, and,
  - (c) A record of the names of persons present, and whether they attended as a delegate, as a representative or as an individual or life member.
- 17.7 Voting affiliates shall not be entitled to vote by proxy at any general meeting.

## **THE BOARD**

### **18. EXISTING BOARD MEMBERS**

- 18.1 Upon approval of this Constitution under the Act, the committee of management of NBA shall determine which 5 committee of management members will hold the Elected Director positions on the Board as set out in clause 21.1(a) until the next Annual General Meeting following the approval of this Constitution.

## **19. POWERS OF THE BOARD**

19.1 Subject to the Act and this Constitution the business of NBA shall be managed, and the powers of NBA shall be exercised by, the Board. In particular, the Board as the controlling authority of NBA shall be responsible for acting on all issues in accordance with the objects and By-Laws of NBA and shall operate for the collective and mutual benefit of NBA, the members, and the sport of baseball throughout the Hunter Region and shall:

- (a) Govern the sport of baseball in the Hunter Region in accordance with the objects of NBA;
- (b) Determine major strategic directions of NBA; and
- (c) Review the NBA's performance in achieving its pre-determined aims, objectives and policies.

## **20. DELEGATION BY THE BOARD**

20.1 The Board shall have power, by ordinary resolution at a Board meeting, to create standing or special purpose committees or to delegate some or all of its powers, either absolutely or subject to conditions, to standing or special purpose committees, which may include, but which are not restricted to:

- (a) Disputes Committee
- (b) Fixtures Committee
- (c) Junior Baseball Committee

20.2 The Chair of NBA shall be an ex officio member of any committee created by the Board.

- 20.3 If any committee is created, or if any power of the Board is delegated to a committee, the Board shall keep details, in writing, of the committee created, and the power(s) delegated (and whether conditionally or not).
- 20.4 The Board may by ordinary resolution at a Board meeting, amend or revoke the existence of any committee or amend or revoke the delegation of any power to a committee. The Board shall keep details, in writing, of the amendment or revocation of any committee, and of the power(s) amended or revoked.

## **21. COMPOSITION OF THE BOARD**

### 21.1 Board Composition

The Board shall comprise:

- (a) Five (5) Elected Directors elected by the Voting Affiliates in accordance with clause 22 one of whom shall be appointed as chair in accordance with clause 21.2;
- (b) Up to five (5) Independent Directors who may be appointed in accordance with clause 23.

### 21.2 Chair

- (a) The position of Chair shall be appointed by the Board from amongst the Directors as soon as practicable after each Annual General Meeting. The appointee will hold the position until the conclusion of the next Annual General Meeting following their appointment. A Director may be re-appointed as Chair.
- (b) If the Directors cannot agree on the appointment of a Chair, a vote shall be taken by poll and voting shall be conducted by exhaustive ballot.



### 21.3 Junior Chair

- (a) If the Board, or a previous Board, has created a standing committee for Junior baseball, the position of Chair of the Junior Baseball Committee shall be appointed by the Board as soon as practicable after each Annual General Meeting. The appointee will hold the position until the conclusion of the next Annual General Meeting following their appointment. A person may be re-appointed as Chair of the Junior Baseball Committee.
- (b) If the Directors cannot agree on the appointment of a Chair, a vote shall be taken by poll and voting shall be conducted by exhaustive ballot.

## **22. ELECTION OF ELECTED DIRECTORS**

### 22.1 Qualifications for Elected Directors

- (a) Nominees for Elected Director positions on the Board must be an Individual Member and satisfy any other qualifications prescribed from time to time by NBA.
- (b) Nominees for Elected Director positions on the Board must declare any position they hold in a Voting Affiliate, including as an office bearer, director or a paid appointee.

### 22.2 Election of Elected Directors

- (a) The Chair shall call for nominations for Elected Directors at least thirty (30) days before the date of the Annual General Meeting. All Voting Affiliates shall be notified of the call for nominations.
- (b) Nominations for Elected Directors must be:
  - (i) In writing;
  - (ii) On the prescribed form (if any) provided for that purpose;

- (iii) Signed by a President, Treasurer or Secretary of a Voting Affiliate; and
  - (iv) Certified by the nominee (who must be a Member) expressing his or her willingness to accept the position for which he or she is nominated.
- (c) Nominations must be received by the Secretary at least fourteen (14) days prior to the Annual General Meeting.
- (d) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be elected. If there are still vacancies to be filled, further nominations shall be called for at the Annual General Meeting from the floor, and such further nomination need not comply with clause 22.2(b) provided:
- (i) It is seconded by a voting affiliate, and,
  - (ii) the nominee is personally present and accepts the nomination.
- (e) If the number of nominations from the floor exceeds the remaining number of vacancies to be filled, a poll shall be taken.

### 22.3 Term of Elected Directors

- (a) Elected Directors shall be elected in accordance with this Constitution for a term of 2 years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.
- (b) Three Elected Directors shall be elected in each year of odd number and two Elected Directors shall be elected in each year of even number.
- (c) Retiring directors are eligible to nominate for and be re-elected to positions on the Board.

## **23. APPOINTMENT OF INDEPENDENT DIRECTORS**

### 23.1 Appointment of Independent Directors

- (a) The Elected Directors may nominate up to five (5) independent directors.
- (b) Independent Directors shall be elected at a General Meeting which shall, if possible, be held within sixty days (60) following the Annual General Meeting.
- (c) A nominee for an Independent Director position on the Board shall be appointed unless 66% or more of the Members entitled to vote reject the nomination.
- (d) If the Members entitled to vote reject the nomination, the position shall be deemed to be a casual vacancy and may be filled in accordance with the procedure set out in clause 26.

### 23.2 Qualifications for Independent Directors

- (a) Independent Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which compliment the Board composition or as required by the Board from time to time, but need not have experience in or exposure to the sport of baseball.
- (b) Prior to appointment, they do not need to be Individual Members of the Association, but they must become individual members within 30 days of appointment.
- (c) Nominees for Independent Director positions on the Board must declare any position they hold in a voting affiliate or affiliated organisation, including as an office bearer, director or a paid appointee.

### 23.3 Term of Appointment of Independent Directors

- (a) Independent Directors shall, subject to clause 23.3 (b), be appointed in accordance with this Constitution for a term of 2 years, which shall commence at the conclusion of the General Meeting at which they are appointed.

- (b) At the next General Meeting following the approval of this Constitution, convened for the purpose of (or purposes including) the appointment of one or more Independent directors, up three Independent Directors may be appointed. The first appointee shall have a term of one year, and any other appointee shall have a term of two years, from date of appointment.
- (c) Two (2) Independent Directors may be appointed in each year of odd number and three (3) Independent Directors may be appointed in each year of even number.
- (d) Retiring independent directors are eligible to be nominated for and be re-appointed to positions on the Board.

## **24. TERMINATION OF DIRECTOR**

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

- (a) Dies;
- (b) Becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) Becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) Resigns his or her office in writing to the NBA;
- (e) Is absent without the consent of the Board from 3 consecutive meetings of the Board;
- (f) Without the prior consent of the Members in General Meeting:-
  - (i) Holds any office of profit under or employment by NBA;
  - (ii) Is directly or indirectly interested in any contract or proposed contract with NBA or fails to declare the nature of his interest;

- (g) Is removed from office by Special Resolution under clause 25; or
- (h) Would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act.

## **25. REMOVAL OF A DIRECTOR**

- 25.1 NBA in a General Meeting may by Special Resolution remove any Director, before the expiration of their term of office. If a Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled in accordance with the procedure set out in clause 26.
- 25.2 Where a resolution referred to in clause 25.1 is lodged with NBA, a director who is named in the resolution may make representations in writing to the Secretary and a copy of such representations shall be sent to each Voting Affiliate as soon as practicable after receipt.

## **26. CASUAL VACANCIES**

- 26.1 A vacancy in the position of any Elected Director (including the Chair) shall be filled by a nominee of the remaining Directors until the next Annual General Meeting of NBA.
- 26.2 If the term of the Elected Director has not expired by the next annual general meeting the Members entitled to vote shall vote on a replacement director but the replacement director shall, despite any other provision of this Constitution, only be elected for the balance of the term for which the person who created the casual vacancy was elected.
- 26.3 Any Independent Director casual vacancy may be filled by the remaining Directors from among appropriately qualified persons, for the remainder of the Director's term.

**27. REMAINING DIRECTORS MAY ACT**

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

**28. MEETINGS OF THE BOARD**

28.1 The Board shall meet as often as is deemed necessary in every financial year for the dispatch of business (but on at least six occasions) and may adjourn and, subject to this Constitution otherwise regulate its meetings as it thinks fit. The Secretary shall, on the requisition of at least 2 Directors, convene a meeting of the Board within a reasonable time.

**29. DECISION MAKING BY THE BOARD**

29.1 Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and all questions so decided shall for all purposes be deemed a determination of the Board. All Directors shall have 1 vote on any question. The Chair shall also have a casting vote where voting is equal.

29.2 A resolution in writing, signed or assented to by facsimile, electronic mail or other form of visible communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by 1 or more of the Directors.

29.3 Without limiting the power of the Directors to regulate Board meetings as they think fit, a meeting of the Board may be held where 1 or more of the Directors is not physically present at the meeting, provided that:

- (a) All persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by telephone or by other form of communication;
- (b) Notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
- (c) In the event that a failure in communications prevents condition (a) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of clause 29.3 (d) to be held, then the meeting shall be suspended until condition (a) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be terminated;
- (d) Any meeting held where 1 or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the Chair is located.

### **30. QUORUM - BOARD**

30.1 At meetings of the Board the number of Directors whose presence is required to constitute a quorum is the majority of the Directors but in the case of any casual vacancy existing shall be of three (3) Directors.

**31. NOTICE OF BOARD MEETINGS**

31.1 Unless all Directors agree to hold a meeting at shorter notice [which agreement shall be sufficiently evidenced by their presence in person or as per clause 29.3] not less than seven (7) days oral or written notice of the meeting of the Board shall be given to each Director by the Secretary. The agenda shall be forwarded to each Director not less than 3 days prior to such meeting.

**32. VALIDITY OF BOARD DECISIONS**

32.1 A procedural defect in decisions taken by the Board shall not result in such decision being invalidated, but in the event of a procedural defect coming to the attention of the Board, the Chair shall move a resolution to ratify the procedurally defective decision, at the next Board meeting. If the procedurally defective decision is not ratified, it shall be deemed void and of no effect.

**33. CHAIR OF BOARD MEETINGS**

33.1 The Chair appointed under clause 21.2 shall preside at every meeting of the Board.

33.2 If the Chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number to preside as chair for that meeting only.

33.3 If the Directors cannot agree on a choice under clause 33.2, clause 21.2(b) shall apply.



## **34. CONFLICTS**

### **34.1 Directors' Interests**

A Director is disqualified from holding any place of profit or position of employment in NBA, or in any company or incorporated association in which NBA is a shareholder or otherwise interested or from contracting with NBA either as vendor, purchaser or otherwise except with the prior consent of members in general meeting.

### **34.2 Conflict Of Interest**

A Director shall declare any interest in any:

- (a) Contractual matter;
- (b) Selection matter;
- (c) Disciplinary matter; or
- (d) Financial matter;

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

### **34.3 Disclosure of Interests**

- (a) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest.

(b) If a Director becomes interested in a contract or other matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.

#### 34.4 General Disclosure

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under clause 34.2 or 34.3 as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

#### 34.5 Recording Disclosures

It is the duty of the Secretary to record in the minutes any declaration made or any general notice given by a Director in accordance with clause 34.

### **35. SECRETARY**

#### 35.1 Appointment of Secretary

- (a) The Secretary shall be appointed by the Board for such term and on such conditions as it thinks fit. The Secretary shall be entitled to notice of, and to attend and participate in debate at, all meetings of the Board, but shall have no entitlement to vote.
- (b) If a Secretary is not appointed by the Board, the Board shall appoint a director of the Board to fulfil the obligations of the Secretary under this Constitution (in which case the director shall retain the right to vote, in the capacity of director).

### 35.2 Secretary to Act as Secretary

The Secretary shall act as and carry out the duties of secretary and unless prohibited by law, as public officer of NBA pursuant to the Act, and shall administer and manage NBA in accordance with this Constitution.

### 35.3 Specific Duties

The Secretary shall:

- (a) As far as practicable attend all Board meetings and General Meetings;
- (b) Prepare the agenda for all Board meetings and all General Meetings;
- (c) Record and prepare minutes of the proceedings of all meetings of the Board and of NBA; and
- (d) Regularly report on the activities of, and issues relating to, the Association
- (e) Keep and maintain a Register of members of NBA, including (at least) the names addresses (including email addresses if available) and contact telephone numbers of members.

### 35.4 Broad Power to Manage

Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Secretary has power to perform all such things as appear necessary or desirable for the proper management and administration of the Association.

### 35.5 Secretary May Employ

The Secretary, in consultation with the Board, may employ such personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the Secretary and the Board determine.

**36. MISCELLANEOUS**

36.1 Insurance

NBA shall effect and maintain any insurance required under the Act, together with any other insurance which may be required by law or which is regarded as necessary or prudent by NBA.

36.2 Funds – Source

- (a) The funds of NBA shall be derived from fees of members, donations, returns on commercial or sponsorship activity, returns on investment or such other sources as the Board determines and subject to any resolution passed in general meeting.
- (b) All money received by NBA shall be deposited as soon as practicable and without deduction to the credit of NBA's account with such one or more financial institution as is or are approved by the Board.
- (c) The NBA Treasurer shall as soon as practicable after receiving any money, issue an appropriate receipt.

36.3 Funds – Management

- (a) Subject to any resolution passed by NBA in general meeting the funds of NBA shall be used in pursuance to the objects of NBA in such manner as the Board determines.
- (b) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by any two members of the Board as are authorised to do so.

**37. ALTERATIONS OF OBJECTS & CONSTITUTION**

37.1 The statement of objects and this Constitution may be altered, rescinded or added to only by a special resolution of NBA in general meeting.

**38. ALTERATIONS OF BY-LAWS, ETC.**

38.1 Any by-law, duty statement, Code of Conduct or policy paper of NBA may be altered, rescinded or added to by ordinary resolution passed at a Board meeting.

**39. COMMON SEAL**

39.1 The common seal of NBA shall be kept in the custody of the public officer.

39.2 The common seal shall not be affixed to any instrument except by the authority of the Board and the affixing of the common seal shall be attested by the signatures either of two (2) Board members or of one (1) Board member and of the public Officer (if the public Officer is not a director).

**40. CUSTODY OF BOOKS**

40.1 Except as otherwise provided by these rules the secretary shall keep in his or her custody or under his or her control all records, books and other documents relating to NBA.

**41. INSPECTION OF BOOKS**

41.1 The records, books and other documents of NBA shall be open to inspection free of charge by a member of NBA at any general meeting.

## **42. SERVICE OF NOTICES**

42.1 For the purpose of these rules, a notice may be served by or on behalf of NBA on any member either personally or by sending it by post or email to the member at the member's postal or email address shown in the register of members.

42.2 A notice is sent to a member by properly addressing, prepaying and posting it or by emailing it.

42.3 A notice is, unless the contrary is proved, taken to have been served on the member at the time at which the Notice would have been delivered in the ordinary course of post or in the case of email, 60 minutes after being sent.

## **43. DISSOLVING OF NBA**

43.1 In the event of NBA being wound up under The Act, any net funds and assets after the payment of any costs and charges associated with the winding up will be distributed to such one or more organisations having objects similar to NBA as is or are determined by the members, but subject to the Act.

43.2 The liability of members of NBA, on winding up, shall be limited to:

- (a) any monies due by the member to NBA for membership fees or as otherwise provided under this constitution, and,
- (b) the sum of A\$1.00.

## **44. DEFINITIONS**

44.1 In this constitution the following words and phrases have the following meanings:

- (a) **“ABF”** means the Australian Baseball Federation.
- (b) **“Act”** means the Associations Incorporation Act (1984)(NSW) as amended from time to time, and includes Regulations made under the Act.

- (c) **“Affiliated Organisation”** means a club or organisation, whether incorporated or not, which is recognised by NBA as having a connection to the sport of baseball and is accepted as an affiliated organisation; and includes but is not restricted to the Umpires Association and the Scorers Association.
- (d) **“Board”** means those Directors elected or appointed in accordance with this Constitution.
- (c) **“Chair”**, or “the Chair”, means a Director, elected or agreed upon by a majority of other directors, to act as chairman of NBA in accordance with the Act and this Constitution.
- (d) **“Delegate”** means a duly appointed delegate of a voting affiliate, who is entitled to attend and debate and to vote at general meetings of NBA.
- (e) **“Director”** means a person elected as a Director in accordance with this Constitution and includes both Elected and Independent Directors.
- (f) **“Exhaustive Ballot”** means:-
  - (i) Where there are only two (2) nominees for a single position, the nominee receiving the highest number of votes shall be elected.
  - (ii) Where there are more than two (2) nominees for a single position; after the counting of votes:-
    - A. All but the two (2) nominees receiving the highest number of votes shall be eliminated.
    - B. A further ballot shall then be held between the remaining two (2) nominees; and the nominee receiving the highest number of votes in this further ballot shall be elected.

- C. Where three or more nominees receive an equal number of votes (such number being higher than the number of votes for any other nominee) all nominees shall draw straws, and only those two (2) nominees drawing long straws shall continue to a further ballot in accordance with sub clause B.
- (g) **“Financial year”** means the period ending on 30 September in any calendar year.
- (h) **“Hunter Region”** means the geographical area of NSW generally adjacent to the Hunter River, and including the local government areas of Newcastle, Lake Macquarie, Maitland, Port Stephens, Cessnock and Singleton.
- (i) **“Individual Member”** means an individual person, who is both a registered member, and a financial member, of a Voting affiliate or of an affiliated organisation, and includes players.
- (j) **“League”** means the NSW Baseball League Inc., or any successor thereof recognised by the Australian Baseball Federation (“ABF”) as the controlling body for baseball in NSW.
- (k) **“Life Member”** means an individual on whom Life Membership has been conferred by NBA in accordance with this Constitution, or under any former Constitution or Rules.
- (l) **“Player”** means those individual members, or life members, who participate in the sport of baseball as players.
- (m) **“Poll”** means a vote taken by secret ballot, in writing, by all persons entitled to vote on any resolution or issue in accordance with this Constitution.
- (n) **“Regulation(s)”** means any regulations made pursuant to the Act from time to time.



- (o) **“Representative”** means a duly appointed representative of an affiliated organisation, who is entitled to attend and debate but not to vote at general meetings of NBA.
- (p) **“Scorers Association”** means the organisation representing the interests of baseball scorers in the Hunter Region.
- (q) **“Special Resolution”** means a resolution passed by at least 66% of votes of those members entitled to vote, who in fact vote on the resolution.
- (r) **“Treasurer”** means one of the Directors, agreed upon or elected by poll by exhaustive ballot, to receive and account for any funds of NBA and to take primary responsibility of the financial affairs of NBA.
- (s) **“Umpires Association”** means the organisation representing the interests of baseball umpires in the Hunter Region, and known, at the date of adoption of this Constitution, as Newcastle Baseball Umpires Association Inc.
- (t) **“Voting Affiliate”** means a member of NBA who has the right under this constitution to appoint a voting delegate to attend meetings of NBA in accordance with this constitution; and includes but is not restricted to Clubs of players participating in competition(s) organised by NBA.