

**Constitution**

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**BASEBALL VICTORIA INCORPORATED**

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# ASSOCIATIONS INCORPORATION REFORM ACT 2012 (VIC)

## CONSTITUTION

### OF

## BASEBALL VICTORIA INCORPORATED

### PART I – OBJECTS, POWERS AND INTERPRETATION

#### 1. NAME OF ASSOCIATION

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The name of the association is Baseball Victoria Incorporated (**Association**).

#### 2. OBJECTS OF ASSOCIATION

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The Association is the peak body for the administration of the sport of baseball in Victoria. The objects for which the Association is established and maintained are to control, promote, encourage and improve baseball in Victoria, including but not limited to:

- (a) conduct, encourage, promote, advance, standardise, control and administer all forms of the sport of baseball in and throughout Victoria;
- (b) provide for the conduct, encouragement, promotion and administration of the sport of baseball through and by various Member Bodies or other organisations for the mutual and collective benefit of the Members and the sport of baseball;
- (c) act in good faith and loyalty to ensure the maintenance and enhancement of the Association and the sport of baseball, its standards, quality and reputation for the collective and mutual benefit of the Members and the sport of baseball;
- (d) at all times operate with and promote, mutual trust and confidence between the Association and the Members in pursuit of these purposes;
- (e) at all times to act on behalf of, in the interests of and in conjunction with the Members and the sport of baseball;
- (f) promote the economic and sporting success, strength and stability of the Association and each Member Body and to act interdependently with each Member Body in pursuit of these purposes;
- (g) affiliate and otherwise liaise with the Australian Baseball Federation (“**ABF**”), and any other such organisation in the pursuit of these purposes and the sport of baseball;
- (h) ensure compliance with the rules and regulations as amended from time to time of the ABF;
- (i) ensure that a high standard of the sport of baseball is maintained;

- (j) develop a sense of sportsmanship and a high degree of proficiency in competitors in the sport of baseball;
- (k) enable competitors to achieve a high level of physical and mental fitness through the teaching and practice of the sport of baseball;
- (l) apply the property and capacity of the Association towards the fulfilment and achievement of these purposes;
- (m) use and protect the Intellectual Property;
- (n) collect, distribute and publish information in connection with the sport of baseball and international and national baseball tournaments and competitions;
- (o) promote and control tournaments, competitions and championships;
- (p) strive for governmental, commercial and public recognition of the Association, the Member Bodies and the sport of baseball;
- (q) promulgate and secure uniformity in, such rules as may be necessary or appropriate for the management and control of the sport of baseball and related activities in Victoria;
- (r) further develop the Association as an organised institution and with these purposes in view, to foster, regulate, organise and manage national and international competitions, displays and other activities and to award trophies as appropriate;
- (s) review and/or determine any matters relating to the sport of baseball which may arise or be referred to it by any Member Body;
- (t) recognise any penalty imposed by any Member Body;
- (u) through or in association with the Member Bodies or other entities or of itself, promote the health and safety of players, coaches, umpires and officials registered with any Member Body or other recognised baseball organisation or other entity;
- (v) through or in association with the Member Bodies or other entities or of itself, encourage players, coaches, umpires and officials registered with any Member Body or other recognised baseball organisation to realise their potential and athletic abilities by extending to them the opportunity of education and further participation, in the sport of baseball;
- (w) conduct or commission research and development for improvements in the sport of baseball and baseball equipment generally;
- (x) pursue through itself or others such commercial arrangements, including sponsorship and marketing opportunities, as are appropriate to further the purposes of the Association and the sport of baseball;
- (y) act as final arbiter on all matters pertaining to the conduct of the sport of baseball in Victoria, including disciplinary matters;
- (z) formulate or adopt and implement appropriate policies, including in relation to sexual harassment, equal opportunity, equity, drugs in sport, health, safety,

junior and senior programs, infectious diseases and such other matters as arise from time to time as issues to be addressed in the sport of baseball;

- (aa) represent the interests of its Members and of the sport of baseball generally in any appropriate forum;
- (bb) have regard to the public interest in its operation;
- (cc) do all that is reasonably necessary to enable these purposes to be achieved and to enable the Members to receive the benefits which these purposes are intended to achieve;
- (dd) encourage and promote performance-enhancing drug free competition; and
- (ee) undertake and or do all things or activities which are necessary, incidental or conducive to the advancement of these purposes.

### **3. POWERS OF ASSOCIATION**

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Solely for furthering the Objects the Association has, in addition to the rights, powers and privileges conferred on it under the Act, the legal capacity and powers of a company as set out under section 124 of the Corporations Act.

### **4. INTERPRETATION**

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#### **4.1 Definitions**

In this Constitution unless the contrary intention appears, these words shall have the following meanings:

**Act** means the *Associations Incorporation Reform Act 2012 (Vic)* or any other act under which the Association may be incorporated from time to time.

**Affiliate** means a club affiliated with, or a member of, a Baseball Association.

**Association** means Baseball Victoria Incorporated.

**Baseball Association** means a baseball association that administers a baseball competition.

**Board** means the body consisting of the Directors under Rule 25.

**By-Law** means any by-law, regulation or policy made by the Board under Rule 34.

**Chief Executive Officer** means the person who is appointed under this Constitution to carry out the duties set out in Rule 31.

**Delegate** means the person elected or appointed from time to time by a Member Body to act for and on behalf of that Member Body and represent the Member Body at General Meetings or otherwise.

**Director** means a member of the Board appointed and ratified in accordance with this Constitution.

**Event** means and includes:



- (a) any championship (national or otherwise) organised or conducted by a Member Body for or on behalf of the Association;
- (b) any championship, competition, series or game sponsored by or conducted by or on behalf of the Association;
- (c) any international competition, series, game or championships at which the Association is represented.

**Financial Year** means each 12 month period ending on 30 September.

**General Meeting** means the annual or any special general meeting of the Association.

**Individual Member** means registered financial individual members of an Affiliate, a Summer League Club or a Representative Body.

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

**Judiciary Committee** means a standing committee of the Association constituted under Rule 33

**Life Member** means an individual upon whom life membership of the Association has been conferred under Rule 8.

**Member** means a member for the time being of the Association under Part III of this Constitution.

**Member Body** means an entity recognised under Rule 7.1 to administer the sport of baseball in Victoria and which can include:

- (a) Baseball Associations;
- (b) Summer League Clubs; or a
- (c) Representative Body.

**Objects** means the objects of the Association in Rule 2.

**Official** means any administrator, coach, umpire, team manager, scorer, statistician or other person who has a position as an official in the sport of baseball.

**Register** means the Register of the Association in Rule 11.

**Representative Body** means an entity that is recognised by the Association as a representative of the sport of baseball in Victoria.

**Seal** means the common seal of the Association and includes any official seal of the Association.

**Secretary** means the secretary of the Association as determined in accordance with Rule 32.1

**Special Resolution** means a special resolution of the Members passed at a General Meeting of the Association in accordance with the Act.

**Summer League Clubs** means a baseball club that participates in the Summer League Baseball Competition administered by the Association.

#### **4.2 Interpretation**

In this Constitution:

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

#### **4.3 Severance**

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

#### **4.4 Expressions in Act**

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

#### **4.5 Model Rules**

The model rules made under the Act are expressly displaced by this Constitution.

## **PART II – STATUS**

### **5. STATUS OF ASSOCIATION**

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#### **5.1 Recognition of Association**

- (a) The Association is recognised as a member of ABF and as the controlling authority for baseball in Victoria and subject to compliance with this Constitution and the ABF constitution shall continue to be recognised as a member of ABF. For so long as the Association remains affiliated or otherwise under the auspices of or in association with the ABF, it shall act in accordance with the constituent documents, rules, regulations and policies of the ABF, to the extent that same applies to the Association. In the event of any conflict or inconsistency between such constituent documents, rules and regulations, or any of them, then the following order of precedence shall apply in order to resolve such conflict or inconsistency:
  - (i) ABF; and
  - (ii) the Association.
- (b) The Association shall administer baseball in Victoria in accordance with the Objects.

## **PART III - MEMBERSHIP**

### **6. MEMBERS**

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#### **6.1 Class of Members**

The Members of the Association shall consist of:

- (a) the Member Bodies, which subject to these Rules, shall be represented by their Delegate who have the right to be present, debate and vote at General Meetings for an on behalf of the Member Bodies;
- (b) Life Members, who subject to these Rules, may upon invitation from the Board attend and debate at General Meetings in the discretion of the Board, but otherwise have no right to vote at General Meetings;
- (c) Affiliates, who have no right to attend, debate or vote at General Meetings;
- (d) Individual Members (other than Directors) who have no right to attend, debate or vote at General Meetings;
- (e) Such new class of Members, created in accordance with Rule 6.2.

#### **6.2 New Members and Creation of New Classes**

The Board has the right and power from time to time to admit new Members and create new classes of membership with such rights, privileges and obligations as are determined applicable (other than voting rights), even if the effect of creating a new class is to alter rights, privileges or obligations of an existing class of Members. No new class of membership may be granted voting rights.

## **7. MEMBER BODIES**

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### **7.1 Recognition of Member Bodies**

- (a) As at the date this Constitution takes effect, the Member Bodies shall be those Member Bodies that were Member Bodies as at the day immediately before this Constitution takes effect and being those Member Bodies that are listed at Schedule 1.
- (b) An entity, including a Baseball Association, a Summer League Club or a Representative Body can make application in accordance with Rule 7.2 to be recognised as a Member Body.

### **7.2 Application for Membership as a Member Body**

An application for membership as a Member Body by an organisation must be:

- (a) in writing on the form prescribed from time to time by the Board, from the applicant or its nominated representative and lodged with the Association;
- (b) accompanied by such information as the Association may reasonably request including a copy of the applicant's constitution (which must be acceptable to the Association and in compliance with Rule 7.6) and register of members;
- (c) be accompanied by a declaration that the applicant is solvent;
- (d) accompanied by the appropriate fee, if any; and
- (e) lodged with the Secretary (or such other person as prescribed by the Board from time to time).

### **7.3 Discretion to Accept or Reject Application**

- (a) The Association may accept or reject an application and shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Association accepts an application, the applicant shall become a Member Body. Membership of the Association shall be deemed to commence upon acceptance of the application by the Association. The Secretary shall amend the register accordingly as soon as practicable.
- (c) Where the Association rejects an application the Association shall refund any fees forwarded with the application and the application shall be deemed rejected by the Association.

### **7.4 Membership Renewal**

- (a) Member Bodies must reapply for membership with the Association annually and otherwise in accordance with the procedures set down by the Association in By-Laws from time to time.
- (b) Upon request by the Association, a Member Body must lodge with the Association an updated copy of its constitution (including all amendments), provide details of any change in its Delegate and provide such other information as reasonably requested by the Association.

## **7.5 Compliance of Member Bodies**

The Member Bodies acknowledge and agree that each of them shall:

- (a) be and remain incorporated;
- (b) elect or appoint one (1) Delegate to represent it at General Meetings of the Association;
- (c) provide the Association with such information as the Association may reasonably require including copies of any financial reports and statements, its annual report and other associated documents within thirty (30) days of such request by the Association;
- (d) recognise the Association as the state peak body for baseball in Victoria;
- (e) generally, have regard to the Objects;
- (f) apply its property and capacity solely in pursuit of the objects of the Association, the Member Body and the sport of baseball;
- (g) at all times act for the joint advantage of the Association and the Members and the sport of baseball;
- (h) do all that is reasonably necessary to enable the Objects of the Association to be achieved;
- (i) act in good faith and loyalty to ensure the maintenance and enhancement of the Association and the sport of baseball, its standards, quality and reputation for the collective mutual benefit of the Members and the sport of baseball;
- (j) at all times operate with and promote, mutual trust and confidence between the Association and the Members in pursuit of these objects;
- (k) at all times act on behalf of and in the interests of the Members and the sport of baseball;
- (l) be solvent; and
- (m) abide by this Constitution.

## **7.6 Constitution of the Member Bodies**

- (a) The constituent documents of a Member Body shall not be in conflict with the Objects and will conform with this Constitution, subject to any requirements in the Act, and at least to the extent of:
  - (i) the Objects;
  - (ii) the structure and membership categories of the Association;
  - (iii) recognising the Association as the state peak body for baseball in Victoria;
  - (iv) recognising the Association as the final arbiter on matters pertaining to baseball in Victoria, including disciplinary proceedings; and

- (v) such other matters as are required to give full effect to the Association's Constitution,

with such incidental variations as are necessary having regard to the Act.

- (b) Member Bodies shall take all reasonable steps necessary to ensure its constituent documents are:
  - (i) in conformity with the Association's Constitution at least to the extent set out in Rule 7.6(a); and
  - (ii) amended in conformity with future amendments made to the Association's Constitution,

subject to any prohibition or inconsistency in the Act.

- (c) Upon request, a Member Body shall provide to the Association a copy of its constituent documents and all amendments to these documents within thirty (30) days of such request by the Association.

### **7.7 Member Body Register**

Each Member Body shall maintain, in a form and with such details as are acceptable to the Association, a register of all Affiliates and Individual Members in its Body. Each Member Body shall provide a copy of the register at a time and in a form acceptable to the Association, and shall provide prompt and regular updates of the register to the Association when requested by the Association.

### **7.8 Deeming provisions**

- (a) Member Bodies shall have 1 year from the approval of these Rules under the Act in which to amend their constitution in accordance with these Rules and for such time as their constitutions do not conform shall not be unduly penalised for such non-compliance, to the extent that such non-compliance is not wilful or calculated to cause harm or prejudice to the Association or the sport of baseball.
- (b) Member Bodies shall provide to the Association such details of Affiliates and Individual Members as are required by the Association under these Rules within one month of the approval of these Rules under the Act.

## **8. LIFE MEMBERS**

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- (a) Each year the Board will call for nominations from Member Bodies for persons to be considered for life membership of the Association. The Board may recommend to the Annual General Meeting that one or more persons duly nominated and who has rendered distinguished service to baseball in Victoria, where such service is deemed to have assisted the advancement of baseball in Victoria, have life membership conferred on them.
- (b) A resolution of the Annual General Meeting to confer life membership on the recommendation of the Board must be a special resolution.
- (c) Upon life membership being conferred the person's details shall be entered upon the Register. A person shall become a Life Member from the time their life membership is formally announced not from the time of entry of their details on the Register.

- (d) As at the date of the adoption of this Constitution the Life Members of the Association are those persons listed in Schedule 2 to this Constitution and include Life Members of Victorian Baseball Association and Life Members of the Victorian Provincial Baseball League.

## **9. AFFILIATES AND INDIVIDUAL MEMBERS**

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### **9.1 Deeming Provisions**

- (a) All parties which were Affiliates on the date immediately prior to the time of approval of this Constitution under the Act shall be deemed Affiliates from the time of approval of this Constitution under the Act. The Affiliates are entitled to such benefits as are conferred on them by the Association under this Constitution whether directly or indirectly.
- (b) All persons who were individual members or officials of Affiliates, Summer League Clubs or Representative Bodies on the date immediately prior to the time of approval of this Constitution under the Act shall be deemed Individual Members or Officials from the time of approval of this Constitution under the Act and will be entitled to such benefits as are conferred on them by the Association, whether directly or indirectly.
- (a) All persons who were, or were to become, delegates prior to approval of this Constitution under the Act shall, unless these positions have otherwise terminated, hold the position of Delegate from the time of approval of this Constitution under the Act.

### **9.2 Affiliates**

In order to remain Members, Affiliates must:

- (a) renew their membership with their respective Baseball Association annually;
- (b) otherwise remain registered financial members of their respective Baseball Association in accordance with the procedures applicable from time to time.

### **9.3 Individual Member**

- (a) An Individual Member is a Member of the Association immediately on being registered as a member of an Affiliate, Summer League Club or Representative Body, for such time as he remains a financial member of that Affiliate, Summer League Club or Representative Body, or otherwise remains registered as a member of that Affiliate, Summer League Club or Representative Body.
- (b) Each Affiliate, Summer League Club or Representative Body shall forward details relating to all Individual Members that are registered with it, including name, address (postal and email), class of membership, date of entry and such other details as are prescribed by the Association from time to time, and any changes in membership details or memberships within 1 month of such changes occurring.

## **10. SUBSCRIPTIONS AND FEES**

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- (a) The annual membership subscription, fees and any levies payable by Members (or any category of members) (if any) to the Association, the basis

of, the time for and manner of payment shall be as determined by the Board from time to time.

- (b) Any Member which or who has not paid all monies due and payable by that Member to the Association shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or otherwise in the Board's discretion. In the meantime, the Member shall have no automatic right to resign from the Association, and shall be dealt with in the Board's discretion, which includes the right to expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

## **11. REGISTER OF MEMBERS**

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### **11.1 Secretary to Keep Register**

- (a) The Secretary shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

### **11.2 Inspection of Register**

Having regard to confidentiality considerations, an extract of the register, excluding the address of any Delegate, Life Member, Individual Member or Director shall be available for inspection (but not copying) by Members, upon reasonable request.

## **12. EFFECT OF MEMBERSHIP**

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- (a) Members acknowledge and agree that:
  - (i) this Constitution constitutes a contract between each of them and the Association and that they are bound by this Constitution and the By-Laws;
  - (ii) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee;
  - (iii) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Association;
  - (iv) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Association, the Members and Baseball;
  - (v) this Constitution and By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Baseball; and
  - (vi) they are entitled to all benefits, advantages, privileges and services of Association membership.
- (b) Subject to Rule 10(b), a Member of the Association who is entitled to vote has the right:



- (i) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by this Constitution;
  - (ii) to submit items of business for consideration at a general meeting;
  - (iii) to have its Delegate attend and be heard and vote at general meetings;
  - (iv) to have access to the minutes of the general meetings and other documents of the Association as provided under Rule 34; and
  - (v) subject to Rule 11.2, to inspect the register of members.
- (c) A right, privilege or obligation of a Member by reason of their membership of the Association is not capable of being transferred or transmitted to another Member.

## **13. DISCONTINUANCE OF MEMBERSHIP**

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### **13.1 Notice of Resignation**

Subject to this Constitution any Member which has paid all monies due and payable to the Association and has no other liability (contingent or otherwise) to the Association may resign from the Association by giving one months' notice in writing to the Association of such intention to withdraw or resign and upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member may resign by notice in writing with immediate effect.

### **13.2 Expiration of Notice Period**

Upon the expiration of any notice period applicable under Rule 13.1 an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register.

### **13.3 Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Association and its property including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately.

### **13.4 Membership may be Reinstated**

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board, on application in accordance with this Constitution and otherwise on such conditions as it sees fit.

### **13.5 Cessation of Membership**

Where a Member Body ceases to be a Member in accordance with this Constitution or the Act, the Affiliates of that Member Body may cease or remain Members to the extent (if any) and for such time (if any) as is determined in the sole discretion of the Board.

## 14. DISCIPLINE OF MEMBERS

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### 14.1 Establishing a Disciplinary Committee

Where the Board is advised of an allegation (not being vexatious, trifling or frivolous) or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the Objects and the interests of the Association and/or Baseball, or another Member; or
- (c) brought themselves, another Member, the Association or Baseball into disrepute,

the Board may by resolution and in accordance with Rule 33.2, establish a disciplinary committee to convene to hear a matter against any Member and to determine what action, if any, to take against that Member (**Disciplinary Hearing**), and that Member, will be subject to, and submits unreservedly to the jurisdiction, disciplinary procedures and penalties and the appeal mechanisms (if any) in this Constitution.

### 14.2 Provisional Suspension

- (a) Upon establishing a disciplinary committee in accordance with Rule 14.1 the Board may by resolution provisionally suspend the Member subject to the Disciplinary Hearing until such time as the disciplinary committee makes a finding.
- (b) The disciplinary committee may lift a provisional suspension prior to making a finding at the Disciplinary Hearing.

### 14.3 Disciplinary Committee Members

The members of the disciplinary committee:

- (a) may be Members or anyone else; but
- (b) must not be biased against, or in favour of, the Member concerned.

### 14.4 Notice of Alleged Breach

- (a) Where a disciplinary committee is established the Association shall serve on the Member not earlier than 28 days and not later than 14 days before the Disciplinary Hearing is to be held, a notice in writing:
  - (i) setting out the alleged breach of the Member and the grounds on which it is based;
  - (ii) stating that the Member may address the disciplinary committee at the Disciplinary Hearing;
  - (iii) stating the date, place and time of that Disciplinary Hearing;

- (iv) informing the Member that he, she or it may do one or more of the following:
  - (A) attend that Disciplinary Hearing;
  - (B) give the disciplinary committee prior to or at that meeting a written statement regarding the alleged breach.

#### **14.5 Determination of Disciplinary Committee**

- (a) The disciplinary committee shall ensure that the Disciplinary Hearing accords with the principles of natural justice by ensuring that:
  - (i) the Member has every opportunity to be heard and to call witnesses; and
  - (ii) due consideration is given to any written statement submitted by the Member or a witness;before determining whether the alleged breach occurred.
- (b) If the disciplinary committee determines there was a breach under Rule 14.1, it will determine what penalty (if any) shall be given to the Member, and give notice of this to the Board.
- (c) The penalties able to be given to the Member by the disciplinary committee include, but are not limited to as follows:
  - (i) expel a Member from the Association; or
  - (ii) suspend a Member from membership of the Association or accessing certain privileges of membership for a specified period; or
  - (iii) fine a Member; or
  - (iv) impose such other penalty, action or educative process as the disciplinary committee sees fit.

#### **14.6 Appeal**

- (a) Subject to Rule 14.6(b), an Appeal Tribunal may be appointed by the Board to hear and adjudicate on any appeal lodged by a Member against the decision of the Disciplinary Committee.
- (b) An appeal may only be lodged by a party directly affected by a decision and where such an appeal is based on the ground that new information or evidence can be presented that was not available at the time of the original decision being appealed against.

#### **14.7 Appeal Tribunal**

- (a) The Board will appoint an Appeal Tribunal to determine an appeal lodged in accordance with the provisions of Rule 14.6. The composition of an Appeal Tribunal shall be:
  - (i) An individual with a high level of legal training and experience in arbitration; or

- (ii) A panel of two (2) or three (3) persons deemed suitable by the Board whereby a chairperson shall be appointed with experience in legal process or dispute resolution.
- (iii) No member of the Appeal Tribunal pursuant to Rules 14.7(a)(i) and (ii) may have been a party to or directly interested in the decision under appeal or the original matter brought for determination.

#### **14.8 Appeals Process**

- (a) Formal advice to the Board of an appeal against a decision of the Disciplinary Committee shall be forwarded to the Chief Executive Officer in writing within fourteen days of formal advice of the decision being appealed. The Chief Executive Officer will inform the Board without delay.
- (b) The lodgement of appeal must be accompanied by payment of an appeal fee as determined by the Board. The fee shall be fully refundable if the appeal is successful.
- (c) An Appeal Tribunal will be appointed within seven (7) days of formal lodgement of the appeal.
- (d) The Appeal Tribunal will schedule a date and venue for a hearing as soon as possible and no later than twenty-one (21) days after formal lodgement of the appeal.
- (e) If, as the circumstances may be, all parties are unable to be present at an appeal hearing, they may participate by tele-conference or other medium as determined appropriate at the discretion of the Appeal Tribunal.
- (f) The parties will be advised of the grounds for appeal and invited to lodge written submissions which must be received by the Chief Executive Officer no later than two business days prior to the scheduled hearing. The Chief Executive Officer shall ensure that all written submissions are distributed to all parties and the Appeal Tribunal in a timely manner prior to the hearing.
- (g) The Appeal Tribunal may then deal with the offence forthwith adhering to the principles of a fair hearing as broadly outlined in Rule 14.5.
- (h) The Appeal Tribunal may adjourn a hearing to obtain further information or evidence.
- (i) At the conclusion of the hearing the Appeal Tribunal shall:
  - (i) uphold the appeal and rescind the original decision, or
  - (ii) dismiss the appeal; or
  - (iii) dismiss the appeal and review the penalty within the provisions of Rule 14.5(c);
- (j) The decision of the Appeal Tribunal shall be final.
- (k) The Appeal Tribunal must forward to the Chief Executive Officer a written report outlining their determination of the matter

## **PART IV - GENERAL MEETINGS**

### **15. DELEGATES**

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#### **15.1 Appointment of Delegates**

- (a) Each Member Body shall nominate to the Board one Delegate for such term as is deemed appropriate by the Member Body. A Delegate must:
  - (i) not also be a Director of the Association;
  - (ii) be an Individual Member of the Member Body which appoints him or her; and
  - (iii) be appropriately empowered by his or her Member Body to make decisions at General Meetings.

#### **15.2 Delegates as Representative**

Each Delegate shall represent his Member Body at General Meetings of the Association and shall have full power to consider and vote on resolutions at General Meetings.

#### **15.3 Member Body to Advise**

- (a) Each Member Body shall, at least forty-eight hours prior to any General Meeting, advise in writing to the Secretary.

its appointed Delegate.

### **16. GENERAL MEETINGS**

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- (a) An annual general meeting of the Association shall be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the annual general meeting shall be special general meetings and shall be held in accordance with this Constitution.

### **17. NOTICE OF GENERAL MEETING**

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#### **17.1 Notice of General Meetings**

- (a) Notice of every General Meeting shall be given to the Delegate and Director at the address appearing in the register kept by the Association. No other person shall be entitled as of right to receive notices of General Meetings, except the auditor(s). Life Members may be invited to attend at the discretion of the Board.
- (b) Notice of General Meeting shall be given at least 28 days prior to the General Meeting and shall specify the place and day and hour of the General Meeting.
- (c) The agenda for the General Meeting stating the business to be transacted at the General Meeting shall be provided with the Notice of General Meeting as set out at 17.1(b), together with any notice of motion received from the Member Body. If a special resolution is proposed, the notice must state in full

the proposed resolution and state the intention to propose the resolution as a special resolution.

## **17.2 Entitlement to Attend General Meeting**

Notwithstanding any other Rule, no Member shall be represented at, or take part in a General Meeting, unless all monies (set in accordance with Rule 10) then due and payable to the Association are paid or, at the Boards discretion, where monies remain due a payment plan has been agreed in writing between the Member and the Association and payment has commenced.

## **18. BUSINESS**

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### **18.1 Business of General Meetings**

- (a) The business to be transacted at the annual general meeting includes confirming the minutes of the last preceding Annual General Meeting and of any General Meeting held since that meeting, the consideration of financial statements of the Association for the preceding Financial Year submitted by the Board in accordance with the Act, reports of the Board (including in relation to the activities of the Association during the last preceding Financial Year) and auditors and the election of Directors and Life Members.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the annual general meeting, with the exception of those matters set out in Rule 18.1(a) shall be special business. "Special business" is business of which a notice of motion has been submitted in accordance with Rule 19.

### **18.2 Business Transacted**

No business other than that stated on the notice shall be transacted at that meeting.

## **19. NOTICES OF MOTION**

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- (a) Subject to Rule 10, Members entitled to vote may submit notices of motion as special business at a General Meeting where the subject of such notices of motion relate to a matter which is expressed in this Constitution to be a right or power of the Members in General Meeting.
- (b) Where the subject of a notice of motion relates to a matter which is not expressly stated in this Constitution to be a right or power of the Members in General Meeting, it will not be considered a valid notice of motion and will not be included as special business at a General Meeting.
- (c) The Secretary must call for notices of motion at least forty-five days before the date of the General Meeting.
- (d) All notices of motion for inclusion as special business at a General Meeting must be submitted in writing (in the prescribed form) to the Secretary not less than thirty days (excluding receiving date and meeting date) prior to the General Meeting.

## **20. SPECIAL GENERAL MEETINGS**

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### **20.1 Special General Meetings may be Held**

The Board may, whenever it thinks fit, convene a special general meeting of the Association and, where, but for this Rule more than fifteen (15) months would elapse between annual general meetings, shall convene a special general meeting before the expiration of that period.

### **20.2 Requisition of Special General Meetings**

- (a) The Board shall on the requisition in writing of at least thirty-three percent of Member Bodies convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Member Bodies making the requisition and be sent to the Association. The requisition may consist of several documents in a like form each signed by one or more of the Member Bodies making the requisition.
- (c) If the Board does not cause a Special General Meeting to be held within sixty (60) days after the date on which the requisition is sent to the Association, the Member Bodies making the requisition, or any of them, may convene a Special General Meeting to be held not later than three months after that date.
- (d) A Special General Meeting convened by Member Bodies under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

## **21. PROCEEDINGS AT GENERAL MEETINGS**

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### **21.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Association shall be sixty-six percent of Member Bodies.

### **21.2 President to Preside**

The President shall, subject to these rules, preside as chairman at every General Meeting of the Association. If the President is not present, or is unwilling or unable to preside, the Vice-President shall preside as chair for that meeting only. If the Vice President is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as chair for that meeting only.

### **21.3 Adjournment of Meeting**

- (a) If within half an hour after the appointed time for the commencement of a General Meeting, a quorum is not present, the meeting:
  - (i) if convened upon the requisition of Member Bodies under Rule 20.2, shall be dissolved; and
  - (ii) in any other case, shall stand adjourned to such other day and at such other time and place as the President may determine. If at the

adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.

- (b) The President may, with the consent of any General Meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in Rule 21.3(c) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

#### **21.4 Use of Technology**

- (a) The Board may from time to time resolve that a Delegate not physically present at a General Meeting may participate in the meeting by the use of technology that allows that Delegate and the Delegates present at the meeting to clearly and simultaneously communicate with each other.
- (b) If the Board resolves to permit a General Meeting to occur as set out at Rule 21.4(a), a Delegate participating in such General Meeting is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.

#### **21.5 Voting Procedure**

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the:

- (a) President; or
- (b) majority of the Delegates present.

#### **21.6 Recording of Determinations**

Unless a poll is demanded under Rule 21.5, a declaration by the President that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

#### **21.7 Where Poll Demanded**

If a poll is duly demanded under Rule 21.5 it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the President directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.



## **21.8 Resolutions at General Meetings**

Except where a Special Resolution is required, all questions at General Meetings shall be determined by the majority of votes. For the avoidance of doubt, in the case of an equality of votes on a question at a General Meeting that motion is lost.

## **21.9 Minutes**

- (a) The Secretary must ensure that minutes are taken and kept of each General Meeting.
- (b) The minutes must record:
  - (i) the business considered at the meeting;
  - (ii) any resolution on which a vote is taken and the result of the vote; and
  - (iii) the names of persons present at all meetings.
- (c) In addition, the minutes of each Annual General Meeting must include:
  - (i) the financial statements submitted to the members in accordance with the Act;
  - (ii) the certificate signed by two Board members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - (iii) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.
- (d) The minutes of General Meetings shall be available for inspection and copying by the Members.

## **22. VOTING AT GENERAL MEETINGS**

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### **22.1 Members entitled to vote**

Each Member Body shall, subject to this Constitution, have 1 vote at General Meetings. Delegates shall represent their respective Member Bodies. No other member shall be entitled to vote but, subject to this Constitution, shall have and be entitled to exercise, those rights set out in Rule 6. The Directors and Chief Executive Officer shall have no right to vote at General Meetings.

### **22.2 Chairperson does not have a casting vote**

Where voting at General Meetings is equal the President does not have a casting vote. In the case of an equality of votes on a question at a General Meeting that motion is lost.

## **23. PROXY AND POSTAL VOTING**

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- (a) Proxy Voting shall not be permitted.

- (b) Postal voting may be permitted from time to time in such instances as the Board may determine and shall be held in accordance with procedures prescribed by the Board.
- (c) Electronic voting may be permitted from time to time in such instances as the Board may determine and shall be held in accordance with procedures as prescribed by the Board.

## **PART V - THE BOARD**

### **24. POWERS OF THE BOARD**

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- (a) The affairs of the Association shall be managed by the Board constituted under Rule 25.1.
- (b) Subject to this Constitution and the Act, the Board:
  - (i) shall control and manage the business and affairs of the Association;
  - (ii) may exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by this Constitution to be exercised by the members in General Meeting;
  - (iii) has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Association; and
  - (iv) in particular, the Board as the controlling authority of the Association shall be responsible for acting on all issues in accordance with the Objects and shall operate for the collective and mutual benefit of the Association, the Members and the sport of baseball throughout Victoria.

### **25. COMPOSITION OF THE BOARD**

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#### **25.1 Board Composition**

The Board shall be at least 5, but no more than 9 Directors, comprising:

- (a) the President;
- (b) the Vice-President;
- (c) the Secretary (when appointed from the Board); and
- (d) up to four (4) Directors appointed by the Board when the Secretary is appointed from the Board, or up to five (5) Directors appointed by the Board when the Secretary is the Chief Executive Officer.

#### **25.2 President and Vice-President**

The positions of President and Vice President shall be appointed by the Board from amongst the Directors as soon as practicable after each annual general meeting. The appointees will hold the respective positions until the conclusion of the next annual general meeting following their appointment. A Director may be re-appointed

to either position for no more than six consecutive years equal to two terms of appointment to the Board in accordance with Rule 26.3.

### **25.3 Secretary**

The position of Secretary shall be appointed by the Board in accordance with Rule 32.1 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. Where the Secretary is appointed from amongst the Directors, a Director may be re-appointed as Secretary for no more than six consecutive years equal to two terms of appointment to the Board in accordance with Rule 26.3. Where it is the Chief Executive Officer appointed as Secretary the appointee will hold the position until the conclusion of the next annual general meeting following their appointment and there is no limit on the number of times that the Chief Executive officer may be reappointed as Secretary.

### **25.4 Portfolios**

If the Board considers it appropriate, in order to further the Objects, it may allocate Directors to specific portfolios, with specific responsibilities, as determined in the discretion of the Board.

### **25.5 Gender Equity**

Gender equity will be given due consideration in the election and/or appointment of all Directors.

### **25.6 Transitional Provisions**

All persons who were Directors on the date immediately prior to the time of approval of this Constitution under the Act shall be deemed Directors from the time of approval of this Constitution under the Act and will continue in such role until the expiration of their respective term or such earlier removal under this Constitution.

## **26. ELECTION OF DIRECTORS**

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### **26.1 Qualifications for Directors**

- (a) Nominees for Director positions on the Board must be over the age of 18 years, reside in Australia and meet the qualifications as prescribed from time to time by the Board and set out in the By-Laws.
- (b) A person who is an officer or director of a Member Body or Affiliate is not eligible to be a Director whilst holding that position.

### **26.2 Elections of Directors**

- (a) Directors appointed under Rule 27.3 shall be ratified by the Members at the next practicable General Meeting.
- (b) Ratification of a Director appointed under Rule 27.3 will require a simple majority of votes cast by the Members entitled to vote being in favour of the appointment.
- (c) Any decisions made by the Board comprising a Director appointed under Rule 27.3 will not be invalidated where a Director appointed under Rule 27.3 is not ratified by the General Meeting under this Rule.

## **26.3 Term of Appointment**

- (a) Directors shall be elected in accordance with this Constitution for a term of three years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the third Annual General Meeting following.
- (b) For each three year interval, three Directors shall be elected in the first year, two Directors shall be elected in the second year and two Directors shall be elected in the third year.
- (c) The Directors to resign at any annual general meeting must be those who have been longest in office since their last election. As between persons who were last elected as Directors on the same day, those to resign must be determined by lot, unless they otherwise agree among themselves.
- (d) Should any adjustment to the term of Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. Elections to subsequent Boards shall then proceed in accordance with the procedures in this Constitution with approximately one third of the Directors retiring each year.

## **27. VACANCIES OF BOARD MEMBERS**

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### **27.1 Grounds for Termination of Director**

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 creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns his office in writing to the Association;
- (e) is absent without the consent of the Board from two consecutive meetings of the Board;
- (f) holds any office of employment of the Association;
- (g) without the prior consent or later ratification of the Members in General Meeting holds any office of profit under the Association;
- (h) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of his interest;
- (i) is removed from office by Special Resolution under Rule 27.2; or
- (j) would otherwise be prohibited from being a director of a corporation under the Corporations Act or is disqualified from office under the Act.

## **27.2 Removal of a Director**

- (a) The Association 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 Rule 27.3.
- (b) Where the Director to whom a proposed resolution referred to in Rule 27.2(a) makes representations in writing to the Secretary and requests that such representations be notified to the Members, the Secretary may send a copy of the representations to each Member Body or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.

## **27.3 Casual Vacancies**

- (a) The Board may appoint an appropriately qualified person to fill a position as a Director on the Board where the position:
  - (i) has become vacant under Rule 27.1 or Rule 27.2; or
  - (ii) was not ratified at the last annual general meeting.
- (b) A director appointed in accordance with Rule 27.3 will hold office for the remainder of the period of office of the relevant director whose vacancy is being filled.

## **27.4 Remaining Directors May Act**

In the event of a casual vacancy or vacancies in the office of a Director, 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**

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### **28.1 Board to Meet**

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

### **28.2 Decisions of Board**

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 present at any meeting shall have one vote on any question. The chair shall not have a casting vote where voting is equal. In the case of an equality of votes on a question at a Board meeting that motion is lost. Voting by proxy is not permitted.

### **28.3 Reconsidered Decisions of Board**

If a majority of votes is not reached, but an affirmative vote of at least 45% of the votes cast is reached (Reconsidered Decision), any Director present may request that the Decision be reconsidered in accordance with Rule 28.3.

- (a) Within 7 days of the initial vote the Director requiring the Decision to be reconsidered must give written notice to the Secretary.
- (b) On receipt of the Notice from the Director, the Secretary must set a date, at least 14 days after and no more than 30 days from receipt of the Notice, on which the Directors will be required to reconsider the Reconsidered Decision.
- (c) During the period from receipt of the Notice until the date on which the Reconsidered Decision is to be reconsidered, the Directors must use their best endeavours to participate in any decisions or process having the approval of the majority of Directors and with the purpose of considering the different views of the Reconsidered Decision.
- (d) At the meeting called in accordance with Rule 28.3, a resolution of the Directors is passed by and shall be decided by a majority of votes cast by the Directors present and entitled to vote. The chair shall not have a casting vote where voting is equal. In the case of an equality of votes on a question at a Board meeting that motion is lost. Voting by proxy is not permitted.
- (e) A motion which is lost in accordance with Rule 28.3 is lost and cannot be reconsidered.

### **28.4 Resolutions not in Meeting**

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex, electronic mail or other form of visible or other electronic 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 one or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one or more of the Directors is not physically present at the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
  - (ii) 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;
  - (iii) in the event that a failure in communications prevents condition (i) 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 the further provisions of this Rule to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within fifteen minutes

from the interruption the meeting shall be deemed to have terminated;  
and

- (iv) any meeting held where one 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.

## **28.5 Quorum**

- (a) Any five (5) Directors shall constitute a quorum for the transaction of the business of a meeting of the Board.
- (b) No business may be conducted at a meeting of the Board unless a quorum is present.

## **28.6 Notice of Board Meetings**

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

## **28.7 Validity of Board Decisions**

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

## **28.8 Chair of Board Meeting**

The President appointed under Rule 25.2 shall preside at every meeting of the Board. If the President is not present, or is unwilling or unable to preside, the Vice President shall preside as chair for that meeting only. If the Vice President 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.

## **28.9 Minutes of Board Meeting**

- (a) The Board must ensure that minutes are taken and kept of each committee meeting.
- (b) The minutes must record the following:
  - (i) The names of the Board members in attendance at the meeting;
  - (ii) The business considered at the meeting;
  - (iii) Any resolution on which a vote is taken and the result of the vote; and
  - (iv) Any conflict of interested disclosed under Rule 29.
- (c) The minutes of Board Meetings shall not be available for inspection or copying by the Members.

## **28.10 Leave of absence**

- (a) The Board may grant a Director leave of absence from committee meetings for a period not exceeding three months on the submission of a written application for such leave to the Chief Executive Officer.
- (b) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Director to seek the leave in advance.

## **29. CONFLICTS**

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### **29.1 Directors' Interests**

A Director is disqualified by holding any place of profit or position of employment in the Association, any Member Body or in any company or incorporated association in which the Association is a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Association in which any Director is in any way interested will be voided for such reason.

### **29.2 Conflict of Interest**

A Director shall declare his/her 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/herself from 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/herself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

### **29.3 Disclosure of Interests**

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. 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.

### **29.4 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 Rule 29.3 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.

## **29.5 Recording Disclosures**

It is the duty of the Chief Executive Officer to record in the minutes any declaration made or any general notice given by a Director in accordance with Rules 29.3 and 29.4.

## **30. DUTIES**

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### **30.1 General Duties**

- (a) As soon as practicable after being elected or appointed to the Board, each Director must become familiar with this Constitution and the Act.
- (b) The Board is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Board comply with these Rules.
- (c) The Board must ensure that the Association complies with all requirements in the Act regarding financial statements.

## **31. CHIEF EXECUTIVE OFFICER**

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### **31.1 Appointment of Chief Executive Officer**

The Chief Executive Officer shall be appointed by the Board for such term and on such conditions as it thinks fit. The Chief Executive Officer, subject to resolution of the Board 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.

### **31.2 Broad Power to Manage**

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

### **31.3 Chief Executive Officer may employ**

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

## **32. SECRETARY**

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### **32.1 Appointment of Secretary**

- (a) The Board shall (unless prohibited by law) appoint a Director or the Chief Executive Officer to act as and carry out the duties of Secretary of the Association required under the Act to be performed by the secretary of an incorporated association in accordance with this Constitution and any directions of the Board.
- (b) The Secretary must give the registrar notice of his or her appointment as Secretary within 14 days after the appointment.

- (c) If the position of Secretary becomes vacant, the Board must appoint a person to the position within 14 days after the vacancy arises.
- (d) The Board may delegate via resolution specific duties to the Chief Executive Officer where a Director is appointed as the Secretary and not the Chief Executive Officer.

### **32.2 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 the Association; and
- (d) regularly report on the activities of, and issues relating to, the Association.

## **PART VI - MISCELLANEOUS**

### **33. DELEGATIONS**

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#### **33.1 Board may Delegate Functions to Committees**

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

#### **33.2 Delegation by Instrument**

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board by the Act or any other law, or this Constitution.

#### **33.3 Delegated Function Exercised in Accordance With Terms**

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

#### **33.4 Procedure of Delegated Entity**

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Rule 28. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- (b) A Director or the Chief Executive Officer shall be ex-officio members of any committee so appointed.
- (c) Within seven (7) days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Chief Executive Officer.

#### **33.5 Delegation may be Conditional**

A delegation under this Rule may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

#### **33.6 Revocation of Delegation**

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

### **33.7 Gender Minimum**

In the appointment of committees under this Rule the Board must aim to meet the requirement set out in Rule 25.5. For the avoidance of doubt, where appropriate, the Board should use reasonable endeavours to ensure no one gender constitutes less than one of the committee members.

## **34. BY-LAWS**

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### **34.1 Board to Formulate By-Laws**

The Board may formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies (**By-Laws**) for the proper advancement, management and administration of the Association, the advancement of the Objects and baseball as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

### **34.2 By-Laws Binding**

All By-Laws made under this Rule shall be binding on the Association and Members.

### **34.3 By-Laws Deemed Applicable**

All by-laws, regulations and policies of the Association in force at the date of the approval of this Constitution under the Act insofar as such by-laws, regulations and policies are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

### **34.4 Notices Binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Member Bodies and Affiliates by means of notices approved by the Board and prepared and issued by the Chief Executive Officer. Member Bodies and Affiliates shall be obliged to draw such notices to the attention of their respective Members. Notices are binding upon all Members.

## **35. RECORDS AND ACCOUNTS**

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### **35.1 Chief Executive Officer to Keep Records**

The Chief Executive Officer shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Association and the Board and shall produce these as appropriate at each Board meeting or General Meeting.

### **35.2 Financial Records**

The Association must keep financial records that -

- (a) correctly record and explain its transactions, financial position and performance; and
- (b) enable financial statements to be prepared as required by the Act.

### **35.3 Records Kept in Accordance with Act**

Books, documents, securities and proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. All such records and the books of account shall be kept in the care and control of the Chief Executive Officer.

### **35.4 Association to Retain Records**

The Association shall retain such records for seven years after the completion of the transactions or operations to which they relate.

### **35.5 Board to Submit Accounts**

The Board shall submit to the annual general meeting the accounts of the Association in accordance with the Act.

### **35.6 Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two persons appointed in writing by the Board.

### **35.7 Inspection of Records**

- (a) Members may on request inspect free of charge -
  - (i) The minutes of general meetings;
  - (ii) Subject to Rule 35.7(b), the financial records, books, securities and any other relevant document of the Association.
- (b) The Board may refuse to permit a member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- (c) The Board must on request make copies of these rules available to members and applicants for membership free of charge.
- (d) Subject to Rule 35.7(b), a member may make a copy of any of the other records of the Association referred to in this rule and the Association may charge a reasonable fee for provision of a copy of such a record.
- (e) For the purposes of this rule -

relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following:

  - (i) its financial statements;
  - (ii) its financial records;
  - (iii) records and documents relating to transactions, dealings, business or property of the Association.

## **36. AUDITOR**

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- (a) A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted accounting principles and/or any applicable codes of conduct.
- (b) Members may remove an auditor from office by resolution made at a General Meeting in accordance with the Act.

## **37. NOTICE**

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### **37.1 Manner of Notice**

- (a) Notices may be given by the Secretary to any Member by sending the notice by post or facsimile transmission or where available, by electronic mail, to the Member's registered address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing and posting the notice. Service of the notice is deemed to have been effected two days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.
- (e) Any notice required to be given to the Association or the Board may be given-
  - (i) by handing the notice to a member of the Board;
  - (ii) by sending the notice by post to the registered address;
  - (iii) by leaving the notice at the registered address;
  - (iv) if the Board determinates that it is appropriate in the circumstances -
    - (A) by email to the email address of the Association or the Secretary; or
    - (B) by facsimile transmission to the facsimile number of the Association.

### **37.2 Notice of General Meeting**

Notice of every General Meeting shall be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

### **37.3 Notice to Individual Members**

Notice to Individual Members (where appropriate or required) shall be deemed given by notice being given in accordance with this Constitution to the Member Body or Affiliate of that Individual Member.

### **38. SEAL**

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- (a) The Association may have a common seal.
- (b) If the Association has a common seal -
  - (i) the name of the Association must appear in legible characters on the common seal:
  - (ii) subject to Rule 38(c), the common seal shall only be used by authority of the Board and every document to which the seal is affixed shall be signed by two Directors or a Director and the Chief Executive Officer.
  - (iii) the common seal must be kept in the custody of the Chief Executive Officer.
- (c) A Director may not sign a document to which the seal of the Association is fixed where the Director is interested in the contract or arrangement to which the document relates.

### **39. REGISTERED ADDRESS**

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- (a) The registered address of the Association is:
  - (i) the address determined from time to time by resolution of the Board;  
or
  - (ii) if the Board has not determined an address to be the registered address, the postal address of the Secretary.

### **40. ALTERATION OF CONSTITUTION**

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- (a) This Constitution shall not be altered except by Special Resolution.
- (b) In addition, there shall be no alteration or amendment to Rules 41 or 42 without the consent of the relevant Minister or other authority under the Act.

### **41. INDEMNITY**

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#### **41.1 Directors to be indemnified**

Every Director, auditor, manager, employee or agent of the Association shall be indemnified to the extent provided under the directors and officers insurance policy of the Association against any liability incurred by him/her in his/her capacity as Director, auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him/her by the Court.

## **41.2 Association to Indemnify**

The Association shall indemnify its Directors and employees to the extent provided under the directors and officers insurance policy of the Association against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director performed or made whilst acting on behalf of and with the authority, express or implied of the Association; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his/her employment by the Association.

## **42. WINDING UP**

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### **42.1 Winding Up of the Association**

Subject to this Rule 42, the Association may be wound up in accordance with the provisions of the Act.

### **42.2 Liability of Members**

The liability of the Members of the Association is limited.

### **42.3 Members' Contributions**

Every Member Body undertakes to contribute to the assets of the Association in the event of it being wound up while a Member, or within one year after ceasing to be a Member for payment of the debts and liabilities of the Association contracted before the time at which he or she ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding \$1.00.

### **42.4 Distribution of Property on Winding Up**

If upon winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members of the Association but shall be given or transferred to some body or bodies having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Association by this Constitution and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such body or bodies to be determined by the Members of the Association at or before the time of dissolution, and in default thereof by such judge of the relevant Supreme Court or such other court as may have or acquire jurisdiction in the matter.

## **43. AUTHORITY TO TRADE**

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The Association is authorised to trade in accordance with the Act.



#### **44. SOURCE OF FUNDS**

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The funds of the Association may be derived from annual membership subscriptions, fees and levies payable by Members, donations, grants, sponsorships and such other sources as the Board determines.

#### **45. APPLICATION OF INCOME**

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##### **45.1 Income and Property Applied to Objects**

The income and property of the Association shall be applied solely towards the promotion of the Objects.

##### **45.2 No Income to Members**

Except as prescribed in this Constitution:

- (a) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.

##### **45.3 Payments in Good Faith**

Nothing contained in Rule 45.2 shall prevent payment in good faith of or to any Member for:

- (a) any services actually rendered to the Association whether as an employee or otherwise;
- (b) goods supplied to the Association in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Association;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Association; or
- (f) any other reason,

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

#### **46. MANAGEMENT OF FUNDS**

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The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Associations' revenue is deposited.

## **47. GRIEVANCE PROCEDURE**

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### **47.1 Grievance by a Member**

- (a) The grievance procedure set out in this rule applies to disputes under this Constitution between a Member and:
  - (i) another Member; or
  - (ii) the Association.
- (b) The parties to the dispute must meet (which may, if agreed by the parties, take place by using any technology that allows the parties to clearly and simultaneously communicate with each other) and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties may, within 10 days, refer the dispute to the Dispute Settlement Centre of Victoria (Department of Justice) (or such other similar body in circumstances where the Dispute Settlement Centre of Victoria is no longer in existence) for resolution.
- (d) The Board may prescribe additional grievance procedures in Regulations consistent with this Rule47.

## SCHEDULE 1

As at the date of the adoption of this Constitution the Member Bodies of the Association are as follows:

- (a) the following Baseball Associations:
  - (i) Bendigo Baseball Association;
  - (ii) Ballarat Baseball Association;
  - (iii) Dandenong Baseball Association;
  - (iv) Geelong Baseball Association;
  - (v) Latrobe Valley Baseball Association;
  - (vi) Melbourne Winter Baseball League;
  - (vii) North Eastern Baseball Association; and
  - (viii) Sunraysia Baseball Association
  
- (b) the following Summer League Clubs:
  - (i) Berwick City;
  - (ii) Ballarat City Brewers;
  - (iii) Blackburn;
  - (iv) Bonbeach;
  - (v) Bundoora;
  - (vi) Carrum Downs;
  - (vii) Chelsea;
  - (viii) Cheltenham;
  - (ix) Croydon;
  - (x) Doncaster;
  - (xi) Essendon;
  - (xii) Fitzroy;
  - (xiii) Footscray;
  - (xiv) Geelong;
  - (xv) Greensborough;
  - (xvi) Heathmont;

- (xvii) Malvern;
- (xviii) Melbourne;
- (xix) Monash University;
- (xx) Moorabin;
- (xxi) Mornington;
- (xxii) Newport;
- (xxiii) North Western Titans;
- (xxiv) Ormond Glenhuntly;
- (xxv) Port Melbourne;
- (xxvi) Preston;
- (xxvii) Research Lower Plenty
- (xxviii) Sandringham;
- (xxvix) Springvale;
- (xxvix) St Kilda;
- (xxx) Sunshine
- (xxxix) Upwey Ferntree Gully
- (xxxix) Waverley
- (xxxix) Werribee
- (xxxix) Williamstown

(c) and the following entities that are recognised as a representative of the sport of baseball in Victoria:

- (i) The Baseball Umpires Association of Victoria.

## SCHEDULE 2

### Life Members of the Association

As at the date of adoption of this Constitution the Life Members of the Association are as follows:

#### BASEBALL VICTORIA

2009-Jason Blair

#### VICTORIAN BASEBALL ASSOCIATION

2006-Jenny Ratcliffe  
2006-Peter J Dihm  
2005-Grant Weir  
2005-Robert O Blackmore  
2004-Beryl Bunting\*  
2004-Rodney Gaunt  
2002-Les T Flower  
1992-Les A Polson  
1991-Ron R Smith\*  
1991-Paul F Collins  
1988-Graeme B Ainscough  
1988-Barry N Smith  
1986-Lyn V Straw\*  
1986-Colin J McKay\*  
1986-Ken CJ Welfare\*  
1985-David L Went  
1983-WE (Bill) Blanden\*  
1982-Jack R Guiliano\*  
1981-Colin C Miller\*  
1980-S Doug Chapman  
1973-John B Anderson\*  
1973-Talbot R Hill\*  
1970-RW (Dick) Chapman\*  
1970-Ross M Straw\*  
1966-Angus McPherson\*  
1963-RJ (Bob) Black\*  
1958-George S Heron\*  
1956-Tom L Straw\*  
1955-Keith L Tucker\*  
1949-Reg E Darling\*  
1948-Wally B Carter\*  
1947-Ernest H King\*  
1945-Jack T Leckey\*  
1944-GB Mackay\*  
1943-Frederick H Martin\*  
1942-Jack EM Ellis Snr\*  
1941-Percy C Pooley\*  
1936-Daniel J Chandler\*  
1935-Alfred Beckefeld\*  
1935-Hugh M Gordon\*  
1935-Harry W Francis\*  
1933-HJ Newbound\*  
1929-J Bayne Mackay\*

1926-Leslie F Johnson OBE\*  
1924-Enest W Fielder\*  
1922-TJ Browne\*  
1921-Robert R Hindson\*  
1920-S Charles Lansdown\*  
1919-Cam Sellars\*  
1912-Percy B Seyffarth\*  
1911-T Smith\*  
1911-FM Russell\*  
1911-JS Milford\*  
1911-F Laver\*  
1911-HM Adams\*  
1910-Peter McAlister\*

## **VICTORIAN PROVINCIAL BASEBALL LEAGUE**

2009-Dale Lewis (VWBL)  
2009-Julie Stephens (Dandenong)  
2009-Michael Stephens (Dandenong)  
2006-Kath Besford (VWBL)  
2005-Greg Evans (Bendigo)  
2005-Clyde Cumming (Latrobe Valley)  
2004-Graeme Besford (VWBL)  
2004-David Rice (VWBL)  
2001-Terrye Cox (Ballarat)  
1999-Michael O'Brien (Geelong)  
1986-John O'Brien\* (Dandenong)  
1976-Ron Clack\* (Ballarat)  
1974-Robert Luxford\* (Dandenong)  
1968-Ern Whykes\* (Ballarat)  
1966-Roy Shadorth\* (Bendigo)  
1965-Ern Blanden\* (Ballarat)  
1964-Ern Gear\* (Geelong)  
1959-Les Olsson\* (Dandenong)  
1957-William Harwood\* (Ballarat)  
1955-William Aitken\* (Ballarat)  
1948-Jack E.M. Ellis\* (VBA)

### Service Award

1976-Sue Grant (VWBL)  
1974-Marilyn Benness (VWBL)  
1968-Artie Murrells\* (Geelong)  
1966-John Peddlesden (Ballarat)  
1965-Phillip O'Connor (Diamond Valley)  
1964-Wally Piper (Geelong/Diamond Valley)  
1959-Jim Murphy (Bendigo)  
1957-Graham Gladman (Ballarat)  
1955-Gordon McKay (Geelong)  
1948-Fred Rogers\* (Ballarat/Dandenong)

\* denotes that the Life Member is deceased.