

Southern Basketball Association Incorporated

ABN 78 936 718 412

(the **Association**)

MEMBERS CIRCULAR INCLUDING NOTICE OF EXTRAORDINARY GENERAL MEETING

For the Extraordinary General Meeting to be held at 150 Tulip Street, Cheltenham VIC 3192
on Tuesday **19 November 2019** at **6.30 pm**.

In this document (**Document**) you will find the following:

1. Letter from Members convening the extraordinary general meeting.
2. Directors' recommendation.
3. Notice of extraordinary general meeting.
4. Explanatory Statement.

IMPORTANT: This Document is an important document which should be read in its entirety. Note in particular the explanatory statement at the end of this Document which contains an explanation of, and information about, the nature of the business to be transacted at the Extraordinary General Meeting, including the proposed resolutions to be considered, and if thought fit, approved, at the Extraordinary General Meeting

Letter from Relevant Members

Dear Members

An extraordinary general meeting (**EGM**) of Southern Basketball Association Incorporated (**Association**) is to be held on Tuesday **19 November 2019** at 150 Tulip Street, Cheltenham VIC 3192. The meeting will commence at 6.30 pm. A formal notice of meeting is included in this document.

The EGM is being convened by the members (**Relevant Members**) in accordance with clause 13.6 of the Association's constitution (**Rules**).

On or before September 2019, 20 or more Relevant Members had requested in writing in accordance with clauses 13.4 and 13.5 of the Rules that the board of the Association convene an EGM (**Requisition Notice**).

We are informed by the existing directors of the Association that, given the current vacancies on the board of the Association, any notice convening an EGM should come from the Relevant Members, not the existing directors. Consistent with legal advice received by the Directors, the Directors did not convene the EGM following receipt of the Requisition Notice.

Accordingly, as the board of the Association did not cause the EGM to be held within one month after receipt of the Requisition Notice, the Relevant Members may convene the EGM in accordance with clause 13.6 of the Rules by sending the notice of meeting included in this document to members of the Association in accordance with the Rules.


The purpose of the EGM is to consider, and if thought fit approve, the following proposals:

1. An amendment to the Rules which makes it clear that where the number of directors of the Association falls below the minimum number required by the Rules, the directors have the power to fill the casual vacancy.
2. That the directors convene an annual general meeting at the earliest opportunity at which all the then directors will resign at the conclusion of the annual general meeting and a new board will be elected by members in accordance with the Association's Rules.

Details of these proposals are set out in the notice of general meeting and explanatory statement included in this document.

The Relevant Members believe that it is in the Association's best interest to pass the resolutions which will enable the existing directors to fill any casual vacancies on the board as quickly as possible, whilst ensuring that at the next annual general meeting it is the members who will ultimately decide the composition of the board of the Association going forward.

Yours sincerely



Steven Lunardon (Life Member) & Alistair Perry (Member Club President)

Authorised representatives on behalf of the Relevant Members.

24 October 2019

Directors' Recommendation

Dear Members

I refer to the letter from the members (**Relevant Members**), the notice of extraordinary general meeting (**EGM**) and the explanatory statement accompanying the notice of EGM, in each case as set out in this document.

The existing directors, being David Hopkins (Secretary), Scott Harvey (Acting President), and Dean Cartwright (Treasurer), have considered the proposals contained in this document. The proposals contained in this document are consistent with the legal advice received by the existing directors. Please note that, although it is the Relevant Members, not the existing directors, who are convening the EGM, the existing directors support the convening of the meeting and the proposals to be considered by Members at the EGM.

Recommendation: The existing directors unanimously recommend that members vote in favour of the resolutions proposed at the EGM. That voting in favour of the resolutions proposed at the EGM is in the best interest of the Association.

Yours sincerely

A handwritten signature in black ink, appearing to be 'David Hopkins', with a large, sweeping initial 'D' and a horizontal line extending to the right.

David Hopkins

Authorised representatives on behalf of the existing directors.

24 October 2019

Notice of extraordinary general meeting

Notice is given that an Extraordinary General Meeting of the Association will be held at 150 Tulip Street, Cheltenham VIC 3192 on Tuesday **19 November 2019** at 6.30 pm.

AGENDA

1 Amendment of Rules

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with section 50 of the *Associations Incorporation Reform Act 2012 (Act)* and section 5 of the Association's Rules:

"That Southern Basketball Association Incorporated's constitution be altered by adding the following new clause 23(9):

"23(9) Notwithstanding any other provision of these Rules, in the event that the number of directors in office falls below the minimum number required by these Rules or otherwise falls below the minimum number required to constitute a quorum at any meeting of the Board:

- (a) the remaining directors are empowered to continue to act to the extent required to fill any vacancy or vacancies on the Board in accordance with clause 23(4) of these Rules and/or to appoint any person to hold an Office Bearer position which may be vacant; and*
- (b) notwithstanding clause 28 of these Rules, quorum at any board meeting convened to exercise the powers referred to in clause 23(9)(a) of these Rules will be a majority of the directors holding office at that time."*

Note: Should this special resolution be passed by Members, the Secretary will provide an appropriately altered Rules to Consumer Affairs Victoria (as the Registrar of Incorporated Associations) in accordance with section 50 of the Act. The altered Rules will take effect upon the acceptance of it by the Registrar.

2 Appointment of Board of Directors

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with the Association's Rules:

*"That the members request that Southern Basketball Association Incorporated's (**Association**) directors convene an annual general meeting at the earliest practicable opportunity at which all of the then directors of SBA will resign at the conclusion of the annual general meeting and a new board will be elected by members in accordance with SBA's constitution."*



Steven Lunardon (Life Member) & Alistair Perry (Member Club President)

Authorised representatives on behalf of the Relevant Members.

24 October 2019

Procedural notes

These notes form part of the Notice of Meeting.

1 **Determination of Members' Right to Vote**

A person's entitlement to vote at the Extraordinary General Meeting will be in accordance with clause 19 of the Rules, including their satisfying any of the Membership Categories as set out in section 6 of the Association's Rules as at the date of the Extraordinary General Meeting.

3 **Voting threshold**

An ordinary resolution must be passed by members attending and voting in person at the Extraordinary General Meeting convened by this Notice of Meeting who hold not less than 50% of the votes eligible to be cast at the Extraordinary General Meeting of the Association.

Under section 64(4) of the Act, a special resolution, where required, must be passed by members attending and voting in person at the Extraordinary General Meeting convened by this Notice of Meeting who hold not less than 75% of the votes eligible to be cast at the Extraordinary General Meeting the Association.

4 **No Appointment of Proxy**

Please note that under section 19(2) of the Rules, "*No proxy or postal votes will be allowed at any meeting of the Association*". In other words, to cast an eligible vote, all Members ***must*** attend the Extraordinary General Meeting in person and cast an eligible vote.

5 **Authorised delegate**

The voting rights set out in the Rules allow for each Championship Team and each Member Club to be entitled to be represented by an authorised delegate.

The authorised delegate for each Championship Team and each Member Club should bring to the Extraordinary General Meeting evidence of his or her appointment, including any authority under which the appointment is signed, unless it has previously been given to the Association.

6 **Taking of Polls at meeting**

Under section 21 of the Rules, three or Members may demand a poll on any resolution before the Members. That poll must be taken in "*such manner as the Chairperson may direct the resolution of the poll shall be deemed to be a resolution of the meeting on that question*".

7 **Casting vote**

Under section 19(5) of the Rules, "*In a case of an equality of voting the chairperson of the meeting is entitled to exercise a second or casting vote*".

8 Incorporation of Explanatory Statement

The Explanatory Statement attached to this Notice of Meeting, is hereby incorporated into and forms part of this Notice of Meeting.

Explanatory statement

This information forms part of the Notice of Meeting. The main purpose of this Explanatory Statement is to provide Members with information to assist them to make an informed decision about the resolutions to be proposed at the EGM.

1 Amendment of Rules

Clause 23(4) of the existing Rules provides that “*in the event of a casual vacancy on the Board, the Board may appoint another person to the vacant office and the person appointed may continue in office up to and including the conclusion of the annual general next following the date of the appointment.*”

Whilst the board has the power to fill a casual vacancy, it is questionable whether they can exercise this power if there are insufficient directors to constitute a quorum at a meeting of directors. Accordingly, the proposed amendment to the Rules set out in Resolution 1 is intended to give effect to what we believe is the intention of clause 23(4), namely that if any director resign from the board the remaining directors have the power to fill any resulting casual vacancies on the board.

Under section 50 of the *Associations Incorporation Reform Act 2012 (Act)*, subject to the terms of the Act, an incorporated association may, by special resolution, alter its rules. An alteration of the rules of an incorporated association does not take effect unless and until the alteration is approved by the Registrar of Incorporated Associations.

2 Appointment of Board of Directors

The purpose of Resolution 2 is to direct the directors to convene an annual general meeting at which all of the existing directors will resign and new directors will be elected by the members, thus ensuring that the board is appointed by the members.

This is consistent with the clause 23(4) of the existing Rules which requires that a person appointed by the board as a director may continue in office up to and including the conclusion of the annual general next following the date of the appointment. The only material difference is that it is proposed that all directors, not just those appointed to fill a casual vacancy, will resign at the next annual general meeting.