



CONSTITUTION

of

NORTHSIDE COMMUNITY SERVICE LIMITED

As amended @ 30 November 2013 AGM

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CORPORATIONS ACT 2001 (CTH)

A Company Limited by Guarantee

CONSTITUTION

of

NORTHSIDE COMMUNITY SERVICE LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Constitution, unless the context otherwise requires:

- (a) “**Act**” means the *Corporations Act 2001 (Cth)*;
- (b) “**Annual General Meeting**” has the same meaning given in the Act;
- (c) “**Board**” means the Directors;
- (d) “**By-Laws**” means any by-laws made by the Board pursuant to Clause 30;
- (e) “**Chair**” means the Chair of the Board appointed under Clause 26.1;
- (f) “**Chief Executive Officer**” means the Chief Executive Officer of NCS;
- (g) “**Constitution**” means this Constitution of NCS or as otherwise amended;
- (h) “**Deputy Chair**” means the Deputy Chair of the Board appointed under Clause 26.2;
- (i) “**Director**” means a director of NCS;
- (j) “**General Meeting**” means the Annual General Meeting or any Special General Meeting of NCS;
- (k) “**General Member**” means a natural person admitted as a General Member of NCS under Clause 9.2;
- (l) “**Honorary Life Member**” means a natural person admitted as a Honorary Life Member under Clause 9.3;
- (m) “**Member**” means a member for the time being of NCS under Clause 9 and “**Membership**” has a corresponding meaning;
- (n) “**NCS**” means Northside Community Service Limited;
- (o) “**Objects**” means the objects of NCS set out in Clause 4; and
- (p) “**Special Resolution**” means a resolution at a General Meeting:
 - (i) for which notice has been given in accordance with the Act; and
 - (ii) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

1.2. Expressions referring to “writing”

Expressions referring to “writing” will, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

1.3. Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to a function includes a reference to a power, authority or duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other gender;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) references to a Clause or schedule refers to a Clause or schedule in this Constitution;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (i) an expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has in any Clause of this Constitution that deals with a matter by that Part or Division the same meaning as in that Part or Division; and
- (j) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.

2. EXCLUSION OF REPLACEABLE RULES

2.1. Replaceable rules do not apply to NCS

Subject to Part 2B.4 of the Act, the replaceable rules do not apply to NCS.

3. THE COMPANY

3.1. Name of the company

The name of the company is “Northside Community Service Limited” (“NCS”).

3.2. The nature of NCS

NCS:

- (a) is a public company limited by guarantee under the Act;
- (b) is established solely for the Objects;
- (c) will apply its surplus income (if any) to promoting the Objects; and

(d) is not carried on for the purpose of profit or gain to the Members.

4. OBJECTS OF THE COMPANY

4.1. Primary Object of NCS

The primary Object of NCS is to build strong and supportive communities that can accommodate and benefit from the diversity and strengths that exist within it and provide support for the vulnerable, disadvantaged or socially isolated.

4.2. Subsidiary Objects of NCS

For the purpose of achieving the primary Object referred to above, the subsidiary Objects of NCS include without limitation:

- (a) providing quality, best practice child care services on a not-for-profit basis;
- (b) assisting aged and disabled people in need and support independent living through flexible service provision;
- (c) providing support and representation in situations where the interests of individuals or the community are being violated;
- (d) contributing to debate and policy developments on matters affecting those members of our community who are vulnerable, disadvantaged or socially isolated;
- (e) fostering relationships and influence to ensure the education, health and welfare of all children and young people, particularly those from Aboriginal and Torres Strait Islander backgrounds; and
- (f) assisting families who are living in poverty, vulnerable and disadvantaged through the provision of contemporary services and programs including emergency relief support; and
- (g) providing housing, property or tenancy management services for affordable or community housing for people in housing need.

5. POWERS

5.1. NCS's capacity and powers

NCS has the legal capacity and powers of a company set out in the Act, which must be exercised solely for furthering the Objects.

5.2. Doctrine of ultra vires will not apply to the power of NCS

This Clause and the other provisions of this Constitution are to be construed to:

- (a) prevent the application of the doctrine of ultra vires to the powers of NCS to further its Objects; and
- (b) ensure NCS can give effect to the Objects without the need to specifically include a power.

6. INCOME AND PROPERTY

6.1. Income and property to only be used in promotion of the Objects

The income and property of NCS must be applied solely towards the promotion of the Objects.

6.2. Members not to receive income or property of NCS

No portion of the income or property of NCS will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member.

6.3. Remuneration of Directors

No remuneration or other benefit in money or money's worth will be paid or given by NCS to any Member in their capacity as a Director unless such remuneration or benefit is authorised by Special Resolution.

6.4. Members may receive payments in good faith

Subject to Clauses 6.2 and 6.3, nothing in this Constitution prevents payment in good faith to any Member:

- (a) for any services actually rendered to NCS as an employee or otherwise;
- (b) for goods supplied to NCS in the ordinary and usual course of business;
- (c) of interest on money borrowed by NCS from any Member;
- (d) of rent of premises demised or let by any Member to NCS; or
- (e) for any out-of-pocket expenses incurred by any Member on behalf of, and approved by, the Board,

provided any such payment does not exceed the amount ordinarily payable between ordinary commercial parties dealing at arms length in a similar transaction.

7. ESTABLISHMENT AND OPERATION OF OTHER FUNDS

7.1. Company may create other funds

NCS may establish one or more funds to be used for specific purposes consistent with the Objects set out in Clause 4 and into which the public, or specific members of the public, will be invited to make gifts and donations of money and property.

7.2. Board to determinate administration of funds under Clause 7

Subject to anything else in this Constitution, the Board shall determine the operation the administration procedures for each fund created under Clause 7.

7.3. Winding up of a fund created under Clause 7

At the first occurrence of:

- (a) the winding-up of a fund created under this Clause 7; or
- (b) NCS ceasing to be a deductible gift recipient within the meaning of section 30-227 of the *Income Tax Assessment Act 1997*;

any surplus assets of any funds created by NCS must be transferred to funds, authorities or institutions:

- (c) That have objects similar to the Objects;
- (d) which are charitable at law; and

- (e) which are deductible gift recipients within the meaning of section 30-227 of the *Income Tax Assessment Act 1997*.

7.4. Receipts

Receipts issued for gifts made to a fund created under Clause 7 must state:

- (f) the number of the receipt;
- (g) the date the donation was received;
- (h) the name and Australian Business Number (ABN) of NCS;
- (i) the name of the fund;
- (j) the signature of a person authorised to act on behalf of the fund;
- (k) the name of the donor; and
- (l) that the amount is for a gift.

8. ADDITION, ALTERATION OR AMENDMENT OF CONSTITUTION

8.2. Amendment of Constitution to be by Special Resolution

No addition, alteration or amendment can be made to this Constitution unless approved by a Special Resolution.

9. MEMBERSHIP

9.1. Categories of membership

NCS shall have the following categories of Members:

- (a) General Members;
- (b) Honorary Life Members; and
- (c) any other categories determined by the Board from time to time.

9.2. General Members

- (a) The initial General Members of NCS shall be those natural persons who are identified as General Members in the application for incorporation of NCS as a public company limited by guarantee submitted to the Australian Securities and Investments Commission.
- (b) The Board may, at its absolute discretion and upon receiving an application for admission as a General Member supported in writing by 2 existing General Members, admit a person as a new General Member provided that person:
 - (i) acts in a manner in pursuit of the Objects;
 - (ii) uses the services or facilities of NCS; or
 - (iii) provides voluntary services to NCS.

9.3. Honorary Life Members

- (a) The initial Honorary Life Members of NCS shall be those persons recognised as Honorary Life Members by NCS at the time it ceases to be an incorporated association created under the *Associations Incorporation Act 1991* (ACT).
- (b) The Board may recommend persons for Honorary Life Membership to NCS in Annual General Meeting, and NCS in Annual General Meeting may appoint such persons as Honorary Life Members by ordinary resolution.
- (c) Any decision made by the Board under Clause 12 shall not be applicable to Honorary Life Members.

10. EFFECT OF MEMBERSHIP

10.1. Consequences of Membership

Members acknowledge and agree:

- (a) that this Constitution constitutes a contract between each of them and NCS and that they are bound by and must comply with:
 - (i) this Constitution; and
 - (ii) any By-Laws, determination, resolution or policy which may be made or passed by the Board or any duly authorised persons or committee in accordance with this Constitution;
- (b) that by being a Member they are subject to the jurisdiction of NCS;
- (c) that subject only to this Constitution, they are entitled to all the rights, advantages, privileges and services of NCS membership.
- (d) to operate with mutual trust and confidence in pursuit of the Objects; and
- (e) to do all things reasonably necessary to enable the Objects to be achieved.

11. LIABILITY OF MEMBERS

11.1. Liability of Members to be limited by guarantee

The liability of the Members of NCS is limited to the amount of any guarantee made by a Member under this Clause 11.

11.2. Guarantee to be \$1

Every Member undertakes to contribute to the assets of NCS in the event of it being wound up:

- (a) while that Member is a Member; or
- (b) within one year after ceasing to be a Member,

for payment of the debts and liabilities of NCS contracted before the time at which that Member ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding one dollar (\$1).

12. SUBSCRIPTIONS AND FEES

12.1. The Board may determine subscriptions and fees for Membership of NCS

- (a) The Board may determine from time to time subscriptions and fees to be paid by Members to NCS, including but not limited to annual membership fees, capitation fees and levies.
- (b) Any subscriptions and fees determined by the Board under Clause 12.1 and the basis of, time for and manner of payment for those subscriptions and fees must be prescribed in the By-Laws.

12.2. Consequences of failure to pay monies due to NCS

If a Member fails to pay all monies due and payable by that Member to NCS under Clause 12.1:

- (a) that Member's rights under this Constitution will be immediately suspended from the expiry of time prescribed for the payment of those monies, unless the Board determines otherwise; and
- (b) such rights will be suspended until all monies are fully paid unless the Board determines otherwise; and
- (c) if the monies remain unpaid for more than 56 days, the Board may deal with the Member at its discretion and in line with any applicable By-Laws and may suspend, disqualify, discipline or retain (but not impose a financial penalty on) that Member as a Member, or impose such other conditions and/or requirements as the Board considers appropriate.

12.3. Natural Justice to be excluded to penalties imposed under Clause 12.2(c)

If the Board exercises its discretion under Clause 12.2(c) and imposes a penalty on a Member whom has not paid all monies due and payable by that Member to NCS, the principles of natural justice are expressly excluded and do not apply to the imposition of that penalty.

13. REGISTER OF MEMBERS

13.1. Chief Executive Officer to keep register

The Chief Executive Officer must keep and maintain a register of Members and must enter such information as is required under the Act from time to time.

13.2. Inspection of register

- (a) Having regard to privacy and confidentiality considerations, a Member may request, and NCS must provide within seven (7) days of such a request, an extract of NCS's company register.
- (b) A request for an extract of NCS's company register must be made in writing to NCS in accordance with any applicable By-Laws and the Act, which may require a request to be accompanied by a reasonable fee for the cost of copying and providing the extract.

14. REMOVAL AND CESSATION OF MEMBERSHIP

14.1. Cessation of Membership

A person ceases to be a Member if the person:

- (a) dies;
- (b) resigns from Membership of NCS under Clause 14.2; or
- (c) is removed from NCS under Clause 14.3; or

with such cessation of Membership taking effect immediately upon the occurrence of the relevant event giving rise to the cessation of Membership.

14.2. Resignation of Members

- (a) A Member who has paid all amounts due and payable by that Member to NCS may resign from Membership of NCS by giving written notice to NCS. The resignation comes into effect upon receipt of the notice by NCS.
- (b) If a Member resigns from NCS, the Member must fulfil all his or her obligations to NCS up to and including the date of resignation.
- (c) Where a person ceases to be a Member of NCS, the Chief Executive Officer must arrange for an appropriate entry to that effect to be made in NCS's company register recording the date on which the Member ceased to be a Member.

14.3. The Board may suspend or expel a Member

- (a) If the Board is of the opinion that a Member:
 - (i) has failed to comply with this Constitution or the By-Laws; or
 - (ii) has acted in a manner prejudicial to the interests of NCS or the Objects,then the Board may, by ordinary resolution:
 - (iii) expel the Member from NCS; or
 - (iv) suspend the Member from the rights and privileges of membership of NCS that the Board may decide for a specified period.
- (b) If the Board passes a resolution under Clause 14.3(a), the Chief Executive Officer must, as soon as practicable, serve a written notice on the Member:
 - (i) setting out the resolution of the Board and the grounds on which it is based;
 - (ii) stating that the Member may address the Board at a meeting held not earlier than 14 days and not later than 28 days after service of the notice; and
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (1) attend and speak at that meeting; and

- (2) submit to the Board at or before the date of that meeting written representations relating to the resolution.
- (c) A resolution of the Board under Clause 14.3(a) is of no effect unless the Board, at a meeting held not earlier than 14 days and not later than 28 days after service on the Member of a notice under 14.3(b), confirms the resolution.
- (d) At a meeting of the Board mentioned in Clause 14.3(c) the Board must:
 - (i) give the relevant Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by that Member at or before the meeting; and
 - (iii) by resolution decide whether to confirm or revoke the resolution of the Board previously made.
- (e) If the Board confirms a resolution under Clause 14.3(d), the Chief Executive Officer must, within 7 days of that confirmation, by written notice inform the Member of that confirmation and of the Member's right of appeal under Clause 14.4.
- (f) A resolution confirmed by the Board under Clause 14.3(d) does not take effect:
 - (i) until the end of the period within which the Member is entitled to appeal against the resolution if the Member does not exercise the right of appeal within that period; or
 - (ii) if within that period the Member exercises any right of appeal, unless and until NCS confirms the resolution in accordance with Clause 14.4.

14.4. Member's right of appeal

- (a) A Member may appeal to NCS in Special General Meeting against a resolution of the Board that is confirmed under Clause 14.3(d), within 7 days after the notice of the resolution is served on the Member, by lodging with the Chief Executive Officer a notice to that effect.
- (b) On receipt of a notice under Clause 14.4(a), the Chief Executive Officer must notify the Board which must call a Special General Meeting of NCS to be held within 21 days after the date when the Chief Executive Officer received the notice or as soon as possible after that date.
- (c) At a Special General Meeting of NCS called under Clause 14.4(b):
 - (i) no business other than the question of the appeal may be transacted;
 - (ii) the Board and the Member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
 - (iii) the Members present must vote by secret ballot on the question of whether the resolution made under Clause 14.3(d) should be confirmed or revoked.
- (d) If the General Meeting passes a Special Resolution in favour of the confirmation of the resolution made under Clause 14.3(d), that resolution is confirmed.

15. MEETINGS

15.1. Annual General Meetings

An Annual General Meeting of NCS must be held in accordance with the Act and this Constitution on a date and at a venue to be determined by the Board.

15.2. All other meetings to be Special General Meetings

All General Meetings other than the Annual General Meeting must be Special General Meetings and held in line with this Constitution and the Act.

15.3. Powers of the General Meeting

NCS in General Meeting must act in accordance with the Objects. NCS in General Meetings will act in the best interests of NCS and may in addition to its other powers and functions under the Act:

- (a) alter the Constitution (subject to Clause 8);
- (b) appoint or remove the Directors;
- (c) determine the remuneration of NCS's Directors;
- (d) appoint the auditors of NCS;
- (e) accept or reject the Annual Report;
- (f) pass or reject Special Resolutions; and
- (g) be the final arbiter on matters referred to it by the Board.

16. NOTICE OF GENERAL MEETINGS

16.1. Notice of General Meetings to be in writing

The Board must give written notice of every General Meeting individually to:

- (a) each and every Member;
- (b) each and every Director;
- (c) the Chief Executive Officer; and
- (d) NCS's auditors,

at least 21 days prior to the date on which that meeting is to be held.

16.2. Service of notice of General Meetings

NCS may give the notice of a General Meeting to a person entitled to notice under Clause 16.1 either:

- (a) personally; or

- (b) by sending it by post to the address for that person appearing in NCS's company register kept by NCS or any alternative address nominated by that person; or
 - (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
 - (d) by sending it to the person by other electronic means (if any) nominated by that person, or
 - (e) by any other form of communication permitted by the Act,
- and the date of service shall be determined in accordance with Clause 33.

16.3. Content of notice of General Meetings

A notice of a General Meeting given under this Clause 16 must state the place, day and time of the General Meeting, together with:

- (a) the agenda for the meeting;
- (b) notice of the business to be transacted at the meeting;
- (c) any notice of motion received from any Member or the Board in accordance with this Constitution;
- (d) relevant accounts and reports in line with this Constitution and the Act;
- (e) if a Member is entitled to appoint a proxy – a statement setting out:
 - (i) that the Member has a right to appoint a proxy;
 - (ii) that the proxy does or does not need to be a Member; and
- (f) the date on which the notice is sent.

17. ENTITLEMENT AT GENERAL MEETINGS

17.1. Entitlement to attend, speak and vote at General Meetings

At a General Meeting, each Member is entitled to attend, speak and vote.

17.2. Directors may attend and debate at all General Meetings

In addition to any rights or entitlements under Clause 17.1, each Director is entitled to attend and speak at all General Meetings.

17.3. Member must not have any outstanding debts to NCS

Despite any other Clause of this Constitution, no Member can be represented at, or take part in, a General Meeting, unless all monies then due and payable by that Member to NCS are fully paid and received by NCS.

18. NOTICES OF MOTION

18.1. Any Member may give a notice of motion for special business

Subject to anything else in this Clause 18, any Member may give NCS a written notice of motion, requiring an issue or resolution to be included as special business at a General Meeting

18.2. NCS must include a notice of motion as special business

If a notice is given under Clause 18.1, NCS must include the issue or resolution referred to in the notice of motion as special business at the next General Meeting.

18.3. Time for a notice of motion to be included as special business in General Meeting

Despite Clause 18.2, a notice of motion from Members under Clause 18.1 is only valid if submitted in writing (in the required form) to the Chief Executive Officer at least 14 days (excluding receiving date and meeting date) before the General Meeting to which the notice of motion relates.

19. SPECIAL GENERAL MEETINGS

19.1. Board may convene Special General Meetings

The Board may, by resolution and whenever it thinks fit, convene a Special General Meeting of NCS and, where but for this Clause more than 15 months would elapse between Annual General Meetings, must convene a Special General Meeting before the expiration of that period.

19.2. Members may demand Special General Meetings

The Board must convene a Special General Meeting on the requisition in writing of more than 5% of voting Members, and such Special General Meeting must be:

- (a) called no later than 21 days after the requisition and in accordance with the Act and the Constitution; and
- (b) held no later than 2 months after the requisition.

19.3. Format of Member's requisition for Special General Meeting

A Members' requisition for a Special General Meeting must:

- (a) state the business to be transacted at that meeting;
- (b) identify any resolutions (including Special Resolutions) that are to be raised at the meeting;
- (c) be signed by the Members making the requisition; and
- (d) be delivered to NCS.

19.4. Member's requisition for Special General Meeting may be in counterparts

The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisition.

19.5. Members may convene Special General Meetings

- (a) If the Board fails to convene a Special General Meeting under Clause 19.2, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than 2 months after the date on which the request was made.
- (b) The cost and expense of convening a Special General Meeting under this Clause 19.5 must be borne by the Members calling and holding that meeting.
- (c) A Special General Meeting convened by Members under this Constitution must be convened in the same manner, or as nearly as possible as that, in which General Meetings are convened by the Board.

19.6. Members' rights to requisition and convene a General Meeting not allowed if a meeting already called

If Members requisition a Special General Meeting in accordance with this Clause 19 and notice has already been given for a General Meeting that is to be held within the next 28 days, the Board shall not convene a Special General Meeting and the business sought by the Members in the requisition notice made under this Clause 19 shall be included in the business of the General Meeting already called.

20. PROCEEDINGS AT GENERAL MEETINGS

20.1. Conduct of General Meetings to be determined by the Board

Subject to this Constitution and the Act, the conduct of the General Meeting is to be determined by the Board.

20.2. Quorum Present

No business can be transacted at any General Meeting unless a quorum of a majority of Members, being more than 50% of existing Members, is present at the time when the meeting proceeds to business.

20.3. Chair of the General Meeting

- (a) The Chair must, subject to this Constitution, preside as chairman at every General Meeting of NCS.
- (b) If the Chair is not present at a General Meeting, or is unable to preside, the Deputy Chair shall preside as chairman for that meeting only.
- (c) If neither the Chair nor Deputy Chair are present at a General Meeting, the present Members will elect:
 - (i) one of the remaining Directors; or
 - (ii) if there are no remaining Directors willing or able to preside, a Member, who must, subject to this Constitution, preside as chairman for that meeting only.

20.4. Chairman of General Meeting to determine conduct of General Meeting

Any question arising at a General Meeting and relating to the order of business, procedure or conduct of that meeting must be referred to the chairman for that meeting, whose decision is final.

20.5. Adjournment of Meeting

If within 30 minutes from the time appointed for the General Meeting a quorum is not present, the meeting must be adjourned to such other day and at such other time and place as the chairman of that meeting may determine. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the rescheduled meeting then the meeting will lapse.

20.6. Chairman may adjourn General Meeting

The chairman of a General Meeting may, and must if so directed by that meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

20.7. Notice of adjourned General Meeting required if adjournment exceeds 30 days

When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of a General Meeting.

20.8. Resolutions determined by show of hands unless a poll is demanded

(a) At any General Meeting a resolution put to the vote of the meeting will be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded.

(b) Unless a poll is demanded then:

(i) a declaration by the chairman of that meeting that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority lost; and

(ii) an entry to that effect is made in the book containing the minutes of the proceedings of NCS,

will be conclusive evidence of that fact without proof of the number of the votes recorded in favour of or against the resolution.

20.9. A demand for a resolution to be voted by poll

(a) A poll may be demanded for a vote on any resolution being considered at a General Meeting:

(i) by the chairman of the meeting; or

(ii) by over half the Members present at the meeting.

(b) If a poll is duly demanded it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman of that meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

20.10. Chairman to have casting vote if voting is equal

Where voting is equal on any vote the chairman of that meeting shall have a second casting vote.

20.11. Resolutions not in Meeting

- (a) NCS may pass a resolution without a General Meeting being held if all Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Any such resolution may consist of one or several documents in like form each signed by one or more of the Members entitled to vote.
- (c) The resolution is deemed to be passed when the last Member signs.

20.12. Members do not need to be physically present at a Special General Meeting

A Special General Meeting may be held even where one or more of the Members entitled to vote are not physically present at the meeting, provided:

- (a) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication; and
- (b) notice of the meeting is given to all persons entitled to notice pursuant to this Constitution and the Act; and
- (c) if a failure in communications prevents Clause 20.12(a) from being satisfied by a quorum then the meeting must be suspended until Clause 20.12(a) is satisfied again. If such is not satisfied within 15 minutes from the interruption the meeting will be deemed to have terminated; and
- (d) no meeting will be invalidated merely because no Member entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

21. VOTING BY PROXY

21.1. Members may vote by proxy

Members entitled to vote may vote at a General Meeting by proxy in accordance with this Clause 21.

21.2. Required form of proxy

The instrument appointing a proxy must:

- (a) be in writing by the Member appointing the proxy;
- (b) confer authority on the holder of the proxy to demand, or join in demanding, a written poll; and
- (c) be in the form determined by the Board from time to time.

21.3. Members may give proxy directions

- (a) A Member appointing a proxy is entitled (but not obliged) to direct a proxy to vote in favour of or against any proposed resolution.
- (b) Unless otherwise instructed under Clause 21.3(a), a proxy may vote as that proxy thinks fit.

21.4. Requirements for lodging proxy instrument

An instrument appointing a proxy must be deposited at the registered office of NCS, or at any other place that is specified for that purpose in the notice convening the General Meeting:

- (a) at least 48 hours before the time for the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote; or
- (b) in the case of a poll, at least 48 hours before the time appointed for the taking of the poll,
- (c) and failure to comply with this Clause 21.4 will result in the instrument appointing the proxy being deemed invalid.

21.5. Proxy votes to remain valid despite death of appointor or revocation of proxy

A vote in line with the terms of a proxy is valid despite:

- (a) the previous death or unsoundness of mind of the Member appointing the proxy; or
- (b) revocation of the proxy or power under which the instrument was executed,

provided no notice in writing of that death, unsoundness of mind or revocation is received by NCS at its registered office, or at any other place that is specified for that purpose in the notice convening the General Meeting, before the commencement of that meeting or adjourned meeting.

21.6. Proxy may not hold more than 5 votes

A person may not hold more than 5 proxy votes.

22. THE BOARD

22.1. The Board to conduct the business of NCS

- (a) Subject to the Act and this Constitution, NCS is governed, and the powers of NCS will be exercised by, the Board.
- (b) The Board must act in pursuit of the Objects.

22.2. Composition of the Board

The Board will, subject to this Constitution, comprise:

- (a) no less than 7 and no more than 10 Directors elected under Clause 23; and
- (b) no more than 3 Directors appointed by the Board under Clause 24.

22.3. Portfolios to be determined by Board

The Board may at its discretion assign portfolios to certain Directors.

22.4. Board to Meet

- (a) The Board will meet as often as is deemed necessary for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate, its meetings as it thinks fit.
- (b) A meeting of the Board may be called at any time by a Director giving notice under Clause 22.9.

22.5. Chairman of Board meeting

- (a) The Chair shall preside as chairman at every meeting of the Board.
- (b) If the Chair is not present at a meeting of the Board, or is unable to preside, the Deputy Chair shall preside as chairman for that meeting only.
- (c) If neither the Chair nor Deputy Chair are present at a meeting of the Board, the Board shall appoint a Director present at that meeting to preside as chairman of that meeting only.

22.6. Resolutions of Board

- (a) Subject to this Constitution, questions arising at any meeting of the Board will be decided by a majority of votes and a determination of a majority, being more than 50%, of Directors present and entitled to vote shall for all purposes be deemed a resolution of the Board.
- (b) All Directors will have 1 vote on any question. No other persons will have a vote on any question before the Board.
- (c) The Chair will also have a 2nd casting vote where voting is otherwise equal.

22.7. Resolutions not in Board meeting

- (a) A resolution in writing, signed or assented to by facsimile or other form of visible or other electronic communication by all Directors is as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors and is deemed to have been passed when the last Director signs the resolution.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board may be held where 1 or more of the Directors is not physically present at the meeting, provided:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in line with the usual procedures agreed upon or laid down from time to time by the Board; and
 - (iii) if a failure in communications prevents Clause 22.7(a)(i) from being satisfied by a quorum of Directors then the meeting is suspended until Clause 22.7(a)(i) is satisfied again. If a quorum is not satisfied within 15 minutes from the interruption, the meeting will be deemed to have terminated, and

no meeting will be invalidated merely because no Director is physically present at the place for the meeting specified in the notice of a meeting.

22.8. Quorum

At meetings of the Board the number of Directors whose presence (or participation) is required to constitute a quorum, is at least half of the number of Directors.

22.9. Notice of Board meetings

(a) Unless all Directors agree to hold a meeting at shorter notice (and such agreement will be sufficiently evidenced by their presence), at least 14 days' written notice of the meeting of the Board must be given to each person entitled to notice of Board meetings.

(b) The agenda for a Board meeting must be forwarded to each Director and the Chief Executive Officer at least 7 days before such meeting.

22.10. Validity of Board decisions

A procedural defect in decisions taken by the Board will not result in such decisions being invalidated.

23. ELECTION AND APPOINTMENT OF DIRECTORS

23.1. Initial Directors

The initial Directors of NCS shall be those persons who are identified as Directors in the application for incorporation of NCS as a public company limited by guarantee submitted to the Australian Securities and Investments Commission.

23.2. Procedure for election of Directors other than Appointed Directors

(a) Where an office of Director will be deemed vacant at the end of an Annual General Meeting, nominations shall be called, and an election shall be held, for that office in accordance with with this Clause 23.2.

(b) At least 21 days prior to each Annual General Meeting, all Members must be given notice:

- (i) of any office of Director that will be vacant at the relevant Annual General Meeting; and
- (ii) that NCS is seeking nominations for that vacant office.

(c) Nominations for election to a soon to be vacant office of Director must be:

- (i) in writing;
- (ii) on the prescribed form (if any) provided for that purpose;
- (iii) specify the nominee, who must be a natural person and who must not be an employee of NCS;
- (iv) signed by a nominator and a seconder, who must be voting Members;
- (v) signed by the nominee expressing his willingness to accept the position for which he or she is nominated;
- (vi) received by NCS in writing at least 42 days prior to the date for the relevant Annual General Meeting.

- (d) At the time a notice of Annual General Meeting is sent out in accordance with Clause 16, a list of those persons nominated for election to the office of Director shall be provided.
- (e) In the event that the number of nominations received for election to the position of Director is less than the number vacant offices, the Board may seek, from amongst the Members and the public, such additional nominations as is necessary to ensure the number of nominations is equal to the number of vacant offices.
- (f) At an Annual General Meeting, where the number of nominations for election to the position of Director is equal to or less than the number of vacant positions, then those persons so nominated shall be deemed to be elected to the office of Director.
- (g) At an Annual General Meeting, where the number of nominations for election to the position of Director exceeds the number of vacancies, a poll shall be held in accordance with Rule 20.9.

23.3. A person may not hold two or more positions on the Board

For the avoidance of doubt, a person is not eligible to simultaneously hold more than one position on the Board.

23.4. Duration of Appointment

The term of appointment of each Director appointed or elected under this Clause 23 shall be for a period until the third Annual General Meeting after the Annual General Meeting of his or her appointment.

23.5. Eligible for reappointment

- (a) Directors appointed or elected under this Clause 23 are eligible for re-appointment at the expiry of each term of appointment subject to Clause 23.5(b).
- (b) A person is not eligible for re-appointment as a Director under this Clause 23 if that person at the time of re-appointment would have already been a Director of NCS for a continuous period of 3 terms unless the Members otherwise determine by Special Resolution.

24. APPOINTED DIRECTORS

24.1. Board may appoint up to 3 Appointed Directors

The Board may from time to time appoint up to 3 Appointed Directors as additional directors of NCS for the purposes of ensuring the Board has an appropriate mix of skills to best promote the Objects.

24.2. Term for Appointed Directors not to exceed 3 years

The term of appointment for each Appointed Director shall be determined by the Board but shall not exceed 3 years from the date of appointment.

24.3. Eligible for reappointment

Appointed Directors appointed Clause 24 are eligible for re-reappointment by the Board but must not serve as an Appointed Director a continuous period of more than 6 years unless the Members determine otherwise.

25. REMOVAL FROM OFFICE AND VACANCIES OF DIRECTORS

25.1. Retirement of Directors

A Director may resign upon written notice to NCS.

25.2. Removal from office

NCS may by Special Resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement.

25.3. Vacancy

In addition to the circumstances (if any) in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director at the time:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) is absent without the consent of the Board from all Board meetings held during a period of 6 months;
- (e) without the prior consent or later ratification of NCS in General Meeting, holds any office of profit under NCS;
- (f) is directly or indirectly interested in any contract or proposed contract with NCS and fails to declare the nature of that interest;
- (g) would otherwise be prohibited from being a director of a corporation under the Act; or
- (h) retires, resigns or is removed from office under this Clause 25.

25.4. Casual Vacancies

- (a) The Board may fill any casual vacancy occurring in the office of Director from appropriately qualified persons if the vacancy arises more than 3 months from the next Annual General Meeting.
- (b) Any such vacancy can only be filled until the next Annual General Meeting.

26. CHAIR AND DEPUTY CHAIR

26.1. Chair

- (a) The Board shall appoint from amongst their number a Chair.
- (b) The term of appointment of a Director as Chair shall be 2 years.
- (c) The Chair must not be an employee or subcontractor of NCS.
- (d) The Chair may resign by notice in writing to the Board.
- (e) The Chair may be removed as Chair, but not as a Director, by resolution passed by at least 75% of the Directors.
- (f) The Chair shall be deemed to have vacated his or her position if he or she ceases to be a Director.

26.2. Deputy Chair

- (a) The Board shall appoint from amongst their number a Deputy Chair.
- (b) The term of appointment of a Director as Deputy Chair shall be 2 years.
- (c) The Deputy Chair must not be an employee or subcontractor of NCS.
- (d) The Deputy Chair may resign by notice in writing to the Board.
- (e) The Deputy Chair may be removed as Deputy Chair, but not as a Director, by resolution passed by at least 75% of the Directors.
- (f) The Deputy Chair shall be deemed to have vacated his or her position if he or she ceases to be a Director.

27. CONFLICTS OF INTEREST OF DIRECTORS

27.1. Directors must declare any real or potential conflicts of interest

A Director must declare to the Board an interest in any matter, whether contractual, disciplinary, financial or otherwise, in which a conflict of interest arises or may be perceived to arise and shall, unless otherwise determined by the Board, absent his or her self from discussion of such matter.

27.2. Register of declared conflicts of interest

The Chief Executive Officer must maintain a register of declared conflicts of interest.

28. CHIEF EXECUTIVE OFFICER

28.1. The Board to appoint a Chief Executive Officer

The Chief Executive Officer is to be appointed by the Board for such term and on such conditions as it thinks fit.

28.2. Obligations of the Chief Executive Officer

The Chief Executive Officer must:

- (a) fulfil all obligations of the company secretary under the Act, if appointed to this position by the Board;
- (b) as far as practicable attend all Board meetings and General Meetings;
- (c) prepare the notice of and agenda for all Board meetings and all General Meetings;
- (d) ensure minutes of the proceedings of all Board meetings and General Meetings are recorded and prepared; and
- (e) regularly report and be accountable to the Board on the activities of, and issues relating to, NCS.

28.3. Powers of the Chief Executive Officer

- (a) Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of NCS.
- (b) No resolution passed by the General Meeting will invalidate any prior act of the Chief Executive Officer or the Board which would have been valid if that resolution had not been passed.

28.4. Chief Executive Officer to employ personnel as necessary

The Chief Executive Officer in accordance with any policies set down by the Board, may employ such personnel as are deemed necessary from time to time and such appointments are for such period and on such conditions as the Chief Executive Officer determines.

29. DELEGATIONS

29.1. Board may Delegate Functions

- (a) The Board may by instrument in writing create or establish or appoint from among the Directors or otherwise, committees, individual officers or consultants to carry out such duties and functions and with such powers as the Board determines.
- (b) The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:
 - (i) this power of delegation; and
 - (ii) a function exclusively imposed on the Board or the Chief Executive Officer by the Act, any other law or this Constitution.

29.2. Delegated function to be exercised in accordance with terms of delegation

A function, the exercise of which has been delegated under this Clause 29, may whilst the delegation remains unrevoked, be exercised from time to time in line with the terms of the delegation.

29.3. Procedure of delegated entity

- (a) The procedures for any delegated entity must, with any necessary or incidental amendment, be the same as those applicable to meetings of the Board.

- (b) Unless stated in the delegation instrument, the quorum for the delegated entity will be determined by the entity, but must be at least one half of the total number of the entity's members.

29.4. Delegation may be conditional

A delegation under this Clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

29.5. Revocation of delegation

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Clause 29, and may amend, repeal or veto any decision made by such body or person under this Clause.

30. BY-LAWS

30.1. Board to formulate By-Laws

- (a) The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of NCS and the advancement of the Objects as it thinks necessary or desirable.

- (b) Such By-Laws must be consistent with this Constitution and the Act.

30.2. By-Laws binding

All By-Laws made under this Clause 30 are binding on NCS and its Members.

30.3. Notices binding on members

Amendments, alterations, interpretations or other changes to By-Laws must be advised to Members by means of notices in writing approved by the Board and prepared and issued by the Chief Executive Officer.

31. RECORDS AND ACCOUNTS

31.1. Chief Executive Officer to Keep Records

The Chief Executive Officer must establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of NCS and the Board and must produce these as appropriate at each Board meeting or General Meeting.

31.2. Records Kept in Accordance with the Act

- (a) Proper accounting and other records must be kept in line with the Act, generally accepted accounting principles and/or any applicable code of conduct.
- (b) The books of account must be kept in the care and control of the Chief Executive Officer.

31.3. NCS to retain records

NCS must retain such records for at least 7 years after the completion of the transactions or operations to which they relate.

31.4. Board to submit accounts

The Board must submit to the Annual General Meeting the accounts of NCS in line with this Constitution and the Act.

31.5. Accounts Conclusive

The accounts when approved or adopted by NCS in Annual General Meeting are conclusive except as regards any error discovered in them within 3 months after such approval or adoption.

31.6. Accounts to be sent to Members

The Chief Executive Officer must cause to be sent to all persons entitled to receive notice of Annual General Meetings of NCS in line with this Constitution, a copy of the accounts, the Board's report, the auditor's report and every other document required under the Act (if any).

31.7. Inspection of accounts

Subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed in accordance with this Constitution, the financial records of NCS must be open to inspection (but not copying) by the Directors.

31.8. Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments and all receipts for money paid to NCS, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, only by those persons authorised by the Board.

32. AUDITOR

32.1. Auditor to be appointed by the Board

- (a) A properly qualified auditor or auditors will be appointed pursuant to Clause 15.3 and the remuneration of such auditor or auditors fixed by the Board.
- (b) The auditor's duties will be regulated in accordance with the Act, or if no relevant provisions exist under the Act in accordance with generally accepted principles, or any applicable code of conduct.

32.2. Auditor to examine the accounts of NCS

The accounts of NCS including the profit and loss accounts and balance sheet must be examined by the auditor or auditors at least once in every year.

33. NOTICES

33.1. Manner of Notices

- (a) Notices may be given to any Member or person on the Board by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the person's registered address or facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected 3 days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected on the next business day after receipt of a confirmation report confirming the facsimile was sent to, or received at, the facsimile number to which it was sent.

- (d) Where a notice is sent by electronic mail, service of the notice is deemed to be effected on the next business day after the electronic mail was sent provided that there is no indication in writing that the electronic mail was not able to be sent.
- (e) Where a notice is sent by another method of communication permitted by the Act, service of the notice is deemed to be effected in accordance with the Act.

33.2. Notice of General Meeting

Notice of every General Meeting must be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

34. INDEMNITY AND INSURANCE

34.1. Persons to whom this Clause apply

This Clause applies to:

- (a) each person who is or has been a Director or Chief Executive Officer of NCS; and
- (b) such other officers or former officers of NCS as the Board in each case determines.

34.2. Indemnity

- (a) NCS must indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this Clause 34 applies for all losses or liabilities incurred by the person as an officer of NCS including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Act.
- (b) NCS must indemnify its Directors, the Chief Executive Officer and all NCS officers and employees against all damages and costs (including legal costs) for which any such person may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
 - (i) in the case of a Director, officer or the Chief Executive Officer, performed or made whilst acting on behalf of and with the express or implied authority of NCS; and
 - (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by NCS.

34.3. Insurance

NCS may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this Clause 34 applies against any liability incurred by that person as a Director, Chief Executive Officer, officer or employee of NCS including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever the outcome.

35. DISSOLUTION

35.1. Dissolution of NCS to be in accordance with the Act

NCS may be wound up, deregistered or dissolved in line with the provisions of the Act.

35.2. Distribution of Property on Dissolution

(a) Subject to Clause 35.2(b), if upon the winding up or dissolution of NCS there remains, after the satisfaction of all its debts and liabilities, any surplus assets or property, the same must not be paid to or distributed amongst the Members but must be paid to, or distributed to, an organisation or organisations, whether incorporated or unincorporated, that:

- (i) has objects similar to the Objects;
- (ii) is deemed by the Australian Taxation Office to be a deductible gift recipient; and
- (iii) prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on NCS in this Constitution.

(b) An organisation may only be the recipient of surplus housing assets or property under Clause 35.2(a) if the organisation not only satisfies the requirements of that clause but also:

- (i) is a registered housing provider under Part 4A of the Housing Assistance Act 2007 (ACT);
- (ii) is approved by the Commissioner for Social Housing under that Act; and
- (iii) is endorsed by the Commissioner of Taxation as a public benevolent institution under Item 4.1.1 of Section 30-45 of the Income Tax Assessment Act 1997 (Cth).

(c) The organisation referred to in Clause 35.2(a) or (b) above is to be determined by the Members at or before the time of dissolution, and if no such determination is made, by such judge of the Supreme Court of the Australian Capital Territory as may have or acquires jurisdiction for the matter.

36. GENERAL

36.1. Submission to jurisdiction

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of the Australian Capital Territory, the Federal Court of Australia and any Courts which may hear appeals from those courts.

36.2. Prohibition and enforceability

(a) Any provision of, or the application of any provision of, these Clauses which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.

- (b) Any provision of, or the application of any provision of, these Clauses 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 that or any other place.

37. TRANSITIONAL BOARD

37.1. Nature of Clause

This Clause is a transitional Clause to reflect that the incorporation of NCS as a public company limited by guarantee resulted from a restructure of its legal entity status.

37.2. Initial Directors to hold Board meeting within one month

The initial Directors shall meet within one month of NCS being registered as a public company limited by guarantee to:

- (a) appoint a Chair and Deputy Chair; and
- (b) draw straws each of different lengths.

37.3. Initial Chair and initial Deputy Chair to serve one-year term

Despite anything else in this Constitution, the initial Chair and initial Deputy Chair shall serve a term of one year, whereupon they will both be eligible for re-election in accordance with Clause 26.

37.4. Half of initial Directors to serve a two-year term

Despite anything else in this Constitution, those 4 initial Directors drawing the shortest straws pursuant to Clause 37.2 shall only serve a term as Directors until the conclusion of the second Annual General Meeting of NCS, whereupon they will be eligible for re-election in accordance with Clause 23.

37.5. Half of initial Directors to serve a three-year term

Despite anything else in this Constitution, those 5 initial Directors not drawing the shortest straws pursuant to Clause 37.2 shall serve a term as Directors until the conclusion of the third Annual General Meeting of NCS, whereupon they will be eligible for re-election in accordance with Clause 23.