

**CONSTITUTION
OF
MARLBOROUGH BASKETBALL ASSOCIATION INC.**

**Marlborough Basketball Association Inc
Constitution**

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Marlborough Basketball Association Inc
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.

Board means Marlborough Basketball Association Inc's governing body.

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

Bylaws means any bylaws, policies, regulations and codes of Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc under this Constitution.

Chief Executive/ Operations Manager means the person in the highest-ranking management position in Marlborough Basketball Association Inc.

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 Marlborough Basketball Association Inc.

Interested has the meaning given in section 62 of the Act.

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 Marlborough Basketball Association Inc and includes all classes of members described in clause 4.3.

Basketball New Zealand means Basketball New Zealand Incorporated.

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

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

Purposes means the purposes of Marlborough Basketball Association Inc described in clause 3.1.

Region means the geographical area as determined by Basketball New Zealand to be the region represented by Marlborough Basketball Association Inc and within which the primary base of activities of Marlborough Basketball Association Inc is located and is at the date of adoption of this Constitution, Marlborough.

GM 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 has the meaning given to that term under the Legislation Act 2019 and excludes the day observed as the anniversary in Marlborough.

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 secondary legislation, 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 Board Member if sent to the address set out in their Contact Details;
- (b) Marlborough Basketball Association Inc if sent to info@marlboroughbasketball.org.nz or by post to Marlborough Basketball Association Inc'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 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 Marlborough Basketball Association Inc

- 2.1 **Name:** The name of the society is Marlborough Basketball Association Incorporated.
- 2.2 **Charitable status:** **Marlborough Basketball Association Inc** is registered as a charitable entity under the Charities Act 2005.
- 2.3 **Status:** **Marlborough Basketball Association Inc** is the regional association for Basketball New Zealand and related activities in the Region and is bound by and must observe the rules of Basketball New Zealand.
- 2.4 **Registered office:** The registered office of Marlborough Basketball Association inc 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 charitable purposes of Marlborough Basketball Association Inc are to:
 - (a) be a member of Basketball New Zealand 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 Basketball New Zealand, mainly as an amateur 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;
 - (e) lead, promote and enable Diversity, Equity and Inclusion across the whole organisation including governance of Marlborough Basketball Association Inc and participation in basketball;
 - (f) promote, develop and co-ordinate basketball competitions, programmes and tournaments in the Region for the well-being, benefit and recreation of the general public;

- (g) protect the integrity of basketball and Marlborough Basketball Association Inc by developing and enforcing standards of conduct, ethical behaviour and implementing good governance in the Region;
- 3.2 **Capacity and powers: Marlborough Basketball Association Inc** 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 Basketball New Zealand, the Act, any other legislation, and the general law.
4. **Members**
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- 4.1 **Application:** An application to become a Member (**Application**) must be in the form required by Marlborough Basketball Association Inc. All Applications are decided by the Board, 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. A person or entity becomes a Member by submitting an Application to the Marlborough Basketball Association Inc, paying fees, entering any competition, programme or tournament organised by Marlborough Basketball Association Inc, or through election to the Board or approved as a Life Member in accordance with Clause 4.5, unless otherwise specified in this Constitution.
- 4.2 **Member consent:** A person or entity consents to become a Member by submitting an Application to the Marlborough Basketball Association Inc, paying fees, entering any competition, programme or tournament organised by Marlborough Basketball Association Inc, or through election to the Board or approved as a Life Member, unless otherwise specified in this Constitution.
- 4.3 **Members:** The Members of Marlborough Basketball Association Inc are Clubs, Board Members, Life Members and other individuals or entities as the Board determines.
- 4.4 **Clubs:** A Club that wishes to be a 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 of this Constitution and any Bylaws;
 - (b) ensure its constitution is not inconsistent with this Constitution, provide Marlborough Basketball Association Inc 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;
 - (c) act in good faith with loyalty to Marlborough Basketball Association Inc to ensure the maintenance and enhancement of Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc. 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 an Annual General Meeting for determination by the Members. A person may only be elected as a Life Member by a Resolution at an Annual General Meeting and by a majority of 75% of the votes cast. 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 Basketball New Zealand.
- (b) they are subject to the jurisdiction of Marlborough Basketball Association Inc;
- (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 Marlborough Basketball Associations Inc's property; and
- (g) they will promote the interests and Purposes of Marlborough Basketball Association Inc and must not do anything to bring Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc 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 imposing 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 Marlborough Basketball Association Inc 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;
- (b) by giving notice to the Board of their resignation;
- (c) if their membership is terminated under clause 4.6(e);
- (d) if their membership is terminated following a dispute resolution process or such other process set out or referred to in this Constitution.

- (e) In the case of a Life Member, under clause 4.6(e) only at a Special Meeting called for that purpose and with a 75% majority of the votes cast.
- 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 Marlborough Basketball Association Inc;
 - (b) must return all of the Marlborough Basketball Association Inc'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:** The Board will keep an up-to-date Member register, which includes each Member's name, Contact Details and the date they became a Member. A Member must provide notice to the Board of any change to their Contact Details. The Member register will be updated as soon as practicable after the Board becomes aware of changes of the information recorded in the Member register. The Board will keep a record of those who have ceased to be a Club member within the previous 7 years and the date on which they ceased to be a member.

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 Marlborough Basketball Association Inc and not more than 15 months after the previous AGM.
- 5.2 **Notice of AGM:** The Members must be given at least two weeks notice of the AGM. Notice to Members of an AGM may be given by posting on Marlborough Basketball Association Inc's website or social media sites.
- 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 or reviewers report to members on the financial statements audited or reviewed by an approved auditor or reviewer.
 - (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) consideration of any motions proposing to amend this Constitution that have been properly submitted for consideration at the AGM;
 - (e) 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 Marlborough Basketball Association Inc at least two weeks before the date of the AGM. Notice of proposed motions and other items of business must be in writing which includes by email.
- 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 five days before the date of the AGM. Notice to Members of the agenda may be given by posting on Marlborough Basketball Association Inc's website or social media sites. No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree unanimously to discuss any other items.
- 5.6 **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 50% of Members aged 18 years old and over.
- 5.7 **Notice of SGM:** Members must be given at least two weeks 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.
- 5.8 **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.
- 5.9 **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 10 Members who are entitled to vote. The quorum must always be present during the General Meeting.
- 5.10 **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.
- 5.11 **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.
- 5.12 **Control of General Meetings:** The President 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.
- 5.13 **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 chair 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.

5.14 **Attendance:** Members aged 18 years old and over, and any other persons invited by the Board are eligible to attend and speak at General Meetings.

5.15 **Voting:** The voting entitlement for each Member eligible to vote is as follows:

- (a) Board Members shall have one vote
- (b) Clubs shall have one vote
- (c) Life Members shall have one vote
- (d) Members aged 18 years old and over shall have one vote

5.16 **Voting by electronic means:** Voting by electronic means is permitted.

5.17 **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.

5.18 **Minutes:** Minutes must be kept of all General Meetings.

5.19 **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.

5.20 **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 aged 18 years old or over is valid as if it had been passed at a General Meeting provided the resolution;

- is dated with the date on which the proposed resolution is first sent to a person entitled to vote for the purpose of approval (the circulation date); and
- is sent to an address for each person who is entitled to vote; and
- as far as is reasonably practicable, is sent on the circulation date; and
- states that the proposed resolution lapses if it is not passed within 1 month after the circulation date.

An accidental omission to send a proposed resolution or statement to a person entitled to vote does not invalidate a resolution passed. The Board must send a copy of the resolution to all those entitled to vote who did not approve the resolution and on whose behalf the resolution was not approved within 5 working days after a resolution is passed.

6. **Board**

6.1 **Functions and powers:** Subject to any modifications, exceptions, or limitations contained in the Act or in this Constitution the Board must manage, direct or supervise the operation and affairs of Marlborough Basketball Association Inc and

has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of Marlborough Basketball Association Inc.

6.2 Composition: The Board consists of:

A minimum of three and a maximum of 10 persons elected at the AGM under clause 6.3 (**Elected Board Members**).

The Elected Board Members shall appoint a President, Vice President, Secretary and Treasurer from within the Elected Board Members.

6.3 Election of Board Members: Board Members are elected as follows:

- (a) the Board must call for nominations for any Elected Board Member positions that are to be vacated at an AGM at least 14 days before the AGM.
- (b) nominations are made in the form decided by the Board and must be received by the date set by the Board and if no date is set, at least 7 days before the AGM. Where insufficient nominations have been received prior to the AGM, nominations may be accepted at the AGM. Nominations must disclose any actual or potential conflicts of interests or if the person is involved/closely connected with a person or activity which has or may bring Marlborough Basketball Association inc into disrepute or which may be prejudicial to the purposes or the interests of Marlborough Basketball Association Inc and/or basketball if they become a Board Member.
- (c) at the AGM, 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;
- (d) those nominees who have the highest number of votes in their favour to fit the number of vacant positions are declared elected;
- (e) 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;
- (f) 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 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.

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

- (a) A person who is an employee of, or independent contractor to Marlborough Basketball Association Inc.

- (b) A person who is disqualified from being elected, 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) 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.

- 6.6 **Term of office:** The term of office for all Board Members is one year, expiring at the end of the relevant AGM. A Board Member may be re-elected to the Board for an indefinite number consecutive terms of office.
- 6.7 **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 until the expiry of the term of the person they replace; or;
 - (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.
- 6.8 **Suspension of Board Member:** If any Board Member is or may be the subject of an allegation, notice or charge described in the 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 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.
- 6.9 **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 Marlborough Basketball Association Inc or basketball into disrepute or which may be prejudicial to the Purposes or the interests of Marlborough Basketball Association Inc 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 who is the subject of 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.

6.10 **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 50% of Board Members, but generally the Board meets monthly.
- 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 50% of 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. The role of the Chair is to chair meetings of the Board. If the Chair is unavailable, another Board Member must be appointed by the Board to undertake the Chair's role during the period of unavailability.
- 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. If there is an equality of votes, the Chair does not have a casting vote.
- 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

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 Marlborough Basketball Association Inc;
- (b) must exercise a power as an Officer for a proper purpose;
- (c) must not act, or agree to Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc, 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 Marlborough Basketball Association Inc being carried on in a manner likely to create a substantial risk of serious loss to Marlborough Basketball Association Inc's creditors or cause or allow the activities of Marlborough Basketball Association Inc to be carried on in a manner likely to create a substantial risk of serious loss to Marlborough Basketball Association Inc's creditors;
- (f) must not agree to Marlborough Basketball Association Inc incurring an obligation unless the Officer believes at that time on reasonable grounds that Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc 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 50% or more Board Members are Interested in a Matter, an SGM may 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 Marlborough Basketball Association Inc and to help establish or maintain public credibility of Marlborough Basketball Association Inc. A Patron is entitled to attend and speak at General Meetings but has no right to vote. A Patron is not an Officer of the Marlborough Basketball Association Inc.

11. **Chief Executive/Operations Manager**

- 11.1 **Role of Chief Executive/Operations Manager:** A Board may engage a Chief Executive/Operations Manager. The Chief Executive/Operations Manager is under the direction of the Board and is responsible for the day-to-day management of the affairs of Marlborough Basketball Association Inc under this Constitution and the Bylaws and within any delegated authority from the Board.
- 11.2 **Board involvement:** The Chief Executive/Operations Manager may 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 Marlborough Basketball Association Inc 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:** Marlborough Basketball Associations Inc's balance date is 31st March or on the date as the Board decides.
- 12.3 **Audit/Review of financial statements:** Marlborough Basketball Association Inc's financial statements must be audited or reviewed each year and the audited/reviewed financial statements must be submitted to the AGM. The auditor or reviewer 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 Marlborough Basketball Association Inc. 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 Marlborough Basketball Association Inc in respect of payments or transactions between it and them, their direct family or any associated entity.

13. **Indemnity and insurance**

- 13.1 **Indemnity:** Marlborough Basketball Association Inc indemnifies its current and former Officers, Members and employees as permitted by section 96 of the Act.
- 13.2 **Insurance:** With the prior approval of its Board, Marlborough Basketball Association Inc may effect insurance for its current and former Officers, Members and employees as permitted by section 97 of the Act.
- 13.3 **Indemnity for Officers:** Marlborough Basketball Association Inc 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**

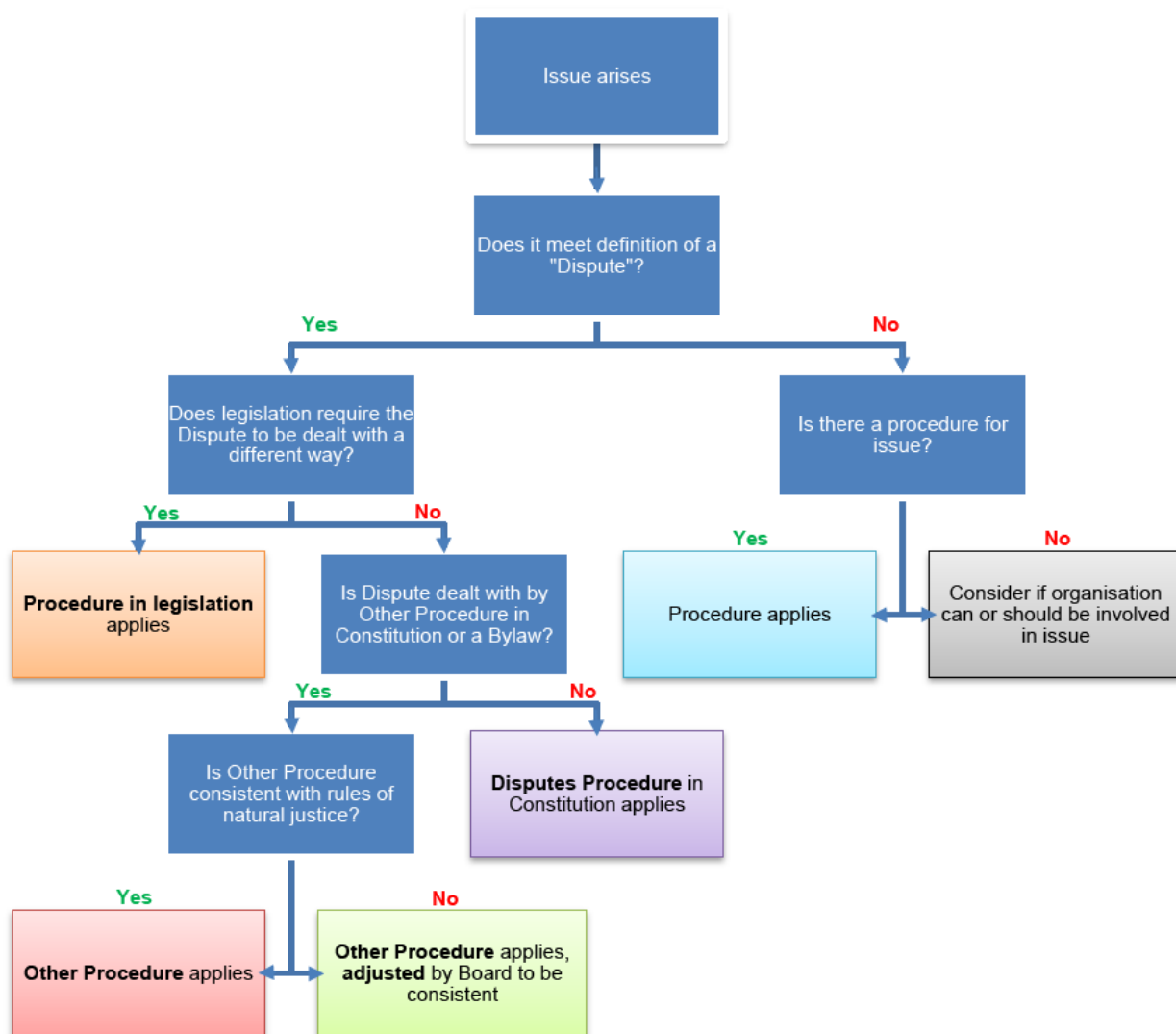
- 14.1 **Amendments:** This Constitution may only be amended or replaced by Special Resolution of Members at a General Meeting.

- 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 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 and Integrity**

- 15.1 **Bylaws:** The Board may make and amend Bylaws for the conduct and control of Marlborough Basketball Association Inc's activities and codes of conduct applicable to Members. Any Bylaw must be consistent with this Constitution, the Purposes, the constitution of Basketball New Zealand, the Act and any other laws. All Bylaws are binding on Marlborough Basketball Association Inc and the Members. The making, amendment, revocation, or replacement of a Bylaw is not an amendment of this Constitution.
- 15.2 **Definition:** In this clause, **Integrity Code** means an integrity code issued by the Integrity Sport and Recreation Commission under section 19 of the Integrity Sport and Recreation Act 2023.
- 15.3 **Integrity Code binding:** If Basketball New Zealand adopts an Integrity Code, Marlborough Basketball Association Inc is bound by the Integrity Code.
- 15.4 **Application to Members:** If Basketball New Zealand adopts an Integrity Code, all Members of Marlborough Basketball Association Inc agree to the application of the Integrity Code to them and agree to be bound by it and must include a similar clause in their constitutions to bind their members.

16. **Dispute resolution**



16.1 Definitions: In this clause16:

- (a) **Dispute** means a disagreement or conflict between and among any one or more Members, any one or more Officers and Marlborough Basketball Association Inc, 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) Marlborough Basketball Association Inc 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) **DisputesProcedure** 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 Marlborough Basketball Association Inc.
 - (b) Marlborough Basketball Association Inc 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.
 - (c) 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.
- 16.6 **Investigating and determining Disputes:** Unless otherwise provided, Marlborough Basketball Association Inc 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, Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc 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:** Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc makes a Complaint, Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc.

- (b) A Member or Officer or Marlborough Basketball Association Inc must be taken to have been given the right if:
 - (i) the Member or Officer or Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc'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 Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc, a Board Member may exercise the right on behalf of Marlborough Basketball Association Inc. 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 20 Working Days of a proposed motion:

- (a) to appoint a liquidator;
- (b) to remove Marlborough Basketball Association Inc from the Register of Incorporated Societies; or
- (c) for the distribution of Marlborough Basketball 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 Marlborough Basketball Association Inc, after the payment of all costs, debts and liabilities, must be disposed of to Basketball New Zealand or any other not-for-profit entity which are exclusively charitable and that shares similar purposes to the Marlborough Basketball Association Inc.

18. **Matters not provided for**

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 **Transition:** This clause 19 applies to facilitate transition of Marlborough Basketball Association Inc 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 Marlborough Basketball Association Inc 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) The Board Members under the previous rules/constitution continue.