

**Corporations Act, 2001
A Company Limited by Guarantee**

CONSTITUTION
of
BaptistCare Community Housing Limited
(ACN 667 330 065)

(as amended by special resolution: 27 November 2024)

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1 Name of the Company

The name of the Company is BaptistCare Community Housing Limited.

2 Type of Company

2.1 Type of Company

The Company is a not-for-profit public company limited by guarantee.

2.2 Guarantee by the Member

Every Member undertakes to contribute to the assets of the Company, in the event of it being wound up while that person is a Member, or within one year after that person ceases to be a Member, for payment of the debts and liabilities of the Company contracted before that person ceases to be a Member, and of the costs, charges and expenses of winding up the Company and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding ten (10) dollars.

3 Exclusion of replaceable rules

This Constitution displaces the Replaceable Rules to the extent it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless the context otherwise requires:

- (a) **ACNC** means Australian Charities and Not-for-profits Commission.
- (b) **ACNC Act** means *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
- (c) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).
- (d) **AGM** means annual general meeting.
- (e) **Act** means the *Corporations Act 2001* (Cth).
- (f) **Auditor** means any auditor of the Company appointed from time to time.
- (g) **Board** means the board of Directors.
- (h) **Business Day** means a day which is not a Saturday, a Sunday or a public holiday in Sydney.
- (i) **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 40**.
- (j) **Chair** means a Director appointed to that position pursuant to **clause 22.3(b)**.
- (k) **Chairperson** means the person holding that office under this Constitution and includes any assistant or acting chairperson.
- (l) **Committee** means a committee of the Member's board of directors to which the Board has delegated its powers under **clause 36**.
- (m) **Company** means BaptistCare Community Housing Limited or as it may otherwise be named from time to time.

- (n) **Constitution** means the constitution of the Company as contained in this document and as may be amended from time to time.
- (o) **DGR** means a deductible gift recipient as defined by the law.
- (p) **Director** means a director of the Company from time to time.
- (q) **Member** means:
 - (i) BaptistCare NSW & ACT (ACN 000 049 525); or
 - (ii) a replacement Member admitted pursuant to **clauses 9(c) and 9(d)**, and **Membership** has the corresponding meaning.
- (r) **Member's Guarantee Amount** means the amount referred to in **clause 2.2**.
- (s) **Objects** means the objects of the Company as set out in **clause 5.1**.
- (t) **Officer** has the same meaning as given to that term in section 9 of the Act.
- (u) **Register** means the register of Members to be kept pursuant to the Act.
- (v) **Registration** means registration of the Company as a body corporate by the Australian Securities and Investments Commission.
- (w) **Registered Office** means the registered office of the Company from time to time.
- (x) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Act.
- (y) **Representative** means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate, as described in **clause 7**.
- (z) **Seal** means the common seal of the Company (if any) and includes any duplicate common seal and official seal of the Company.
- (aa) **Secretary** means any person appointed to perform the duties of a secretary of the Company and includes an assistant secretary and any person appointed temporarily to perform the duties of secretary or assistant secretary.
- (bb) **Significant Issue** means any matter which may have a material reputational, financial, operational or legal impact on the Company or the Member.
- (cc) **Special Resolution** has the meaning given to it by the Act.
- (dd) **Subscription** means the subscription fees payable by the Member pursuant to **clause 8**.

4.2 Interpretation

In the interpretation of this Constitution, unless any contrary intention appears:

- (a) a reference to a clause, sub-clause, paragraph or Schedule is to a clause, sub-clause, paragraph or Schedule of this Constitution;
- (b) a reference to gender includes all genders;
- (c) words importing the singular include the plural and vice versa;
- (d) headings are for convenience only and do not affect interpretation;
- (e) except so far as the contrary intention appears, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- (f) a reference to a body (including an institute, association, authority, union, board or committee), whether statutory or not:
 - (i) which ceases to exist;
 - (ii) whose powers or functions are transferred to another body; or

- (iii) whose name is changed from the name it had at the date this Constitution is adopted,
is a reference to the body which replaces it or which substantially succeeds to its powers or functions or as such body may then become named, as applicable; and
- (g) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email.

5 Objects

5.1 Objects

- (a) The Company is motivated by transforming lives by expressing the love of Christ. It is a charitable institution established to provide relief to the disadvantaged, vulnerable and marginalised, as well as people at serious risk of experiencing those conditions. The Company achieves this object by:
 - (i) supporting and providing care to vulnerable elderly persons, and persons who need assistance with everyday tasks due to their vulnerability;
 - (ii) providing benevolent relief of suffering, distress, misfortune, helplessness and disadvantage experienced by people living in local, regional and metropolitan communities throughout Australia, particularly by providing homes, social and affordable housing and related support to people who are disadvantaged through homelessness, sickness, disability, mental illness, ageing, low income or financial hardship;
 - (iii) providing relief to people suffering from mental illness and/or who are affected by family violence and/or abuse;
 - (iv) providing poor and disadvantaged persons anywhere with relief in money or in kind and to give them board, lodging, clothing, food, medical attendances, nursing services, medicine and all things and appliances of a medical, surgical, dietetic and dental nature; and
 - (v) doing anything ancillary to the Objects referred to in clauses **5.1(a)(i)** to **5.1(a)(iv)** (including partnering with or working in collaboration with other organisations, including the Member and other organisations with objects similar to the Objects, to provide benevolent relief and to achieve the Objects referred to in clauses **5.1(a)(i)** to **5.1(a)(iv)**.
- (b) The Company can only exercise the powers in section 124(1) of the Act to:
 - (i) carry out the Objects; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Assets and Income

The assets and income of the Company shall be applied solely and exclusively in the furtherance of its abovementioned Objects and no portion shall be either distributed directly or indirectly (by way of dividend, bonus or otherwise) to the Member. However, this clause does not prevent:

- (a) the payment in good faith in return for any services actually rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) paying interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company;
- (c) making a payment to the Member in carrying out the Company's charitable purposes; or

- (d) the payment of reasonable and proper rent for premises leased by the Member to the Company.

5.3 Remuneration of Directors

- (a) No payment shall be made to any Director other than the following payments in good faith by the Company:
 - (i) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
 - (ii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

MEMBERSHIP

6 Admission to Membership

6.1 Sole Member

The Company shall at all times only have one (1) Member which, subject to **clauses 9(c) and 9(d)**, is Baptist Care NSW & ACT (ACN 000 049 525).

6.2 Member Responsibilities and Benefits

- (a) The Member agrees to assume the liability to pay the Member's Guarantee Amount.
- (b) The Member shall be entitled to vote at general meetings.
- (c) In addition to the Member being entitled to vote at all general meetings, the Board shall determine from time to time what additional benefits shall attach to Membership.

7 Representative(s)

- (a) The Member must appoint as its Representative(s) a minimum of one (1) natural person(s).
- (b) The Member may appoint more than one (1) Representative, but only one (1) Representative may exercise the Member's powers at any one time.
- (c) The name and address of the Representative(s) will be entered in the Register as the representative of the Member.
- (d) All correspondence and notices from the Company will be served on the Representative(s), and any notice served on the Representative(s) will be deemed to be service on the Member.
- (e) If the appointment of a Representative by the Member is made by reference to a position held, the appointment must identify the position.
- (f) Despite **clause 10**, the Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.
- (g) A signature by a Representative of the Member on behalf of the Member is taken to be the signature of the Member for the purposes of this Constitution.
- (h) Any power or right of the Member as granted by this Constitution can be

- exercised by a Representative of the Member.
- (i) The actions of a Representative bind the Member.
 - (j) Each Representative shall comply with the terms of this Constitution in all matters pertaining to the Company as if the Member himself or herself.

8 Subscriptions

- (a) There may be an annual Subscription payable by the Member to the Company.
- (b) The amount of any such annual Subscription, as well as the timing and manner of payment, will be determined by the Board from time to time.
- (c) The Board may in its discretion:
 - (i) determine that no annual Subscription is payable by the Member in a given year; and
 - (ii) extend the time for payment of the annual Subscription by the Member.
- (d) No part of any annual Subscription shall be refunded to the Member who ceases to be the Member in accordance with **clause 9**.

9 Cessation of Membership

- (a) The Member's Membership will cease:
 - (i) on the date that the Secretary receives written notice of resignation from the Member;
 - (ii) if;
 - (A) the Member is dissolved or otherwise ceases to exist; or
 - (B) the Member has:
 - (1) a receiver;
 - (2) a receiver and manager;
 - (3) a liquidator;
 - (4) an administrator;
 - (5) an administrator of a deed of company arrangement; or
 - (6) a trustee of other person administering a compromise or arrangement between the Member and someone else, appointed to it.
- (b) The Member may at any time, pursuant to **clause 9(a)(i)**, resign as the Member but shall continue to be liable for:
 - (i) any monies due by the Member to the Company; and
 - (ii) any sum for which the Member is liable as the Member of the Company under **clause 2.2**.
- (c) In the event that the Member ceases to be the Member pursuant to **clause 9(a)**, the vacating Member shall have the power to admit a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of the vacating Member, subject to **clause 9(e)**.
- (d) In the event that the vacating Member does not admit a new Member pursuant to **clause 9(c)**, the Board may immediately admit a new Member to the

Company, the choice of that new Member being within the full and unfettered discretion of the Board, subject to **clause 9(e)**.

- (e) The new Member referred to in **clause 9(c)** and **9(d)** must be a charitable body corporate with similar purposes to the vacating Member.

10 Membership Entitlements not Transferable

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

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

GENERAL MEETINGS

11 Convening of General Meetings

11.1 AGM

Notwithstanding section 111L of the Act:

- (a) in the event that the Board wishes to do so, it may convene an AGM; and
- (b) any AGM which is convened must be done so in accordance with the requirements of the Act.

11.2 Convening of General Meetings

- (a) The Board may, whenever it thinks fit, convene a general meeting.
- (b) Notwithstanding section 111L of the Act:
 - (i) the Member may call a general meeting; and
 - (ii) the Company will do so,in accordance with the provisions of Part 2G.2 of the Act pertaining to the rights of members to call a general meeting.
- (c) A general meeting of the Company may be convened virtually or at the time and place (including using one or more methods of secure technology that gives the Member a reasonable opportunity to participate in the meeting) and in the manner the Board resolves.

12 Notice for General Meetings

- (a) Subject to consent to shorter notice being given in accordance with the Act (notwithstanding section 111L of the Act), at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (iv) if the meeting is to be held virtually or in two or more places, the technology that will be used to facilitate this; and
 - (v) any other information required by the Act (notwithstanding the application of section 111L of the Act).
- (b) The accidental omission to give notice of any general meeting to or the non-

receipt of notice of a meeting by any person entitled to receive notice (except the Member) will not invalidate the proceedings at, or any resolution passed at, the meeting.

- (c) Subject to **clause 12(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
 - (i) the Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

13 Postponement or Cancellation of General Meetings

13.1 Postponement or Cancellation of General Meeting

- (a) Subject to the provisions of the Act (notwithstanding section 111L of the Act) and this Constitution, the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by the Member pursuant to **clause 11.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by the Member.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Member relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed, the Board must give notice in writing to each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting.

13.2 Failure to Notify in Writing

Any failure to notify in writing any person entitled to receive notice of the meeting (excluding the Member) or failure of a person to receive a written notice (excluding the Member) shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

14 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum at all times during the meeting.
- (b) For the purpose of **clause 14(a)**, the Member shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of the Member, shall be dissolved; or
 - (ii) in any other case:

- (A) it will stand adjourned to such other day time and place as the Board may by notice to the Member appoint; and
- (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

15 Chairperson

- (a) The Chair shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair; or
 - (ii) the chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting,then another Director chosen by the Directors present at the meeting will be Chairperson in lieu of the Chair.
- (c) The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

16 Adjournments

- (a) The Chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs,to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

17 Determination of Questions

- (a) At any general meeting, a resolution to be considered at the meeting shall be decided on the verbal vote of the Member.
- (b) Notwithstanding **clause 17(a)**, where not excluded from doing so by the law, the Member may pass a resolution by the Member recording it and signing the record.

18 Disqualification

No person other than:

- (a) a Representative; or
 - (b) an attorney of the Member,
- shall be entitled to vote at a general meeting.

19 Objections to qualification to vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson whose decision shall be final and conclusive and a vote allowed by the Chairperson shall be valid for all purposes.

20 Right of Non-Members to Attend General Meeting

- (a) The Chairperson of a general meeting may invite any person who is not the Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

PROXIES

21 No Right to Appoint Proxies

The appointment by a Member or a Representative of a proxy is not permitted.

APPOINTMENT AND REMOVAL OF DIRECTORS

22 Number and Appointment of Directors

22.1 Number of Directors

- (a) The number of Directors who comprise the Board shall be not fewer than three (3) and not more than five (5).
- (b) The Member may vary the maximum number of Directors holding office from that referred to in **clause 22.1(a)**, but not the minimum number of Directors.

22.2 Composition of Board

- (a) Subject to **clause 22.3**, the Board shall consist of:
 - (i) the Chief Executive Officer of the Member;
 - (ii) the Chief Financial Officer of the Member;
 - (iii) a General Manager Community Housing of the Member; and
 - (iv) any other person(s) appointed by the Member,so long as the number of Directors is within the range referred to in **clause 22.1**.
- (b) The eligibility of any Director to remain on the Board is dependent upon the Director holding one of the positions stated in **clause 22.2(a)** or being appointed by the Member.

22.3 Initial Board

- (a) The Directors of the initial Board shall hold office for so long as they remain eligible pursuant to **clause 22.2(b)**, unless they cease to be a Director under **clause 24**.
- (b) The Director eligible pursuant holding the position stated in **clause 22.2(a)(i)** shall be the Chair of the Board.

23 Right to Appoint Directors

The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in accordance with **clause 22.1** the Member may act for the purpose of:

- (a) increasing the number of Directors to the minimum; or
- (b) convening a general meeting.

24 Vacation of office

- (a) Any Director may resign from office on giving written notice to the Company at the Office of his intention to resign and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) ceases to be eligible pursuant to **clause 22.2(b)**;
 - (iii) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (iv) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Act;
 - (v) has been disqualified by the ACNC Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
 - (vi) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (vii) is removed from office by the Company in a general meeting (including a sole member resolution if there is only one member);
 - (viii) resigns by notice in writing to the Company; or
 - (ix) is absent without the consent of the Board from meetings of the Board during a period of 3 consecutive months, unless the Board resolves that this does not constitute resignation.

25 Casual Vacancies

- (a) In the event of a casual vacancy occurring on the Board, the Member may in relation to a Director vacancy, appoint a Director.
- (b) Any Director appointed pursuant to **clause 25(a)** shall hold office for so long as they remain eligible pursuant to **clause 22.2(b)**.

26 Alternate Directors

Alternate Directors shall not be permitted.

POWERS AND DUTIES OF DIRECTORS

27 Duties of Directors

- (a) Each Director is subject to, and must comply at all times with, the duties set out in governance standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with governance standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

28 Powers of Directors

- (a) The control, management and conduct of the Company shall be vested in the Board, who shall exercise all such powers of the Company as are not by the Act, the ACNC Act, the ACNC Regulation or by this Constitution required to be exercised in any other manner.
- (b) A Director is, pursuant to section 187 of the Act, taken to have acted in good faith in the best interests of the Company even if that Director is acting in the best interests of the Member if the following conditions are satisfied:
 - (i) the Director acts in good faith in the best interests of the Member; and
 - (ii) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

29 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
 - (b) the Secretary; or
 - (c) another staff member of the Company,
- to sign such instruments.

30 Conferment of Powers

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 30** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

31 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the provisions of the relevant legislation, being either:
 - (i) the Act; or
 - (ii) the ACNC Regulation,which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 31(b)**, a Director who has a material personal interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
 - (i) not be present while the matter is being considered at a meeting;
 - (ii) not vote on the matter;
 - (iii) still be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this **clause 31** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

32 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than once each calendar year.
- (b) The Secretary shall, upon the request of at least one (1) Director, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the

meeting to all Directors, provided that the Director or Secretary must have used their best endeavours to ensure that the notice was properly served and received.

- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 32(e)**, a Board meeting may be convened or held virtually or using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 32(d)**, must be available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

33 Quorum

- (a) The quorum necessary for the transaction of the Board's business is Directors being personally present (or in conference in accordance with **clause 32**) is two (2) Directors.
- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 31** shall be counted in the quorum despite that disqualification.

34 Chairperson

- (a) Where a Board meeting is held, the Chairperson shall be the Chair but if:
 - (i) the Chair has not been appointed; or
 - (ii) the Chair is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act,the Directors present shall elect one of their number as chair of that meeting.

35 Voting

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairperson is entitled to a casting vote in addition to a deliberative vote.

36 Committees

- (a) The Board may delegate any of its powers to one or more Committees of the Member's board of directors. Such Committees shall have the powers, functions, responsibilities and membership set out under their respective terms of reference.

37 Written resolutions

- (a) The Board or a Committee may pass a resolution without a Board meeting being held if:
 - (i) in the case of the Board, two (2) Directors; and
 - (ii) in the case of a Committee, the total number of Committee members, sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) An email transmission which is received by the Company and which purports to have been sent by a Director or Committee member shall for the purposes of this **clause 37** be taken to be in writing and signed by that Director or Committee member at the time of the receipt of the email transmission by the Company.
- (c) A vote made by a Director or Committee member using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 37** be taken to be in writing and signed by that Director or Committee member at the time the vote was received by the online voting platform.
- (d) Any decisions made under this **clause 37** shall be tabled at the next Board meeting or Committee meeting, as the case may be.

38 Defects in appointments

The acts of a person acting as a Director or Committee member and the resolutions of the Board and of a Committee comprising that person are as valid as if the person had been duly appointed as a Director or a Committee member notwithstanding that it may subsequently be discovered that there is a defect in that person's appointment or that the person was disqualified from acting as such.

SECRETARY

39 Secretary

39.1 Appointment

The Board shall appoint a Secretary on such terms as it thinks fit and the Secretary shall be the company secretary of the Member.

39.2 Termination

The Board may at any time terminate the appointment of a Secretary.

BY-LAWS

40 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on the Member and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Member all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

41 Seals and Execution of Documents

41.1 Safe custody

The Board shall provide for the safe custody of any Seal.

41.2 Use of Seals

- (a) A Seal shall only be used by the authority of the Board.
- (b) Every document to which a Seal is affixed shall be signed by a Director and be countersigned by another Director, Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

41.3 Seal not required for valid execution

The Company may execute a document in any manner permitted by the Act or as authorised by the Board and nothing in this clause should be read as requiring execution by the Company under Seal.

ACCOUNTS AND INSPECTION OF RECORDS

42 Finance and Accounts

42.1 General funds

The general funds of the Company shall be under the control of the Board.

42.2 Deposit of funds

All funds of the Company shall be deposited in the first instance to the credit of the Company at such bank or banks as may be approved by the Board. All cheques shall be signed as may be directed from time to time by the Board. Bank accounts shall be kept in the name of the Company into which all moneys received shall be paid. It shall be the duty of the Secretary or other officer appointed by the Board to receive any moneys, subscriptions, donations and contributions due by Members and to apply them to the credit of the Company at the bank appointed.

42.3 Official receipts

Official receipts for any subscriptions, donations or other payments to the Company shall be given by the Secretary or other officer of the Company duly authorised by the Board.

42.4 Availability of funds

All funds or property of the Company not impressed with a trust for any particular purpose shall be available at the discretion of the Board for the purpose of the Company in any part of the Company's sphere of operation and for subscribing to or otherwise aiding within the powers conferred by the Constitution some other institution or institutions in the Commonwealth of Australia having objects similar to the objects of the Company.

42.5 Records

The Board shall cause proper records to be kept with respect to all matters required by the Act, including:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods and services by the Company; and
- (c) the assets and liabilities of the Company.

The records must be such that they correctly record and explain the Company's transactions and financial position and performance and enable true and fair financial statements to be prepared and audited.

42.6 Books of account kept at Registered Office

The books of account shall be kept at the Office or at such place or places as the Board thinks fit.

42.7 Annual financial reports

Subject to (and in accordance with) the Act or the ACNC Act or ACNC Regulation, the Board shall cause to be prepared, for each financial year, a financial report (which includes the financial statements, notes to the financial statements and the Directors' declaration about the statements and notes) and a Directors' report and shall (where required by, and in accordance with, the Act or the ACNC Act or ACNC Regulation) cause the financial report to be audited by the Auditor.

42.8 Financial report laid before AGM

At any AGM that may be held pursuant to **clause 11.1** (and subject to the requirements under the Act from time to time, notwithstanding section 111L of the Act), the Board shall lay before the Company the financial report, the Directors' report and the Auditor's report (where applicable) for the last financial year that ended before the current AGM.

42.9 Errors in financial report

Every financial report when audited and approved by a general meeting shall be conclusive except as regards any error discovered therein within three (3) months following its approval and except as provided below. Whenever such error is discovered within that period, the financial report shall forthwith be corrected and shall then be conclusive.

42.10 Provision of financial report to persons entitled

Subject to (and in accordance with) the Act (notwithstanding section 111L of the Act), a copy of every financial report (including every document required by the Act to be annexed or attached thereto) which is to be laid before the Company in general meeting shall be sent to all persons entitled to receive notices of general meetings of the Company in accordance with the timing requirements prescribed by the Act.

42.11 Accounts of officers

The accounts of any officer of the Company may be settled and allowed or disallowed either wholly or in part by the Board.

43 Audit

An Auditor(s) shall be appointed and the Auditor's duties will be regulated, as may be required by and in accordance with the Act or the ACNC Act or the ACNC Regulation.

44 Minutes and Records

44.1 Keeping of minutes

The Board and any Committee thereof shall cause minutes to be duly entered in the books provided for the purpose:

- (a) of all appointments of officers of the Company;
- (b) of the names of the Directors present at each meeting of the Board and of any Committee of the Directors;
- (c) of all orders made by the Board and Committees of Directors; and
- (d) of all resolutions and proceedings of general meetings and of meetings of the Board and Committees.

44.2 Evidence

Minutes of a meeting of the Board or any Committee thereof purporting to be signed by the chair of that meeting or by the chair of the next succeeding meeting and any document purporting to be signed by a Director pursuant to **clause 37** are, unless the contrary is proved, evidence:

- (a) of the matters stated; and
- (b) in the case of minutes of a meeting:
 - (i) the meeting having been duly convened and held; and
 - (ii) the validity of all proceedings at the meeting.

44.3 Reporting to Member

The Board and any Committee must:

- (a) provide a copy of all board papers and signed minutes of each meeting of the Board, and each meeting of any Committee to the Member;
- (b) provide copies of any information requested by the Member and meet with representatives of the Member upon request; and
- (c) within a reasonable period, provide a summary report and, if requested, accompanying evidence to the Member of any Significant Issue.

NOTICES

45 Notices and Payments

45.1 Notices

- (a) The Company may give a notice to a Member by:
 - (i) serving it personally;
 - (ii) sending it by post to the address as shown in the Register or the address supplied by that person to the Company for the giving of notices; or
 - (iii) sending it by electronic means to an electronic address supplied by that person to the Company for the giving of notices.
- (b) Subject to this Constitution, a notice may be given under this Constitution to any Director by:
 - (i) serving it on the Director personally;
 - (ii) sending it by post to the Director or leaving it at the Director's usual residential or business address; or
 - (iii) sending it to the electronic address supplied by the Director to the Company for the giving of notices.
- (c) Subject to this Constitution, a notice may be given by a Member or Director to the Company by:
 - (i) serving it on the Company at the Office;
 - (ii) sending it by post to the Office; or
 - (iii) email to the Company's principal email address.
- (d) A notice to a person whose address for notices is outside Australia must be sent by airmail or electronic means.
- (e) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice and to have been effected:
 - (i) within three (3) business days, if within Australia; and
 - (ii) within fourteen (14) business days, if overseas.
- (f) Where a notice is sent electronically, service of the notice shall be deemed to be effected at the time that it is sent.
- (g) The fact that a person has supplied an electronic address to the Company for the giving of notices does not oblige the Company to give notices to that person electronically.
- (h) The signature to any notice to be given by the Company may be written, printed or typed.
- (i) Where a given number of days' notice or notice extending over any other period is required to be given, the day of service shall, but the day upon which

such notice will expire shall not be included in the number of days or other period.

45.2 Other documents

Clause 45.1 applies, to the extent possible, to the service of any communication or document.

GENERAL

46 General

46.1 Jurisdiction

The Member submits to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any matter arising:

- (a) under this Constitution; and
- (b) between the Company and that person.

46.2 Proper law

Any matter arising:

- (a) under this Constitution; or
 - (b) between the Company and the Member,
- shall be determined in accordance with the law of New South Wales.

46.3 Enforceability

- (a) Any provision, or the application of any provision, of this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision, or the application of any provision, of this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in any other place.
- (c) If a provision of this Constitution is illegal, ineffective or unenforceable:
 - (i) if the provision would not be illegal, ineffective or unenforceable if a word or words were omitted, that word is or those words are omitted; and
 - (ii) in any other case, the whole provision is severed, and the remainder of this Constitution continues in force.

INDEMNITY

47 Officers' Indemnity and Insurance

47.1 Indemnity

- (a) To the maximum extent permitted by law, every officer and former officer of the Company must be indemnified out of the property of the Company (or of a related body corporate) against any liability (including a liability for legal costs) incurred as a result or in consequence of the holding or performance of that office, including:

- (i) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of that officer or in which that officer is acquitted; or
 - (ii) in connection with any application in relation to any such proceedings in which relief is granted under the law to that officer by the Court.
- (b) The Board may cause the Company to provide a separate contractual indemnity to an officer of the Company.

47.2 Insurance

- (a) The Board may cause the Company to effect, at the Company's (or a related body corporate's) expense, insurance indemnifying an officer or former officer of the Company against claims arising from the holding or performance of that person's office, to the maximum extent permitted by law.
- (b) A policy of insurance permitted under **clause 47.2(a)** must not provide an indemnity which is prohibited by law.

WINDING UP

48 Dissolution of the Company

- (a) If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, such property shall not be paid to or distributed to the Member but shall be given or transferred:
 - (i) in the case of all such surplus property other than community housing assets (to which **clause 48(a)(ii)** applies), to some other institution or institutions, provided such other institution or institutions:
 - (A) has or have objects similar to the Objects and is charitable;
 - (B) prohibit(s) the distribution of income and property among its or their members to an extent at least as great as is imposed on the Company under **clause 5.2**;
 - (C) is or are exempt from income tax under section 50-5 of the *Income Tax Assessment Act, 1997* (Cth) or some equivalent provision; and
 - (D) is or are ones to which tax deductible gifts can be made under Item 1 of the Table in Section 30-15 of the *Income Tax Assessment Act, 1997* (Cth) or some equivalent provision; and
 - (ii) in the case of all remaining community housing assets in a participating jurisdiction, to another registered community housing provider or to a Housing Agency in the jurisdiction in which the asset is located.
- (b) For the purposes of **clause 48(a)(i)**, such institution or institutions is or are to be determined by the Member.
- (c) If effect cannot be given to **clause 48(b)**, then the recipient of such property shall be determined by application to the Supreme Court of New South Wales.
- (d) For the purpose of this **clause 48**, and subject to **clause 48(e)** below, the following terms shall have the meanings prescribed from time to time in the *Community Housing Providers National Law* ("**Law**"), being an appendix to the *Community Housing Providers (Adoption of National Law) Act, 2012* (NSW),

and which at the date of adoption of this clause are defined in section 4 of the Law as follows:

- (i) **“community housing”** means housing for people on a very low, low or moderate income or for people with additional needs that is delivered by non-government organisations.
- (ii) **“community housing asset”** of a community housing provider means:
 - (A) land vested in the provider by or under the community housing legislation of a participating jurisdiction;
 - (B) land acquired by the provider wholly or partly with funding provided by a Housing Agency of a participating jurisdiction;
 - (C) land vested in the provider on which a Housing Agency of a participating jurisdiction has constructed housing or made other improvements;
 - (D) funds provided to the provider by a Housing Agency of a participating jurisdiction for the purposes of community housing; or
 - (E) any other asset of the provider that is of a class of assets declared by the community housing legislation of a participating jurisdiction as community housing assets for the purposes of this Law.
- (iii) **“community housing legislation”** of a participating jurisdiction means:
 - (A) this Law as it applies as a law of that jurisdiction by an Act of that jurisdiction (including provisions of that Act that relate to the application of this Law in that jurisdiction); or
 - (B) so much of an Act of that jurisdiction that contains provisions that substantially correspond to the provisions of this Law,and includes any other legislation of that jurisdiction that the law of that jurisdiction declares to be community housing legislation.
- (iv) **“entity”** means the following:
 - (A) a company limited by shares or guarantee under the Act;
 - (B) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act, 2006* of the Commonwealth; or
 - (C) a body corporate, cooperative or incorporated association created under legislation of the Commonwealth or a State or Territory.
- (v) **“Housing Agency”** of a participating jurisdiction, means a body or officer declared to be a Housing Agency of that jurisdiction by the community housing legislation for that jurisdiction for the purposes of the provision of this Law in which the expression occurs.
- (vi) **“participating jurisdiction”** means an Australian jurisdiction in which:
 - (A) this Law applies as a law of the jurisdiction; or
 - (B) a law that substantially corresponds to the provisions of this Law has been enacted.
- (vii) **“registered community housing provider”** means an entity registered under this Law as a community housing provider.

- (viii) “**Registrar**” means a Registrar for a participating jurisdiction as referred to in section 9 of the Law.
- (e) For the avoidance of doubt, and notwithstanding any other provision of this Constitution, if the Member meets the requirements set out in **clauses 48(a)(i)** or **48(a)(ii)** respectively, the Company may pay or distribute property to the Member pursuant to this **clause 48**.

49 Revocation of DGR Status

- (a) If the endorsement of the Company as a DGR is revoked at a time prior to the winding up or dissolution of the Company, any DGR Assets remaining after the satisfaction of all of the Company’s debts and liabilities shall be given or transferred to an institution, fund or authority which meets the requirements in **clause 48(a)(i)**.
- (b) Such institution, fund or authority is to be determined by the Member at, before or as soon as reasonably practicable after the time the endorsement of the Company as a DGR is revoked.
- (c) If effect cannot be given to **clause 49(b)**, then the recipient of DGR Assets remaining after the satisfaction of all of the Company’s debts and liabilities shall be determined by application to the Supreme Court of New South Wales.
- (d) For the purpose of this **clause 49**, the term “**DGR Assets**” has the following meaning:
 - (i) gifts of money or property to the Company for the principal purpose of the Company;
 - (ii) contributions made to the Company in relation to an eligible fundraising event held for the principal purpose of the Company; and
 - (iii) money received by the Company because of such gifts or contributions.