Explanatory Memorandum

This explanatory memorandum has been prepared for the information and benefit of members in relation to the business to be conducted at the annual general meeting of BaptistCare NSW & ACT (Company) on 30 November 2023.

This explanatory memorandum should be read in conjunction with the special resolutions and the proposed constitution.

1. Background and reasons for the proposal

The proposed amendments to the constitution have been prepared by the in-house legal team and reviewed by Mills Oakley, a law firm retained by the Company to advise it on the appropriateness of the proposed amendments.

The board has been working closely with in-house legal team to ensure that the proposed amended constitution:

(a) acknowledges the contribution of Baptistcare WA Limited as part of the merger between the Company and Baptistcare WA Limited that occurred on 31 May 2023;

(b) addresses the need for the Company to be able to recruit Directors with a desired skill set that are not able to be filled from the membership base and define the requirements of such an appointment; and

(c) complies with the current applicable laws.

Under section 136(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**), amendments to the Company’s governing document may only be made through a special resolution of members.

The more salient terms of the new constitution, as compared with the current constitution, are as follows:

| **TOPIC** | **CLAUSE** | | **EXPLANATION** |
| --- | --- | --- | --- |
| **Number of Directors** | Current | 5.1 | Provides that the Board shall consist of no less than 7 and no more than 11 Directors. |
| New | 5.1 | This clause is amended to increase the minimum and maximum number of Directors that will comprise the Board to 8 and 12 respectively.  The increase is to enable the appointment of 2 current Directors of Baptistcare WA Limited to the Board of the Company which currently has 10 Directors. |
| **Composition of Board** | Current |  | No clause was included |
| New | 5.2 | This new clause introduces the concept of the Board comprising 2 types of Directors, Elected Directors and Appointed Directors and defines the manner in which the Board is to be composed with respect to the number of Elected Directors and Appointed Directors.  The term Elected Director is defined in the Constitution and is the term that refers to Directors who are Members of the Company and being elected by the Membership to the Board. The eligibility requirements for an Elected Director are defined in clause 5.3.  The term Appointed Director is defined in the Constitution and is the term that refers to a person who is appointed as a Director but is not a Member of the Company. The eligibility requirements for an Appointed Director are defined in clause 5.4.  Consequential numbering changes have been made as a result of the insertion of this new clause. |
| **Qualification and nomination of Elected Directors** | Current | 5.2(a) | A person is only eligible to be a Director of the company if they are a Member, not an employee and not related to a full-time employee of the company. |
| New | 5.3 | There is to be an additional eligibility requirement for Elected Directors being that they agree to support the Statement of Faith as approved by the Board.  Consequential numbering changes have been made to existing subclauses. |
| **Qualification and Appointment of Appointed Directors**  **Qualification and Appointment of Appointed Directors (cont.)** | Current |  | No clause was included. |
| New | 5.4 | There is to be a restriction of a maximum of 4 persons on the number of Directors that can be appointed pursuant to the new class of eligible people inserted at Clause 5.2(a)(ii)(ie Appointed Directors).  To be eligible to be an Appointed Director the person must be:   * A regular participant of a Recognised Christian Church or Denomination within the Commonwealth of Australia; and * Agrees to support the Statement of Faith; and   Must not be a Member of the Company, not be an employee of the Company and is not related to any full-time employee of the Company.  Additionally, if the person is being appointed as a WA Appointed Director they must also be:   * Affiliated with Baptistcare WA Limited prior to it becoming a related entity of the Company; or * A member of a Baptist Church in Western Australia affiliated with the Baptist Union of Western Australia Incorporated; and * Their nomination for appointment is approved by the Baptist Union of Western Australia.   Clause 5.4(c) contains the process under which an appointment of a WA Appointed Director is to be made. |
| **Term**  **Term** | Current | 5.3 | The clause defines the length of the terms able to be served by a Director that has been elected by the Members. The maximum term able to be served by a Director is 4 consecutive 3 year terms for a maximum a 12 consecutive years. Any time served by a Director filling a casual vacancy does not count towards the maximum term. |
| New | 5.5 | In addition to defining the terms of an Elected Director, the clause also defines the length of the terms able to be served by an Appointed Director. The maximum consecutive term able to be served by an Elected Director is 12 years.  As the initial term of an Appointed Director may not necessarily commence at an Annual General Meeting of the Company, the expiry of the initial term will coincide with the timing of the Annual General Meeting of Company immediately following the third anniversary of their appointment as an Appointed Director. This means that the initial term may exceed 3 years in duration. As a result, the maximum consecutive term served by an Appointed Director is 12 years plus any additional time served in their initial term. |
| **Casual Vacancies** | Current | 5.5 | The board shall appoint an ordinary member to fill a vacancy until the next annual general meeting. Any time served on the board filling a casual vacancy will not count towards the maximum consecutive term. |
| New | 5.7 | The clause defines the appointment of both Elected and Appointed Directors to fill casual vacancies. |

1. *The approval of the Assembly Council of the Association of Baptist Churches in NSW & ACT to the amendments was provided at its meeting on 10 October 2023.*
2. Recommendation

The board unanimously recommends that members approve the adoption of the proposed constitution and vote in favour of the special resolutions.