



Corporations Act 2001

Constitution of

NORTHERN COALFIELDS COMMUNITY CARE ASSOCIATION LIMITED
ACN 003 605 267

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Constitution

NORTHERN COALFIELDS COMMUNITY CARE ASSOCIATION LIMITED ACN 003 605 267

1. **Defined meanings**

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. **Objects**

2.1 The objects for which the Company is established are:

- (a) The provision of services and accommodation for elder persons.
- (b) to perform all such acts and things necessarily conducive to the benefit, advancement, and promotion for the purposes of caring for and supporting those requiring care in all conditions of health;
- (c) to co-operate with, encourage and provide assistance to any charitable institution, charitable body or charitable fund having objects similar to the objects of the Company; and
- (d) solely for the above purposes, to do anything allowed by the operation of section 124 of the Corporations Act.

2.2 **Pursuance of objectives**

The objects of the Company are to be pursued principally within Australia.

3. **Limited liability**

3.1 **Members' liability**

The liability of the Members is limited.

3.2 **Members' contributions**

Every Member of the Company undertakes to contribute to the assets of the Company if it is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for:

- (a) the payment of the debts and liabilities of the Company, contracted before the Member ceased to be a Member;
- (b) the expenses of winding up the Company; and
- (c) the adjustment of the rights of the contributories among themselves.

3.3 **Amount of Members' contributions**

The amount of the contribution under clause 3.2 must not exceed \$100 per member in any circumstances.

4. **Use of the property by the Company**

4.1 **Conduit policy**

Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons must be made in accordance with the established objectives of the Company and not be influenced by the expressed preference or interest of a particular donor to the Company.

4.2 **Application of Company property**

Subject to clauses 4.3 and 4.4 below, all income and property of the Company must be applied for the Objects of the Company. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to any Member. Notwithstanding the foregoing Directors shall be entitled to remuneration as provided in clause 4.4 hereof.

4.3 **Payments of Company expenses**

Nothing in clause 4.2 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers or employees of the Company or to any Member in return for any services actually rendered by them to the Company;
- (b) interest on money borrowed from any Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings);
- (c) rent for premises let by any Member to the Company; or
- (d) payment for any goods or services supplied to the Company by any Member;
- (e) remuneration to Directors as provided in clause 4.4 hereof.

4.4 **Remuneration and Training of Directors**

- (a) The Directors are to be remunerated for their services as Directors as determined by a special resolution of the Board. The remuneration is taken to accrue from day to day.
- (b) If a Director, at the request of the Board, performs any additional or special duties for the Company, the Company may remunerate that Director as determined by the Board and that remuneration may be either in addition to, or in substitution for, that Director's remuneration under clause 4.4(a).
- (c) Subject to the Corporations Act, the Company may pay a former Director, or the personal representatives of a Director who dies in office, a retirement benefit in recognition of past services in an amount determined by the Board.

The Company may also enter into a contract with a Director providing for payment of a retiring benefit.

- (d) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Board or a Committee or when otherwise engaged on the business of the Company.
- (e) Directors are encouraged to complete appropriate courses in relation to their responsibilities and duties as Directors and shall be reimbursed out of funds of the Company for any such training and/or courses.

4.5 **Director's interests**

Subject to complying with the Corporations Act regarding disclosure of, and voting on, matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind;
- (b) enter into any contract or arrangement with the Company;
- (c) participate in any association, institution, fund, trust, or scheme for past or present employees or officers of the Company or persons dependent on, or connected with, them;
- (d) act in a professional capacity (or be a member of a firm that acts in a professional capacity) for the Company, except as auditor;
- (e) participate in, vote on, and be counted in a quorum for any meeting, resolution or decision of the Board and may be present at any meeting where any matter is being considered by the Board;
- (f) sign, or participate in the execution of, a document by or on behalf of the Company; and
- (g) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement

For the purpose of this clause 4.5, a reference to the Company includes a reference to all and all Related Bodies Corporate of the Company.

4.6 **Surplus**

If on the:

- (a) winding up or dissolution of the Company; or
- (b) the revocation of the Company's registration as a charity under the ACNC Act;

after the satisfaction of all its debts and liabilities, any property remains (surplus), the surplus must not be paid to or distributed among the Members.

4.7 Transfer of surplus

The surplus must be given or transferred to an institution, body, entity, or organisation (Transferee Entity):

- (a) having objects similar to the Objects of the Company and which is endorsed as a deductible gift recipient under the ITAA;
- (b) is registered as a charity under the ACNC Act; and
- (c) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under clauses 4 and 5.

4.8 Choice of transferee

The Transferee Entity must be chosen by the Board (as the Board were constituted at the commencement of the winding up). If the Directors do not choose a Transferee Entity within a reasonable time, any Member at the commencement of the winding up or the liquidator may apply to the Supreme Court of New South Wales to choose the Transferee Entity.

5. Fundraising authority

If the Company holds an authority to fundraise from the Chief Secretary's Department of New South Wales, no addition, alteration, or amendment may be made to clauses 4 or 5 without the prior written approval of New South Wales Fair Trading and any other relevant Statutory Authority.

6. Registration as a charity

If the Company is at any time registered as a charity with the Australian Charities and Not-for-profits Commission or in any State or Territory of Australia, to the extent required by law, any changes to clauses 4 or 5 must be notified to any relevant Commonwealth or State or Territory statutory authority.

7. Members

7.1 General

The Members consist of:

- (a) Memberships shall be limited to members of the Board, as at the date this Constitution is adopted as the Constitution of the Company; and
- (b) All other persons admitted to Membership of the Board in accordance with this Constitution.

7.2 Members' qualification

A person is qualified to be a Member of the Company who:

- (a) is a natural person who is at least 18 years of age;
- (b) has been nominated for Membership of the Company as provided by clause 7.4; and
- (c) has been approved for Membership of the Company by the Board.

7.3 Rights of Members

Members are entitled to:

- (a) vote at a general meeting of Members;
- (b) receive notices of meetings of Members;
- (c) attend all general meetings of Members including any extraordinary general meeting or Annual General Meeting; and
- (d) receive financial reports and statements of the Company.

7.4 Nomination for Membership

A nomination of a person for Membership of the Company:

- (a) must be made by Remuneration and Nominations Committee of the Company subject to the nominee meeting the eligibility criteria as outlined in clause 7.2; and
- (b) must be lodged with the secretary of the Company.

7.5 Admitting Members

- (a) As soon as practicable after receiving a nomination for Membership, the secretary must refer the nomination to the Board which must determine whether to approve or to reject the nomination.
- (b) The Board must consider the nomination for Membership at the next meeting of the Board after the receipt of the nomination for Membership.
- (c) Where the Board determines to approve a nomination for Membership, the secretary must, as soon as practicable after that determination, notify the nominee of that approval and enter the nominee's name in the Register and, upon the name being so entered, the nominee becomes a Director and Member of the Company.
- (d) No nominee may be admitted to Membership and have their name entered in the Register unless the applicant agrees in writing to be bound by this Constitution.

7.6 Discretion to admit

The Board may refuse to admit any person as a Member. If the Board refuses to admit a person as a Member, the Board is not obliged to give reasons for so refusing.

7.7 Delegation

The Directors may at any time delegate, on such terms as they think fit, to such persons as they may determine, the power to:

- (a) admit persons as Members;
- (b) re-admit such persons;
- (c) refuse applications for Membership.

8. Cessation of Membership

8.1 Cessation

A person ceases to be a Member of the Company if the person:

- (a) dies;
- (b) resigns whether in writing or not or is dismissed as a Director;
- (c) has refused or neglected to comply with a provision of the Constitution;
- (d) has acted in a manner prejudicial to the reputation or interests of the Company;
- (e) is expelled from the Company under this Constitution; or
- (f) is a person whose actions in the opinion of the Directors brings the Company into serious disrepute.
- (g) has served a total of 9 continuous years as a Director unless extended on an annual basis by a majority of the Board of Directors.

8.2 Appointment as Member not transferable

A right, privilege, or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of the person's Membership.

9. Discipline of Members

9.1 Initial resolution of Directors

Where the Directors are of the opinion that a Member of the Company:

- (a) has refused or neglected to comply with a provision of the Constitution; or

- (b) has acted in a manner prejudicial to the reputation or interests of the Company,
- (c) the Directors may, by Ordinary Resolution (Initial Resolution):
 - (i) reprimand the Member;
 - (ii) suspend the Member from Membership of the Company for a specified period; or
 - (iii) expel the Member from the Company.

9.2 **Suspended operation**

An Initial Resolution is of no effect unless it is confirmed at a meeting of the Directors in accordance with the following clauses. For that purpose, the meeting of Directors must be held not earlier than 7 days and not later than 21 days after service on the Member of a notice under the clause 11.1.

9.3 **Notice to Member**

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Member. The notice must:

- (a) set out the Initial Resolution and the grounds on which it is based;
- (b) state that the Member may personally address the Directors in relation to the Initial Resolution at a meeting of the Directors to be held not earlier than 7 days and not later than 21 days after service of the notice;
- (c) state the date, place, and time of that meeting of the Directors; and
- (d) inform the Member that the Member may submit to the Directors at or before the date of that meeting a written representation relating to that resolution and speak to the representation.

9.4 **Confirming resolution of Directors**

At a meeting of the Directors held as referred to in the preceding clause, the Directors must:

- (a) give to the Member an opportunity to speak to the written representation;
- (b) give due consideration to any written representation submitted to the Directors by the Member at or before the meeting; and
- (c) by Ordinary Resolution (Confirming Resolution) confirm, vary, or revoke the Initial Resolution.

9.5 **Immediate or suspended effect**

The Confirming Resolution may take effect immediately, after any period of time or only on conditions specified in the Confirming Resolution.

9.6 **Right of appeal**

There is no right of appeal against the Confirming Resolution of the Directors.

9.7 **Notice to a Member**

The Secretary must, within 7 days of the passing of the Confirming Resolution, by notice in writing, inform the Member of the fact and that there is no right of appeal under the Constitution.

10. **Register of Members**

10.1 **Register to be kept**

The Secretary must maintain at the Company's offices a Register of Members containing the following details of each Member:

- (a) full name;
- (b) mailing address;
- (c) mobile phone number;
- (d) electronic mail address; and
- (e) date on which the entry of the Member's name in the Register is made.
- (f) Notices in writing

Any notice required to be issued under this Constitution may be issued in writing or by electronic mail to the last nominated email address held by the Company in its records. The receipt by the Company of an acknowledgment of correspondence sent by electronic mail to the last nominated email address held by the Company in its records will be deemed to have been properly received by the Member at the time of transmission.

11. **Meetings of Members**

11.1 **Act to apply**

A general meeting of the Company and an Annual General Meeting must be held in accordance with the provisions of the Corporations Act or the ACNC Act as applicable unless the provisions of this Constitution provides otherwise.

11.2 **Calling of meetings**

- (a) The Directors may call a general meeting.
- (b) The Company must convene an Annual General Meeting at least once in each calendar year and within 5 months after the end of its financial year.

11.3 Notice of meeting

- (a) Notice of a general meeting may be given electronically.
- (b) Every notice of a general meeting must:
 - (i) set out the place, date, and time of meeting;
 - (ii) in the case of special business, state the general nature of the business;
 - (iii) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
 - (iv) in the case of an election of Directors, give the names of the candidates for election;
 - (v) contain a statement setting out the following in relation to proxy voting:
 - a) that the Member has a right to appoint a proxy; and
 - b) that a proxy must be a Member

11.4 Entitlement to notice

Notice of a general meeting must be given to:

- (a) every Member;
- (b) each Director; and
- (c) the auditor of the Company.

11.5 Notice period

Notice of a general meeting must be given in accordance with section 249H of the Corporations Act and where those provisions no longer apply to the Company, must be given in writing upon no less than 21 days' notice unless 95% of the Members agree to a shorter period.

11.6 Proxy voting by Members

A Member may appoint a proxy to attend and vote at any meeting at which the Member is entitled to attend and vote. To be valid, a proxy appointment must be in writing and delivered to the place nominated by the Directors in the notice of meeting (or, if no place is nominated, the Registered Office) at least 48 hours before the scheduled commencement of the meeting. A proxy appointment may be delivered by electronic mail.

11.7 Omission to give notice

The accidental omission to give notice of a general meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

11.8 Consent to short notice

With the consent in writing of the majority of Members for the time being entitled to vote at a general meeting, any general meeting may be called on short notice and, in any manner, they think fit and all provisions of this Constitution are modified accordingly.

11.9 Cancellation or postponement of meeting

The Directors may cancel or postpone the holding of any general meeting. The Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members.

11.10 Notice of cancellation or postponement

The Directors may notify the cancellation or postponement of a meeting by such means as they see fit. If any meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Members of the postponed meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

11.11 Venue

Despite any other rule, the Company may hold a general meeting of Members at two or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

12. Representation at meeting

12.1 Persons entitled to attend

The following persons only may attend a general meeting:

- (a) each Director, Secretary, and auditor of the Company;
- (b) a proxy who is a Member;
- (c) other persons only with leave of the meeting or its Chairperson and then only while the leave has not been revoked in accordance with the terms of the leave.

12.2 Powers of the Chairperson

The right of a person to attend is subject to the powers of the Chairperson of the meeting granted by the Corporations Act, the ACNC Act and under this Constitution.

13. Proceedings at meetings of Members

13.1 Quorum

No business may be transacted at any general meeting unless a quorum of three (3) of Members is present at the time when the meeting proceeds to business. Except as provided in clause 15.2, the Members present at the meeting shall be a quorum.

13.2 **Failure of quorum**

If a quorum is not present within 15 minutes from the time appointed for a general meeting:

- (a) where the meeting was called by, or in response to, the requisition of Members made under the Corporations Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the Directors determine.

If no determination of an adjourned meeting is made by the Directors, the meeting stands adjourned to the same day in the second week following, at the same time and place. If at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the meeting is dissolved.

13.3 **Business of Annual General Meeting**

The business of an Annual General Meeting is:

- (a) to receive the Company's financial report, the Director's report, and the auditor's report on the financial statements;
- (b) to elect Directors in the place of those retiring; and
- (c) to transact any other business which under this Constitution, the Corporations Act or the ACNC Act ought to be transacted at an Annual General Meeting.

13.4 **Report on Company's activities**

The Board must at each Annual General Meeting in addition to the matters in clause 13.3, submit to the Members a report on the activities of the Company in the period since the previous general meeting.

13.5 **Frequency of Annual General Meeting**

The Company must hold an Annual General Meeting at least once every calendar year and within 5 months after the end of its financial year.

13.6 **Special business**

No special business may be transacted at any general meeting other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution, the Corporations Act or the ACNC Act to be transacted at the meeting.

13.7 **Chairperson of meeting**

The Chairperson, or in the Chairperson's absence the Deputy Chairperson of the Directors (if any), is entitled to take the Chair at each general meeting. If neither of those persons is present at any general meeting within 15 minutes after the time appointed for holding the meeting, or neither of them is willing to take the Chair, the Members present must elect a person.

13.8 **Passing the chair**

If the Chairperson of a general meeting is unwilling or unable to be the Chairperson for any part of the business of the meeting:

- (a) that Chairperson may withdraw as Chairperson for that part of the business and may nominate any person who would be entitled under the preceding clause to Chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to Chair the meeting upon the request of the prior Chairperson. The prior Chairperson is then entitled to resume as the Chairperson of the meeting.

13.9 **Responsibilities of Chairperson**

The Chairperson of a general meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly before the meeting. For these purposes, the Chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary, or rescind rulings;
- (c) prescribe, vary, or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity, or rejection of a vote.

13.10 **Admission to meetings**

The Chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the Chairperson to be dangerous, offensive, or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive, or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

13.11 Adjournment of meeting

The Chairperson may with the consent of any meeting at which a quorum is present (and must if so, directed by the meeting) adjourn the meeting from time to time and from place to place as the Chairperson determines.

13.12 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and no notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However, when a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

13.13 Personal attendance at Meetings

A Director must attend any meeting in person at least twice each financial year, however, **may** otherwise attend by remote conferencing such as by Teams or Zoom.

14. Voting at meetings of Members

14.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any Membership, each natural person who is present at a general meeting may vote if he or she is a Member or a proxy of a Member.

14.2 Number of votes

Each Member who is, under the preceding clause, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote; and
- (b) on a poll, one vote.

14.3 Method of voting

Every resolution put to a vote at a general meeting (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the Chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

14.4 Demand for poll

- (a) A demand for a poll under the preceding clause may be made by:
 - (i) the Chairperson of the meeting; or
 - (ii) at least four (4) persons present having the right to vote at the meeting.
- (b) In respect of any general meeting (unless a poll is so demanded):

- (i) a declaration by the Chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (ii) an entry made in the book containing the minutes of proceedings of the Members,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

14.5 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the Chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a Chairperson or on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

14.6 Casting vote of Chairperson

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a second or casting vote.

14.7 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes, the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

14.8 Ruling on votes

The Chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the Chairperson is final and conclusive.

15. Appointment and removal of Board of Directors

15.1 Board of Directors

- (a) The minimum number of Directors at any one time shall be six (6) and the maximum number of Directors at any one time shall be ten (10), however, the Board may from time to time increase or decrease the minimum, or maximum number of Directors having regard to the business imperatives at that time.
- (b) At least one (1) Director (or more if required by future legislation) must have experience in the provision of Clinical Care as required by the Aged Care Quality and Safety Commission.

- (c) At least, one half of the Board shall be independent Non-Executive Directors. All Directors must observe and fulfil such duties as may be required from time to time by the Australian Charities and Not for Profits Commission (or any other relevant statutory authority) including, in particular, Governance Standard 5 requiring certain duties of Directors.
- (d) The Chairman of the Board shall be elected on an annual basis.

15.2 Directors' qualification

A Director must be:

- (a) a natural person; and
- (b) over the age of 18 years; and
- (c) able to demonstrate competence in one or more of the following areas:
 - (i) Governance and Leadership;
 - (ii) Fundraising, Sales, and Marketing;
 - (iii) Finance and Accounting;
 - (iv) Legislative Compliance;
 - (v) Aged Care and Community Services;
 - (vi) Property and Infrastructure; and
- (d) not a person disqualified from managing a corporation, within the meaning of the Corporations Act; and
- (e) not a person disqualified by the Australian Charities and Not-for-profit Commissioner at any time during the preceding 12 months from being a Director of the Company under the ACNC Act.

15.3 Initial Directors

The Directors holding office at the date of adoption of this Constitution continue in office subject to this Constitution, with their retirement determined under clauses 15.5 or 15.6.

15.4 Casual appointment

The Directors may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Directors via a nomination of the Remuneration and Nominations Committee. Until that person is re-elected at a general meeting, that Director is a "casual appointee."

15.5 Retirement of casual appointee

A casual appointee, following his or her appointment by the Directors, holds office only until the conclusion of the next Annual General Meeting. The casual appointee is eligible for re-election at that Annual General Meeting.

15.6 Retirement

- (a) The maximum term for Directors to continue as Directors shall be nine (9) years and any Director intending to retire shall give the Board at least three (3) months' notice in writing to allow for succession planning.
- (b) The normal term for a Director, notwithstanding the provisions contained in clause 15.6(a) hereof is anticipated to be three (3) years and the Chairman of the Board shall be elected on an annual basis.
- (c) Notwithstanding the provisions contained in Clause 15.6(a) hereof the tenure of a Director may be extended on a year to year basis with the approval of a majority of the Board of Directors.

15.7 Deemed re-appointment

If there are fewer persons than the minimum number required standing for election or re-election than vacancies, all persons are deemed to be elected without the need for an actual election.

15.8 Candidates requiring nomination

No person is eligible for election to the office of Director at any general meeting unless duly nominated by the Remuneration and Nominations Committee.

15.9 Valid nominations

- (a) Nominations must be made to the Secretary at the Registered Office. Nominations close at 5.00 pm local time on the day which is 21 days before the date for the holding of the meeting. For a nomination to be valid:
 - (i) the nomination must name the candidate and be signed by not less than 3 other Members;
 - (ii) the person nominated must consent to act if elected;
 - (iii) the nomination and consent must be received before the close of nominations; and
 - (iv) before the holding of the meeting, the nomination must be reviewed by the Board and the Board must confirm the nominee satisfies the skill requirements and needs of the Company. If the Board does not formally provide its consent to a nomination, consent will be deemed to be given. No nominee may appeal against any determination by the Board in relation to any nomination.
- (b) The Board by resolution may nominate a person to be a Director but such person must satisfy the requirements in clause 15.2 and that person must consent to the nomination.

- (c) Consent is sufficient if the person signs a form of consent on the nomination paper. The Secretary may accept any other form of consent, including consent conveyed by electronic mail, whether or not accompanied by the nomination paper, that the Secretary deems satisfactory and such acceptance is final.

15.10 Resignation of Director

Any Director may retire from office by giving notice in writing to the Company's Chief Executive Officer of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However, the resignation must take effect within 3 months from the date of the giving of the notice.

15.11 Vacation of office

A Director will cease to be a Director if the Director:

- (a) ceases to be a Director by virtue of a provision under the Acts or any order under the Acts;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) is suspended or expelled as a Member in accordance with clause 11;
- (e) resigns his or her office by notice in writing to the Company;
- (f) If absent in person for two (2) consecutive meetings without the Board's approval.
- (g) is disqualified from managing a corporation, within the meaning of the Corporations Act; or
- (h) is disqualified by the Australian Charities and Not-for-profit Commissioner at any time during the preceding 12 months from being a Director of the Company under the ACNC Act.
- (i) If the Board deems that a Director is no longer a responsible person as defined by the Australian Charities Not for Profits Commission under Government Standard 5.

15.12 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a general meeting; or
- (c) in emergencies.

16. Appointment and removal of office bearers

16.1 Election of Chairperson and Deputy Chairperson

The Directors must annually elect from among their number a Chairperson and Deputy Chairperson of their meetings and may determine the period for which each is to hold office.

16.2 Election of other officers

The Directors must annually elect from among their number the secretary and such other officers as determined by the Directors.

17. Proceedings of Directors

Directors' meetings

- 17.1 The Board may meet for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit, including the use of technology to which each Director at the meeting consents (such consent may be a standing consent).

Director may convene a Board meeting

- 17.2 A Director may at any time, and the Secretary must upon the written request of a Director, convene a meeting of the Board.

Notice of Board meeting

- 17.3 Except in circumstances involving a bona fide emergency for the Company, each director must be given at least 48 hours' notice of a meeting of the Board, unless all of the Directors who are entitled to vote on the resolutions to be proposed at the meeting consent to shorter notice.

- 17.4 It is not necessary to give notice of a meeting of the Board to any Alternate Director unless:

- (a) notice of the meeting is not given to the appointing Director; or
- (b) the appointing Director has requested in writing that the Alternate Director received notices.

Quorum for Board meeting

- 17.5 The quorum for a meeting of the Board is

Three Directors who are entitled to vote on the resolutions to be considered at that meeting, present in person or by proxy.

Each Director has one vote

- 17.6 If a Director is entitled to vote on a resolution at a meeting of the Board, the Director is entitled to cast one vote on that resolution in that capacity.

Resolution decided by majority of votes cast

- 17.7 A resolution proposed at a meeting of the Board is to be decided by a majority of the votes cast on that resolution at that meeting and that decision is, for all purposes, deemed to be a decision of the Board.

Proxy at Board meeting

- 17.8 A person who is present at a meeting of the Board as a proxy for another Director has:
- (a) one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy; and
 - (b) if that person is also a Director, one vote as a Director in that capacity.

Chairperson at Board meetings

- 17.9 The Board may elect one of the Directors as Chairperson of their meetings and may also determine the period for which the person elected as Chairperson is to hold the office of Chairperson. In the event of an equality of votes then the Chairperson shall have a second or casting vote.

18. Director's contracts with Company

18.1 Director's contracts and conflicts of interest

In relation to Director's contracts and conflicts of interest, but subject at all times to clause 4:

- (a) despite any rule of law or equity to the contrary, no Director is disqualified by that office from contracting with the Company;
- (b) no Director shall be an employee of the Company;
- (c) any such contract, or any contract entered into by or on behalf of the Company in which any Director is in any way interested, is not avoided;
- (d) any Director so contracting or being so interested is not liable to account to the Company for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established;
- (e) the nature of the Director's interests must be disclosed by that Director at the meeting of the Directors at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case at the first meeting of the Directors after the acquisition of those interests related party transactions shall be recorded in the Related Parties' Register of the Company and should they be deemed material by the Board they shall be disclosed to

the Company's Accountant and noted in the Company's Audited Financial Statements.

- (f) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested if prohibited by the Acts from doing so. However, such Director may, despite that interest, participate in the execution of any instrument by or on behalf of the Company, whether through signing or sealing it or otherwise.

18.2 Notice of interest

A general notice given to the Directors by any Director in accordance with section 192 of the Corporations Act and to the effect that he or she:

- (a) is an officer or a member of, or interested in, any specified firm or body corporate; and
- (b) is to be regarded as interested in all transactions with such firm or body,

is sufficient disclosure as required by the Corporations Act as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any transaction with such firm or body.

18.3 Office in another company

- (a) A Director of the Company may be, or become a director or other officer of, or otherwise interested in, a body corporate promoted by the Company or in which the Company may be interested, or which holds any Membership in the Company.
- (b) No such Director is accountable to the Company for any remuneration or other benefits received by him or her as a Director or officer of, or from his or her interest in, such body corporate.
- (c) The Directors may exercise the voting power conferred by the shares or owned by the Company, or exercisable by them as Directors of such other body corporate in such manner in all respects as they think fit. This includes the exercise of that voting power in favour of any resolution appointing themselves, or any of them as Directors or other officers of such body corporate. Any Director may vote in favour of the exercise of such voting power in that manner despite the fact that he or she may be, or be about to be, appointed a Director or other officer of such corporation and as such is, or may become, interested in the exercise of such voting power in that manner.

19. Powers and duties of Directors

19.1 Powers generally

Subject to the Acts and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Directors who may exercise all such powers of the Company and do all such acts or things not expressly required by this Constitution or by the Acts to be exercised or done by a general meeting. No clause adopted or resolution passed by a general

meeting invalidates any prior act of the Directors which would have been valid if that clause or resolution had not been adopted or passed.

19.2 **Borrowing**

The Directors have the power to raise or borrow any sum of money and to secure the payment or repayment of such money and any other obligation or liability of the Company in such manner and on such terms as they think fit. This includes upon the security of any mortgage.

19.3 **Execution of negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed, or otherwise executed as the case may be, in such manner as the Directors at any time determine.

19.4 **Delegation**

The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under the Constitution by the Directors for such time as they may think fit and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect. They may at any time revoke, withdraw, alter, or vary all or any of such powers.

19.5 **Validity of acts**

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter, or thing which but for such omission would have been valid.

20. **Patron**

The Board may from time to time appoint a patron to represent the Company and promote the Objects of the Company throughout the community.

21. **Committees**

21.1 **Delegation to committee**

- (a) The Board may from time to time establish such committees as it sees fit to assist it in carrying out its functions.
- (b) The Directors may:
 - (i) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; or
 - (ii) establish advisory committees (or other similar committees) not having delegated authority or powers.

- (c) At least one Director, being an independent Director, must be a member of any Committee established by the Board and may also be the specialist referred to in clause 21.3.

21.2 Committee powers

- (a) The Directors may determine from time to time the functions, purpose, objectives and terms of reference of each committee.
- (b) Any committee so formed, or persons appointed to those committees must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors.

21.3 Committee meetings

- (a) A Chairperson must be nominated for any committee established and that Chairperson must be a Director. The meetings and proceedings of any committee to be conducted in accordance with the principles of meetings of Directors.
- (b) At the election of the Board where specialist advice is required, a committee shall also comprise a person who is a specialist in the field required and that person shall be entitled to be paid such remuneration as may be determined by the Board from time to time.

22. Minutes

The Board will cause minutes to be made:

- (a) of all appointments of statutory officers;
- (b) of names of Directors present at all meetings of the Company and of the Board; and
- (c) of all proceedings at all meetings of the Company and of the Board.

Such minutes must be signed by the Chairperson of the relevant meeting or the Chairperson of the next meeting of the relevant body.

23. Seal

23.1 Mode of execution by common seal

Every document to which the Seal is affixed must be signed, to attest the affixing of the Seal, by two persons. One must be a Director or Company Secretary. The other must be the Secretary, another Director, or such other person as the Directors may appoint in accordance with section 127 of the Corporations Act. No person may sign in more than one capacity.

24. Accounts and audit

24.1 Distribution of documents

The Board will cause proper accounting and other books of account to be kept and will distribute to the Members with the notice of the Annual General Meeting all accounts and other documents required by law to be so distributed in accordance with relevant legislation and the Board will table at each Annual General Meeting all accounts and other documents required by law to be tabled.

24.2 Inspection

The Board will determine in accordance with this clause at what times and places, under what conditions or regulations the accounting and other records of the Company will be open to the inspection of Members of the Company.

24.3 Audit

The Company must in accordance with the Acts and any State or Territory legislation applicable to registration of charities, or charitable fundraising arrange for the accounts to be audited in accordance with the Acts and the applicable State or Territory legislation.

25. Notices

25.1 Service of notices

Where this Constitution, the Acts or other legislation require or permit a document to be served on, given, sent, or dispatched to, any person, whether any such expression or any other expression is used (in this clause referred to as served), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence; or
 - (ii) business of the person last known to the person serving the document; or
 - (iii) in the case of a Member, to the postal or email address of the Member entered in the Register,

the document, by such dispatch, is regarded as left at that address; or

- (c) subject to the Acts, by publication in a newspaper circulating generally in the State in which the Registered Office is located.

25.2 Date of deemed service

A document served under clause 25.1 is treated as having been duly served, regardless of whether it is actually received:

- (a) where clause 25.1(a) applies – on the day of delivery;
- (b) where clause 25.1(b) applies - on the day following the day when dispatch occurred; and
- (c) where clause 25.1(c) applies - on the day, the newspaper is first published.

26. Counting of days

Subject to the Acts, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

26.1 Service on Company or its officers

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the Registered Office.

26.2 Signature

The signature to any document to be given by the Company may be written, printed, or stamped.

27. Indemnity

27.1 Indemnity for officers

To the extent that the Acts allows it, each Officer of the Company, and each Officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

27.2 Insurance premiums

The Company may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is an Officer of the Company against a liability incurred by the person. The liability insured against may not include that which the Acts prohibits. Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration approved by Members under this Constitution.

28. Alteration of Constitution

This Constitution may only be amended, added to, or rescinded by a Special Resolution of the Members of the Company.

29. Definitions and interpretation

29.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Acts means the Corporations Act and the ACNC Act as it applies to the Company for the time being;

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as it applies to the Company for the time being;

Board means the Board of Directors of the Company from time to time;

Chairperson means the Chairperson of the Board appointed from time to time in accordance with clause 125.1;

Company means Northern Coalfields Community Care Association Ltd (ACN 003 605 267);

Constitution means this constitution;

Corporate Governance Policy means the Company's Corporate Governance Policy;

Corporations Act means the *Corporations Act 2001* (Cth) as it applies to the Company for the time being;

Directors means the Directors of the Company in office for the time being;

General Meeting means a meeting of Members duly called and constituted in accordance with this Constitution and any adjourned holding of it;

ITAA means the *Income Tax Assessment Act 1997* (Cth) as amended from time to time

Member means any person entered in the Register as a member for the time being of the Company; (A member is a Director)

Objects of the Company means the objects set out in clause 2.1;

Officer means

- (a) a director or secretary of the corporation; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or

- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Ordinary Resolution means a resolution of a general meeting where more than 50% of the total votes cast on the resolution are in favour of the resolution;

Patron means a person appointed as patron pursuant to clause 22;

Register means the Register of Members kept under the Act and includes any branch Register;

Registered Office means the Registered Office for the time being of the Company;

Remuneration includes, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes or profit-sharing schemes;

Seal means the common seal of the Company and includes any official seal of the Company;

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily; and

Special Resolution means a resolution of a general meeting where at least 75% of the votes cast on the resolution are in favour of the resolution and which is passed in accordance with sections 249H and 249L of the Corporations Act.

29.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

29.3 Replaceable rules

The operation of each of the sub-sections of the Corporations Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.