

**Corporations Act, 2001
A Company Limited by Guarantee
and Not for Profit**

CONSTITUTION

of

BaptistCare NSW & ACT

(ACN 000 049 525)

(adopted by special resolution: 6 November 2014 and as further amended by special resolutions:
10 November 2016, 9 November 2017, 8 November 2018, 11 November 2021, 10 November 2022
and 30 November 2023)

Registered Office:

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1. GENERAL

1.1 Definitions

- (a) In this Constitution, unless the context otherwise requires:

ACNC Act means *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

ACNC Regulation means *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).

Act means the *Corporations Act, 2001* (Cth).

Appointed Director means any person appointed as a Director pursuant to **clause 5.4** and includes WA Appointed Directors.

Assembly Council, being the assembly council of the Baptist Association, has the meaning given to it in the constitution of the Baptist Association, and which was (until adoption by the Baptist Association of its new constitution on 31 March 2012) known as the executive committee established under the *Baptist Union Incorporation Act, 1919* (NSW) (as amended).

Auditor means any auditor of the Company appointed from time to time.

Baptist Association means The Baptist Union of New South Wales, a body corporate created by the *Baptist Union Incorporation Act, 1919* (NSW) (as amended) and commonly known as 'The Association of Baptist Churches of NSW & ACT'.

Board means the board of Directors.

Business Day means a day which is not a Saturday, a Sunday or a public holiday in Sydney.

Committee means a committee of the Board under **clause 5.12**.

Company means BaptistCare NSW & ACT (ACN 000 049 525) or as it may otherwise be named from time to time.

Constitution means the constitution of the Company as contained in this document and as may be amended from time to time.

Director means any person holding the position of a director of the Company from time to time (and includes any Elected Director and any Appointed Director).

Elected Director means any person elected as a Director pursuant to **clause 5.3**.

Honorary Life Member means a Member referred to in **clause 2.2(c)**.

Life Member means a Member referred to in **clause 2.2(b)**.

Member means a person who is a member of the Company under the Act (and includes each of Ordinary Members, Life Members and Honorary Life Members), and **Membership** has the corresponding meaning.

Ordinary Member means a Member referred to in **clause 2.2(a)**.

Recognised Christian Church or Denomination means a church or denomination that is based on the Christian faith and is recognised as a church or denomination by the Assembly Council of the Baptist Association.

Register means the register of Members.

Registered Office means the registered office of the Company from time to time.

Seal means the common seal of the Company (if any) and includes any duplicate common seal and official seal of the Company.

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.

Statement of Faith means the statement regarding the Board's belief in and commitment to the Christian religion as affirmed by the Board from time to time.

WA Appointed Directors are Appointed Directors who must also meet the criteria set out in **clause 5.4(b)**.

- (b) 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.

1.2 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) a reference to a body (including an institute, association, authority, union, board or committee), whether statutory or not:
- (1) which ceases to exist;
 - (2) whose powers or functions are transferred to another body; or
 - (3) 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

- (f) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email.

1.3 Section 46(1) instrument

Section 46(1) of the *Acts Interpretation Act, 1901* (Cth) applies in relation to this Constitution as if it were an instrument made under the Act as in force on the day when this Constitution became effective.

1.4 Exclusion of replaceable rules

The replaceable rules contained in the Act do not apply to the Company.

1.5 Limited liability

The liability of the Members is limited.

1.6 Guarantee by Members

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 1 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) cents.

1.7 Objects of Company

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, in accordance with the principles of the Baptist Church. The Company achieves this object by:

- (a) supporting and providing care to vulnerable elderly persons, and persons who need assistance with everyday tasks due to their vulnerability.
- (b) 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.
- (c) providing relief to people suffering from mental illness and/or who are affected by family violence and/or abuse.
- (d) 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.
- (e) doing all such other lawful acts, matters and things as are incidental or conducive to the attainment of the above objects or any of them or any objects of a like or similar nature.

1.8 Non-profit character of Company

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 Members or be paid by way of directors' fees to the Directors. However, this clause does not prevent:

- (a) the payment in good faith of remuneration to any employee of the Company or to any Member or other person in return for any services actually rendered to the Company;
- (b) the payment to a Director of such remuneration, and on such conditions, as the Board sees fit;
- (c) the payment to a Director of out-of-pocket expenses incurred in carrying out the duties of a Director where the payments do not exceed an amount previously approved by the Board; or
- (d) the payment to a Director for any service rendered to the Company in a professional or technical capacity where:
 - (i) the provision of that service has the prior approval of the Board; and
 - (ii) the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

2. MEMBERSHIP OF COMPANY

2.1 Number and minimum age of Members

- (a) For the purpose of registration, the number of Members is declared to be unlimited.
- (b) Without limiting any other provision of this **clause 2**, all Members must be at least 18 years old.

2.2 Membership categories

There shall be the following categories of Membership:

(a) Ordinary Members

Ordinary Members shall be:

- (i) natural persons who are:
 - (A) members of a Baptist Church affiliated with the Baptist Association; or
 - (B) members of the Assembly Council; or
 - (C) nominated in writing by a Baptist Church affiliated with the Baptist Association, and who continue to be members of that Baptist Church (with that Baptist Church being able to remove

that Member from the Company in writing) provided there may only be one (1) Ordinary Member nominated by the nominating Baptist Church affiliated with the Baptist Association at any one time, and

(ii) entitled to vote.

(b) **Life Members**

(i) Notwithstanding any other provision within this Constitution, a Life Member will only be any individual who was a Life Member of the Company at the time of the adoption of this Constitution in 2021.

(ii) Life Members are entitled to vote.

(c) **Honorary Life Members**

Honorary Life Members shall be:

(i) natural persons;

(ii) persons who have, in the opinion of the Board, provided outstanding service to the Company at a time when such person was a member of a Baptist Church then affiliated with the Baptist Association; and

(iii) entitled to vote,

and there may not be more than thirty (30) Honorary Life Members at one time (unless the Company approves of a higher number in a general meeting).

2.3 Membership applications and acceptance

(a) In addition to **clause 2.2**, each Member must:

(i) have provided to the Company their written consent to become a member of the Company (in such form as the Board may require from time to time); and

(ii) in the case of Ordinary Members and Life Members, have executed an application for Membership (in such form as the Board may require from time to time) and delivered the application to the Secretary.

(b) In the case of a prospective Member (except for a prospective Honorary Life Member), once the Secretary receives a consent and application for Membership under **clause 2.3(a)**, the Secretary shall forward that application to the Board, which shall determine in its sole and unfettered discretion whether to accept or reject the application.

(c) As soon as practicable after the Board makes that determination under **clause 2.3(b)** the Secretary must:

(i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and

- (ii) if the Board approved the application, enter the applicant's name and class of Membership in the Register and, subject to the Act, the person becomes a Member on the name being so entered; or
 - (iii) if the Board rejected the application, notify the applicant, and shall not be required to provide the applicant with any reasons for the rejection.
- (d) In the case of a prospective Honorary Life Member, subject to receiving a consent under **clause 2.3(a)(i)**, the Board may resolve in its sole and unfettered discretion to admit a person as an Honorary Life Member, and following the passing of that resolution, the Secretary must enter that person's name onto the Register as a Member (unless the person is already a Member).

2.4 Cessation of Membership

The Membership of any Member shall be deemed to be personal and shall forthwith cease to exist if that person:

- (a) dies;
- (b) resigns from Membership by notice in writing to the Company;
- (c) becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, or otherwise becomes incapable of managing his/her affairs;
- (d) subject to **clause 2.5**, is the subject of a resolution by not less than three-quarters of the Directors present at a Board meeting that the Member shall cease to be a Member (including, without limitation, in circumstances where the Member has, in the opinion of the Board, acted in a manner prejudicial to the interests of the Company or has persistently refused or neglected to comply with any provision of the Constitution or other Company practices or procedures), provided that the Member has had an opportunity of being present at the meeting and being heard in his/her defence, and the Member has been provided with written notice of the decision;
- (e) in the case of an Ordinary Member or Life Member, ceases to be a member of a Baptist Church affiliated with the Baptist Association; or
- (f) ceases to be eligible in his or her class of Membership (unless transferred to another class of Membership by the Board).

2.5 Rights of appeal

- (a) A Member may appeal to the Assembly Council against a resolution of the Board under **clause 2.4(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 2.4(d)**.
- (b) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 2.5(a)**, the Assembly Council must convene a meeting.
- (c) At the Assembly Council meeting convened under **clause 2.5(b)**:

- (i) the Member must be given the opportunity to state their case, using a method determined by the Assembly Council, that gives the Member a reasonable opportunity to do so; and
 - (ii) the Assembly Council must vote by ballot on the question of whether the resolution will be confirmed.
- (d) The Assembly Council's decision pursuant to **clause 2.5(c)(ii)** is final. The Member is not entitled to appeal the Assembly Council's decision under **clause 2.5(c)(ii)**.
- (e) The Member the subject of a notice under **clause 2.4(d)** who invokes a right to appeal under this **clause 2.5** is entitled to:
- (i) subject to **clause 2.5(e)(ii)**, bring a support person to any meeting which is held pursuant to this **clause 2.5**; and
 - (ii) if the support person is legally qualified, the Member must notify the Board at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- (f) Natural justice will be applied during every step of the process under this **clause 2.5**, requiring the Assembly Council to act fairly, in good faith and without bias or conflict of interest when making its decision.

2.6 Rights of Members not Transferable

No right or privilege of any Life Member, Honorary Life Member or Ordinary Member shall be in any way transferable or transmissible but all such rights and privileges shall cease upon the Life Member, Honorary Life Member or Ordinary Member ceasing to be such, whether by death, resignation or otherwise.

3. GENERAL MEETINGS

3.1 Annual general meeting

Notwithstanding section 111L of the Act, an annual general meeting of the Company shall be held in accordance with the provisions of the Act.

3.2 Extraordinary general meetings

All general meetings other than annual general meetings shall be called extraordinary general meetings.

3.3 Convening of extraordinary general meetings

- (a) The Board may, whenever it thinks fit, convene an extraordinary general meeting.
- (b) Extraordinary general meetings shall also be convened by the Secretary on receipt of a requisition signed by at least one-fifth of the Members or by at least 2 Directors. Any such requisition shall state the purpose for which an extraordinary general meeting is required. If such meeting is not convened within 21 days, the requisitionists or a majority of them may themselves convene the meeting.

- (c) Notwithstanding section 111L of the Act, extraordinary general meetings shall also be convened and held as provided by the Act.

3.4 Notice for general meetings

Subject to the Act as regards short notice (notwithstanding section 111L of the Act), a general meeting may only be held after the amount of notice required by the Act has been given.

3.5 Notices of general meeting

A notice of a general meeting must:

- (a) specify the place, date and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed, state the resolution and the intention to propose it as a special resolution;
- (d) state that a Member has a right to appoint a proxy; and
- (e) state that a proxy may, but need not, be a Member.

3.6 Persons to receive notices of general meeting

Notice of every general meeting shall be given to:

- (a) every Member;
- (b) every Director;
- (c) the Auditor; and
- (d) any other person who is entitled under the Act to receive notices of general meetings (notwithstanding section 111L of the Act).

3.7 Non-receipt of notices of general meeting

Subject to the Act (notwithstanding section 111L of the Act), non-receipt of the notice convening a general meeting by, or accidental omission to give such notice to, any person who is entitled to receive such notice shall not invalidate the proceedings at or any resolution passed at that meeting.

3.8 Postponement or cancellation of general meetings

- (a) The Board may postpone or cancel any general meeting whenever it thinks fit, other than a meeting convened by Members.
- (b) The Board must give notice of the postponement or cancellation to all Members.

4. PROCEEDINGS AT GENERAL MEETINGS

4.1 Technology

- (a) General meetings may be held in more than one location, using any technology that provides all Members a reasonable opportunity to participate.
- (b) To the extent permitted by the Act, general meetings may be held using any technology that provides all Members a reasonable opportunity to participate.

4.2 Business of an annual general meeting

The business of an annual general meeting shall be:

- (a) to receive and consider the report of the Board;
- (b) to receive and consider the annual financial report, directors' report and the Auditor's report thereon (as applicable);
- (c) to elect Elected Directors meeting the criteria of Elected Directors; and
- (d) to transact any other business which under this Constitution (or any regulation made under the same) or the Act ought to be transacted at any annual general meeting (notwithstanding section 111L of the Act).

All other business transacted at an annual general meeting and all business transacted at an extraordinary general meeting shall be deemed special.

4.3 Minimum notice for Member resolutions

- (a) Notwithstanding section 111L of the Act, no Member shall be at liberty to move at any general meeting any resolution where notice has not been given to the Company.
- (b) The notice must:
 - (i) be in writing; and
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members proposing to move the resolution.

4.4 Quorum

- (a) Except for the election of a chair and the adjournment of the meeting, no business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business and at the time the relevant business is considered.
- (b) A quorum at a general meeting shall be constituted by 12 Members present in person (unless the Company ever has fewer than 14 Members, in which case a quorum shall be 75% of the total number of Members, rounded up to the nearest integer, who are present).
- (c) For the purpose of determining whether a quorum is present:
 - (i) a person attending as a proxy or as an attorney for a Member is deemed to be a Member; and

- (ii) if a person attends a meeting both as a Member and as a proxy, that person shall be counted both as a Member and also as any proxies which are held.
- (d) If a quorum is not present within 30 minutes from the time appointed for the meeting:
 - (i) where the meeting was convened on the requisition of Members, the meeting shall be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to such day and at such time and place as the Board determines or, if no determination is made by the Board, to the same day in the next week at the same time and place; and
 - (B) if a quorum is not present within 30 minutes after the start of the meeting, the meeting is dissolved.

4.5 Chair of meetings

- (a) If the Board has appointed a chair of its meetings, that person may chair a general meeting.
- (b) Where a general meeting is held and:
 - (i) a chair has not been appointed by the Board; or
 - (ii) the chair is not present within 15 minutes after the time appointed for the commencement of the meeting or declines to act,

if the Board has appointed a vice-chair of its meetings, that person may chair the meeting.
- (c) Where any vice-chair appointed by the Board would be entitled to chair a general meeting and:
 - (i) a vice-chair has not been appointed by the Board; or
 - (ii) the vice-chair is not present within 15 minutes after the time appointed for the commencement of the meeting or declines to act,

the Directors present may appoint a person from amongst the Elected Directors to chair the meeting, and in default of their so doing or if no Elected Director is present or if no Elected Director present is willing to act as chair, the Members present shall appoint one of themselves to be the chair.

4.6 Adjournments

- (a) The chair may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place. Only unfinished business is to be transacted at a meeting resumed after an adjournment.

- (b) Where a meeting is adjourned for more than 30 days, notice of an adjourned meeting is to be given. Otherwise, notice of an adjourned meeting need not be given.

4.7 Voting at general meetings

- (a) A resolution put to the vote at a general meeting will be decided on a show of hands unless a poll is demanded.
- (b) Where a resolution is decided on a show of hands, a declaration by the chair is conclusive evidence of the result.
- (c) A poll may be demanded by:
 - (i) the chair; or
 - (ii) 5 Members present in person or by proxy or attorney and entitled to vote on the resolution;either:
 - (iii) before the vote is taken;
 - (iv) before the voting results on a show of hands are declared; or
 - (v) immediately after the voting results on a show of hands are declared.
- (d) A demand for a poll may be withdrawn.
- (e) In the case of an equality of votes, the chair has a casting vote in addition to any deliberative vote held as a Member.

4.8 Polls

- (a) Subject to **clause 4.8(b)**, a poll must be taken when and in the manner the chair directs.
- (b) A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.
- (c) If a poll (other than a poll referred to in **clause 4.8(b)**) has been taken, the chair may close the meeting before the result of the poll is declared.
- (d) If a meeting is closed pursuant to **clause 4.8(c)**, the result of the poll must be declared within 2 Business Days after the closure of the meeting by either notice on the Company's website or by another means approved by the meeting.
- (e) At least 2 scrutineers shall be appointed by the meeting at which a poll is demanded and the result of the poll shall be deemed to be the resolution of such meeting.
- (f) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the resolution on which the poll has been demanded.

4.9 Voting rights

Every Member either on a show of hands or upon a poll shall have 1 vote.

4.10 Objections to qualification to vote

- (a) An objection may be raised to the qualification of a voter only at or before the meeting at which the relevant vote objected to is given or tendered.
- (b) Any such objection shall be referred to the chair of the meeting whose decision is final.
- (c) A vote not disallowed under such an objection is valid for all purposes.

4.11 Proxies

Notwithstanding section 111L of the Act:

- (a) a person who is entitled to attend and cast a vote at a meeting may vote personally or by proxy and, for that purpose, may appoint a person who may, but need not, be a Member, as proxy to attend and vote for the person;
- (b) an instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing;
- (c) an instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, (subject to the Act, notwithstanding section 111L of the Act) the proxy is not entitled to vote on the resolution except as specified in the instrument but may vote otherwise as to procedural matters as that proxy thinks fit;
- (d) an instrument appointing a proxy shall be deemed to confer authority to:
 - (i) demand or join in demanding a poll; and
 - (ii) vote as the proxy sees fit on:
 - (A) an amendment moved to a proposed resolution, a motion that a proposed resolution not be put or similar; and
 - (B) a procedural motion;
- (e) an instrument appointing a proxy shall be in:
 - (i) the form set out in the Schedule;
 - (ii) a form that is as similar to the form set out in the Schedule as the circumstances allow; or
 - (iii) such other form as is approved by the Board from time to time;
- (f) an instrument appointing a proxy is not valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed, or a certified copy, is or are received by the Company at any place that is specified for that purpose in the notice convening the meeting not less than 48

hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

Documents to be lodged pursuant to this clause may be lodged by electronic means, if an electronic address is specified for such purpose in the notice of meeting;

(g) a vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding:

- (i) the previous death or unsoundness of mind of the principal; or
- (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or of the power,

if no written notice of the death, unsoundness of mind or revocation has been received by the Company at its Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised;

(h) the appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the meeting but if the appointor votes on any resolution, a proxy or attorney is not entitled (as that appointor's proxy or attorney) to, and must not, vote on that resolution;

(i) an instrument appointing a proxy is not invalid merely because it does not contain the address of the appointor or of a proxy, is not dated or does not specify the manner in which the proxy is to vote in relation to any resolution; and

(j) an instrument appointing a proxy which does not contain the name of the proxy:

(i) is not invalid merely for that reason; and

(ii) shall be deemed to be given in favour of the chair of the meeting.

5. THE BOARD

5.1 Number of Directors

The number of Directors who comprise the Board shall be not fewer than eight (8) and not more than twelve (12).

5.2 Composition of Board

(a) The Board shall consist of:

- (i) a minimum of eight (8) and a maximum of ten (10) Elected Directors; and
- (ii) up to four (4) Appointed Directors, and in the event that:
 - (A) one (1) or two (2) Appointed Directors are appointed, those Appointed Directors must be WA Appointed Directors; or
 - (B) three (3) or more Appointed Directors are appointed, two (2) of those Appointed Directors must be WA Appointed

Directors.

- (b) The Board shall determine the number of Directors in each category set out in **clause 5.2(a)** so long as the number of Directors is within the range referred to in **clause 5.1**.

5.3 Qualification and nomination of Elected Directors

- (a) A person shall only be eligible to be an Elected Director if the person:
- (i) agrees to support the Statement of Faith;
 - (ii) is a Member (subject to **clause 5.6(g)**);
 - (iii) is not an employee of the Company; and
 - (iv) is not the spouse, child, parent, brother or sister of any full-time employee of the Company.
- (b) Except as otherwise provided in this Constitution, no person is eligible to be elected as a Director at any general meeting unless that person has given to the Company a notice of candidature:
- (i) at least 28 days before the meeting; and
 - (ii) which has been signed by the person seeking election, as well as by a proposer and seconder, each of whom is a Member.

5.4 Qualification and Appointment of Appointed Directors

- (a) A person shall only be eligible to be an Appointed Director if the person:
- (i) is a regular participant of a Recognised Christian Church or Denomination within the Commonwealth of Australia; and
 - (ii) agrees to support the Statement of Faith; and
 - (iii) is not a Member of the Company; and
 - (iv) is not an employee of the Company; and
 - (v) is not the spouse, child, parent, brother or sister of any full-time employee of the Company.
- (b) Any Appointed Director who is a WA Appointed Director must in addition to meeting the criteria set out in **clause 5.4(a)**:
- (i) also be affiliated with any of the following organisations:
 - (A) Baptistcare WA Limited prior to it becoming a related entity of the Company; or
 - (B) a Baptist Church in Western Australia affiliated with the Baptist Union of Western Australia Incorporated; and
 - (ii) may only be appointed (or reappointed) in accordance with the

procedures set out in **clause 5.4(c)**.

- (c) The procedure for the appointment or reappointment of a WA Appointed Director is as follows:
- (i) the person proposed to be appointed or reappointed must be nominated for appointment or reappointment by the Board (**WA Nominee**);
 - (ii) the Board's nomination must be submitted to The Baptist Union of Western Australia Incorporated in writing for approval (**Nomination Approval Request**);
 - (iii) The Baptist Union of Western Australia Incorporated will have forty five (45) days from the date of the Nomination Approval Request to either approve or reject the request for approval;
 - (iv) if The Baptist Union of Western Australia Incorporated fails to respond in writing within the forty five (45) day period, the Nomination Approval Request will be deemed to be approved;
 - (v) any response received from The Baptist Union of Western Australia Incorporated within the forty five (45) day period will be binding on the Company;
 - (vi) if The Baptist Union of Western Australia Incorporated approves the Nomination Approval Request, the WA Nominee will be appointed or reappointed to the Board as a WA Appointed Director; and
 - (vii) if The Baptist Union of Western Australia Incorporated rejects the Nomination Approval Request for the appointment or reappointment of a WA Appointed Director, the process set out in this clause 5.4(c) will reapply until such time as another replacement nominee is appointed as the WA Appointed Director.
- (d) Appointed Directors who are not WA Appointed Directors will be appointed or reappointed by the Board in accordance with appointment procedures and criteria determined by the Board from time to time.

5.5 Term

- (a) Subject to **clause 5.5(c)**, Directors shall hold office as follows:
- (i) Elected Directors will hold office until the conclusion of the third annual general meeting following their last election or re-election, at which point they are eligible for re-election (being a term of approximately three (3) years);
 - (ii) for their first term, Appointed Directors will hold office:
 - (A) from the date of their initial appointment;
 - (B) until the first annual general meeting following the third anniversary of their appointment;

(being a term of three (3) years plus the period between the third anniversary of their appointment and the immediately following annual general meeting).

- (iii) For any further terms, Appointed Directors shall hold office for three year terms:
 - (A) commencing at the time of the annual general meeting at which their immediately previous term ended;
 - (B) until the third annual general meeting following their appointment,

subject to **clause 5.5(e)**.

- (b) An Elected Director who is standing for re-election does not need to submit a notice of candidature under **clause 5.3(b)**.
- (c) No person is entitled to hold the office of:
 - (i) Elected Director for more than 12 consecutive years; and
 - (ii) Appointed Director for more than 12 consecutive years plus, during their first term, the period between the third anniversary of their initial appointment and the immediately following annual general meeting, (**"Maximum Consecutive Term"**).
- (d) Any Director, upon having served as Director for the Maximum Consecutive Term, shall not be eligible for election or appointment to the Board until at least 1 year has passed since the Director last retired.
- (e) For the avoidance of doubt, any Appointed Director who is a WA Appointed Director may only be reappointed in accordance with the procedure set out in **clause 5.4(c)**.

5.6 Vacation of office

Without in any way limiting the circumstances in which a Director vacates office by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) is removed from office by a resolution of Members passed in accordance with the Act;
- (b) dies or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, or otherwise becomes incapable of managing his/her affairs;
- (c) resigns office by notice in writing to the Company;
- (d) is absent without the consent of the Board from meetings of the Board during a period of 3 consecutive months;
- (e) becomes bankrupt or makes any arrangement or composition with creditors generally;

- (f) becomes prohibited from being a director of a body corporate or of the Company, specifically, by any law, finding, order or decision of a Court or the Australian Securities and Investments Commission;
- (g) where that Director is an Elected Director, ceases to be a Member, except that in circumstances where the Director ceases membership of a Baptist Church affiliated with the Baptist Association, the office of Director will become vacant only if the Board does not within 1 month after such membership of a Baptist Church has ceased, resolve to confirm the Director's continuance in office (in which event such person shall then hold office only until the end of the current term of appointment and not be eligible for re-election or reappointment unless in the interim that Director has otherwise satisfied the requirement of being a member of a Baptist Church affiliated with the Baptist Association);
- (h) where that Director is an Appointed Director, becomes a Member;
- (i) where that Director is an Appointed Director, is removed from office by:
 - a. a resolution of the Board; and
 - b. where that Appointed Director is a WA Appointed Director, at the written request of the Baptist Union of Western Australia Incorporated.
- (j) becomes an employee of the Company or a spouse, child, parent, brother or sister of a full-time employee of the Company; or
- (k) ceases to be eligible to be a Director under the ACNC Act or ACNC Regulation.

5.7 Casual Vacancies

- (a) In the event of a casual vacancy occurring on the Board, the Board may in relation to:
 - (i) an Elected Director vacancy, appoint an Ordinary Member; and
 - (ii) an Appointed Director vacancy, appoint a person meeting the eligibility criteria for an Appointed Director specified in **clause 5.4** except that the appointment of a WA Appointed Director under this clause is subject to the appointment procedure set out in **clause 5.4(c)**.
- (b) Any Director appointed or elected pursuant to **clause 5.7(a)** shall hold office until:
 - (i) where that Director fills a casual vacancy created by an Elected Director, the next annual general meeting, at which point an election shall be held, for a fresh term of 3 years, regardless of the term that the vacating Elected Director would have had from that time (if any); and
 - (ii) where that Director fills a casual vacancy created by an Appointed Director, the expiration of the term of the vacating Appointed Director they have been appointed to replace.
- (c) Any time served on the Board:

- (i) by a Director filling a casual vacancy created by an Elected Director up until the next annual general meeting under **clause 5.7(b)(i)** shall not count towards the Maximum Consecutive Term of a Director under **clause 5.5(c)(i)**; and
- (ii) by a Director filling a casual vacancy created by an Appointed Director for the expiration of the term of the vacating Appointed Director, shall count towards the Maximum Consecutive Term of a Director under **clause 5.5(c)(ii)**.

5.8 Powers of the Board

- (a) The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting, subject nevertheless to: any of the provisions of this Constitution, the provisions of the Act, and to such regulations (being not inconsistent with the aforesaid regulations or provisions) as may be prescribed by the Company in general meeting; provided that any rule, regulation or by-law of the Company made by the Board may be disallowed by the Company in general meeting and provided further that no resolution of or regulation made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made and provided further that the Board shall not sell or otherwise dispose of the undertaking of the Company either absolutely or conditionally without the sanction of the Company in general meeting and the approval of the Baptist Association.
- (b) Without limiting the generality of **clause 5.8(a)**, the Board may:
 - (i) exercise all the powers of the Company:
 - (A) to borrow money;
 - (B) to charge any property or business of the Company;
 - (C) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (D) in relation to any Seal; and
 - (ii) by power of attorney, appoint any person to be the attorney of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board when acting in the capacity of trustee, fiduciary, on its own account or otherwise), for such period and subject to such conditions as the Board thinks fit and any such power of attorney may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- (c) The Board may determine the manner in which cheques, promissory notes, bank drafts, bills of exchange, other negotiable instruments and receipts for money paid to the Company may be signed, drawn, accepted, endorsed or

executed and the people who may do so. In the absence of a contrary determination, any 2 Directors may do so.

5.9 Proceedings of the Board

- (a) The Board shall appoint from amongst those of its members who are Elected Directors, in such manner as it sees fit, a chair. Such appointment shall be for a 3 year term, with a maximum of 2 consecutive terms as chair, subject to the following:
 - (i) the Board may determine that at the end of the service of 2 consecutive terms as chair, the chair may remain as chair for a further term of not greater than 1 year; and
 - (ii) any such person shall not be eligible for re-appointment as chair (excluding the circumstance referred to in **clause 5.9(a)(i)**) until a period of at least 3 years has elapsed since that person last occupied that office.
- (b) The Board shall annually appoint from amongst:
 - (i) those of its members who are Elected Directors, in such manner as it sees fit, a vice-chair; and
 - (ii) all of its members, the chairs of each Committee of the Board which the Board has established.
- (c) The positions referred to in **clauses 5.9(a) and 5.9(b)(i)**:
 - (i) are for 1 year terms and are not subject to any maximum consecutive term; and
 - (ii) for the avoidance of doubt, may only be filled by Elected Directors.
- (d) The Board may meet, adjourn and, subject to this Constitution, otherwise regulate its meetings as it thinks fit.
- (e) A Secretary shall on the requisition of at least that number of Directors which is equivalent to 25% of the total number of Directors (rounded up to the nearest whole number in the case of a fraction) convene a meeting of the Board.
- (f) Reasonable notice shall be given to every Director of the place, date and hour of every meeting of the Board except that notice need not be given to a Director who is for the time being out of Australia.
- (g) A Director may participate in a meeting of the Board by any communication system which enables the Director to hear and be heard by each of the other Directors participating in the meeting which is approved by the Board and made known to each Director for the purpose of any meeting of the Board.
- (h) No business shall be conducted at a meeting of the Board unless a quorum of Directors is present at the time when the meeting proceeds to business and at the time the relevant business is considered.
- (i) The number of Directors who constitute a quorum for a meeting of the Board shall be that number which is equivalent to 60% of the total number of Directors

(rounded up to the nearest whole number in the case of a fraction), or such other number as is determined by the Directors from time to time.

- (j) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes and, in the case of an equality of votes, the chair of the meeting shall have a casting vote in addition to a deliberative vote.
- (k) The Board may act notwithstanding any vacancy in its composition except that if the number of Directors falls below the minimum number fixed pursuant to **clause 5.1** the Board may only act:
 - (i) in an emergency;
 - (ii) to call a general meeting; or
 - (iii) to fill vacancies.

5.10 Chair of meetings

- (a) Where a Board meeting is held, the chair shall be the person appointed under **clause 5.9(a)**, but if:
 - (i) a chair has not been appointed; or
 - (ii) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the vice-chair, if any, may act as chair.
- (b) Where a Board meeting is held at which any vice-chair appointed by the Board would be entitled to act as chair and:
 - (i) a vice-chair has not been appointed; or
 - (ii) the vice-chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of the Elected Directors from amongst their number as chair of that meeting.

5.11 Disclosure of interest

- (a) A Director is not disqualified by the holding of that office from contracting with the Company in any capacity for the provision of services to the Company notwithstanding any rule of law or equity to the contrary, providing:
 - (i) the provision of that service has the prior approval of the Board; and
 - (ii) the payment is on reasonable commercial terms and approved by a resolution of the Board.
- (b) A contract or arrangement made by the Company with a Director or in which a Director is in any way, directly or indirectly, interested shall not be avoided merely because the Director is a party to or interested in it.
- (c) A Director who has duly declared the nature of an interest in a contract or arrangement with the Company is not liable to account to the Company for any

profit derived by that Director from that contract or arrangement merely because of that Director's office as director or the resulting fiduciary relationship.

- (d) Subject to the applicable provisions of the Act, a Director who has a material personal interest in a matter that is being considered at a meeting of the Board must not be present while the matter is being considered at the meeting or vote on the matter, but shall still be counted in determining whether a quorum is present during that part of the meeting.
- (e) A reference in this **clause 5.11** to the declaring of an interest of a Director means a declaration or disclosure in accordance with the applicable provisions of the Act.

5.12 Committees

- (a) The Board may delegate any of its powers to a Committee consisting of at least 2 Directors and may from time to time revoke that delegation.
- (b) A Committee must exercise its powers in accordance with any direction of the Board and a power so exercised shall be deemed to have been exercised by the Board.
- (c) A quorum for a meeting of a Committee is the number of members of the Committee that is determined by the Board, or in the absence of a determination, 2 members.
- (d) The chair of a Committee meeting does not have a casting vote.
- (e) Determinations and proceedings of every Committee and minutes of all the proceedings must be made, conducted, entered and signed in the same manner in all respects as determinations and proceedings of the Board and minutes of proceedings of the Board.
- (f) The Board may appoint one or more advisory Committees consisting of such Directors, Members or such other persons as the Board thinks fit. Such advisory Committees shall act in an advisory capacity only. They shall conform to any regulations that may be given by the Board and paragraphs (a) to (e) of this **clause 5.12** shall not apply to any advisory committee unless the Board so determines.

5.13 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, 75% of the total number of Directors (rounded up to the nearest integer); 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 5.13 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 5.13** 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 5.13** shall be tabled at the next Board meeting or Committee meeting, as the case may be.

5.14 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.

5.15 Appointment of representatives

The Board may appoint any one or more of its members or the Company's employees to represent the Company and to vote and by such vote to bind the Company at any meeting or meetings of any other association, union, federation or organisation, whether incorporated or not, having objects wholly or in part similar to the objects of the Company and at which meeting the Company is entitled to vote and the Board may out of the funds of the Company provide (but subject to **clause 1.8**) travelling or living expenses to that person during such time as that person may be representing the Company at any such meeting or meetings.

6. SECRETARY

6.1 Appointment

The Board shall appoint at least 1 Secretary on such terms as it thinks fit.

6.2 Termination

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

7. SEALS AND EXECUTION OF DOCUMENTS

7.1 Safe custody

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

7.2 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.

7.3 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.

8. FINANCE AND ACCOUNTS

8.1 General funds

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

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 Books of account kept at Registered Office

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

8.7 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.

8.8 Financial report laid before annual general meeting

At each annual general meeting (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 annual general meeting.

8.9 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 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.

8.10 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.

8.11 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.

9. 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.

10. MINUTES AND RECORDS

10.1 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.

10.2 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 5.11** 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.

11. NOTICES AND PAYMENTS

11.1 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 Registered 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 3 business days, if within Australia; and
 - (ii) within 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.

11.2 Other documents

Clause 11.1 applies, to the extent possible, to the service of any communication or document.

12. GENERAL

12.1 Jurisdiction

Each 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.

12.2 Proper law

Any matter arising:

- (a) under this Constitution; or
- (b) between the Company and a Member,

shall be determined in accordance with the law of New South Wales.

12.3 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.

13. OFFICERS' INDEMNITY AND INSURANCE

13.1 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.

13.2 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 13.2(a) must not provide an indemnity which is prohibited by law.

14. 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 amongst the Members but shall be given or transferred:

- (i) in the case of all such surplus property other than community housing assets (to which **clause 14(a)(ii)** applies), to some other institution or institutions, provided such other institution or institutions:
 - (A) has or have objects similar to the Company's 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 1.8**;
 - (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 such surplus property which comprises community housing assets in a participating jurisdiction, to another registered community housing provider or to a Housing Agency (each a "**Community Housing Recipient Organisation**") in the jurisdiction in which the asset is located.
- (b) For the purposes of **clause 14(a)**, such institution or institutions is or are to be determined by the Members and approved by the Baptist Association at or before the time of dissolution.
 - (c) For the purposes of **clause 14(a)(ii)**, such Community Housing Recipient Organisation or Community Housing Recipient Organisations is or are to be determined by the Members and approved by the Baptist Association at or before the time of dissolution.
 - (d) If effect cannot be given to **clause 14(b)** or **14(c)**, then the recipient of such property shall be determined by application to the Supreme Court of New South Wales.
 - (e) For the purpose of this **clause 14**, and subject to **clause 14(f)** 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:

"**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.

"**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.

“**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.

“**entity**” means the following:

- (a) a company limited by shares or guarantee under the *Corporations Act, 2001* of the Commonwealth;
- (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.

“**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.

“**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.

“**registered community housing provider**” means an entity registered under this Law as a community housing provider.

“**Registrar**” means a Registrar for a participating jurisdiction as referred to in section 9.

- (f) For the avoidance of doubt, and notwithstanding any other provision of this **clause 14**, any reference in this **clause 14** to the term “community housing asset” shall not include any assets of the Company acquired without assistance (financial or otherwise) from a Housing Agency of a participating jurisdiction.

15. REVOCATION OF DEDUCTIBLE GIFT RECIPIENT STATUS

- (a) If the endorsement of the Company as a deductible gift recipient 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 is charitable at law and 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.
- (b) Such institution, fund or authority is to be determined by the Members and approved by the Baptist Association at, before or as soon as reasonably practicable after the time the endorsement of the Company as a deductible gift recipient is revoked.
- (c) If effect cannot be given to **clause 15(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 15**, 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.

16. HISTORICAL ACKNOWLEDGMENTS

The Members wish to include the following historical acknowledgments in the Constitution.

Company's incorporation and subsequent names

- (a) The Company was incorporated on 5 October 1944 under the *Companies Act, 1936* (NSW) with the name "N.S.W. Baptist Homes Trust".
- (b) On 25 May 1992, the Company changed its name to "Baptist Community Services – NSW & ACT".
- (c) On 3 February 2014, the Company changed its name to "BaptistCare NSW & ACT".

Subscribers to Memorandum and Articles of Association

The subscribers to the Memorandum and Articles of Association dated 28 August 1944 (each of whose signatures were witnessed by Mr F.J Church, Solicitor of 74 Pitt Street, Sydney) were:

- (i) R.E Walker of Oatley (Deputy Prothonotary);
- (ii) Wilfred L. Jarvis of Dulwich Hill (Baptist Minister);
- (iii) A.L. Leeder of Ashfield (Baptist Minister);
- (iv) Winifred B. Smith of Canterbury (Married Woman);

- (v) R.W. White of Gladesville (Master Baker);
- (vi) R.M. Aylward of Roseville (Merchant);
- (vii) C. Taylor of Pennant Hills (Accountant);
- (viii) R.H.H. Butler of Haberfield (Company Director); and
- (viii) Edward J. Phillips of Kogarah (Commercial Traveller).

First Members

Article 4 from the Company's Articles of Association provided as follows:

"The first members of the Company shall be:-

- (a) *The subscribers to the Memorandum and Articles of Association of the Company.*
- (b) *The members of the Board hereinafter named and subject to the provisions of any other Article they shall remain members by virtue of this provision until they cease to be members of the Board.*
- (c) *Every person who has subscribed or donated to the Union for the purpose of establishing a children's home an old ladies home or a home for elderly persons an amount as would under these Articles had the subscription or donation been made to the Company have entitled such person to life membership shall be a life member provided such person in writing agrees to become a member of the Company."*

First Board

Article 50 from the Company's Articles of Association provided as follows:

"The First Board of the Company shall consist of the following persons:

- a) *The persons for the time being holding the offices of the President, Vice President, Immediate Past President, General Treasurer and General Secretary of the Union at the date of incorporation of the Company.*
- b) *Merab Young, Winifred Blanche Smith, Adelaide Bamford, Bessie May Jarvis and Elizabeth May Clatworthy who shall be deemed to have been appointed by the N.S.W. Baptist Women's Federation.*
- c) *John Edward White, Archibald Mosely and Sidney Edward Sturgess who shall be deemed to have been appointed by the Young Peoples Department of the Union.*
- d) *Richard Henry Haydon Butler, Wilfred Lemuel Jarvis, Francis James Dicker, Albert Herbert Wicks, Robert Middleton Leghorn, Roy Wilbur White, Edmund Faulkner Heather, Henry James Morton, Reginald Maurice Aylward, Jennie Turk, Myrtle Belle Walsham, Lilian Alice Jolly, Frances Worboys and Grace Elizabeth Maud Crawford who shall be deemed to have been elected by the Annual Assembly of the Union.*
- e) *Ronald Earle Walker, Cuthbert Taylor, Frederick James Church, Frederick Thomas Smith, Frederick Thomas Elvy, Spencer Lowe, Elizabeth Aylward and Dorothy Maud Mary White who shall be deemed to have been elected by the members of the Company.*

The persons named in Paragraphs b), c), d) and e) above shall hold office until the first General Meeting of the Company in the year 1945 when they shall retire but shall be eligible for re-election or re-appointment as the case may be."

Dates of amendments to former Memorandum and Articles of Association

Amendments were made to the former Memorandum and Articles of Association by special resolutions passed at meetings of members held on:

- (a) 8 September 1961;
- (b) 11 August 1972;
- (c) 13 July 1973;
- (d) 20 March 1992;
- (e) 22 November 1996;
- (f) 29 November 2002;
- (g) 19 November 2004; and
- (h) 20 November 2009.

Licence to omit the word “Limited” from Company’s name

A copy of the Licence to omit the word “Limited” from the Company’s name, as signed by Governor Wakehurst on 20 September 1944, is included in this Constitution.

17. AMENDMENT OF CONSTITUTION

As an affiliated group of the Baptist Association under the constitution of the Baptist Association, the Constitution shall not be altered without approval from the Assembly Council.

SCHEDULE**BaptistCare NSW & ACT
(ACN 000 049 525)**

PROXY FORM

I _____
of _____
being a Member of BaptistCare NSW & ACT appoint:

_____ of _____
in respect of all of my votes or in his/her absence the Chair of the meeting;

as my proxy to vote for me on my behalf at all general meetings of the Company/the general meeting of the Company to be held on _____ and at any adjournment of that meeting.

I direct my proxy to vote in respect of each resolution to be considered as indicated with an "X" below and to vote or abstain in respect of any procedural resolution as my proxy thinks fit.

	FOR	AGAINST	ABSTAIN
Resolution No. 1	[]	[]	[]
Resolution No. 2	[]	[]	[]

If no direction is given above, I authorise my proxy to vote or abstain as my proxy thinks fit in respect of each resolution (including any procedural resolution to be considered by the meeting and any adjournment of the meeting).

Dated _____

Signature _____

Please note:

1. A Member entitled to attend and vote is entitled to appoint only 1 proxy.
2. A proxy may, but need not, be a Member.
3. An instrument appointing a proxy must be in writing under the hand of the appointor or **their** attorney duly authorised in writing.
4. The instrument appointing a proxy and any power of attorney or other authority (if any) under which the instrument is signed, or a certified copy, must be received by the Company at the place specified in the notice not less than 48 hours before the time for holding the meeting.

NEW SOUTH WALES
TO WIT

LICENSE

WHEREAS it hath been proved to the satisfaction of me, the Governor, and the Executive Council of the State of New South Wales that “N.S.W. Baptist Homes Trust” which is about to be registered under the “Companies Act, 1936”, as a Company Limited by guarantee is formed for the purpose of promoting objects of the nature contemplated by the thirty-fourth section of the aforesaid Act and that it is the intention of the said Association that the income and property of the Association whencesoever derived shall be applied solely towards the promotion of the objects of the Association, as set forth in its Memorandum of Association, and that no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Association, and that there is no other Association with similar objects of which the members of the proposed Company might become members upon reasonable terms and conditions: **NOW, THEREFORE**, I the Governor, by and with the advice of the said Executive Council, in pursuance of the powers vested in me by the said thirty-fourth section of the “Companies Act, 1936”, and of any other powers thereunto enabling, and in consideration of the provisions and subject to the conditions contained in the Memorandum of Association of the said Association as subscribed by four members thereof on the 28th August, 1944, do by this License direct “N.S.W. Baptist Homes Trust” to be registered with limited liability without the addition of the word “limited” to its name”.

SIGNED at Sydney, this 20th day of September, One thousand nine hundred and forty-four.

WAKEHURST
Governor

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