

Explanatory statement to members of the Cat Protection Society of NSW Inc regarding governance transfer from incorporated association to company limited by guarantee

Purpose of this statement

For more than 10 years, Cat Protection has operated as a NSW incorporated association, a structure intended for and adopted by many charities and not-for-profits. This had been suitable until now. The NSW Office of Fair Trading (Fair Trading) has effectively directed that, because of the growth in our revenue and assets, Cat Protection ought to convert to a company limited by guarantee – this will remove us from the purview of NSW Government (except for fundraising, which continues to be regulated at the State level) and make us accountable to the Australian Government through the Australian Securities & Investments Commission (ASIC).

The purpose of this statement is to inform members of the proposals, explain the changes that would be required and offer members the opportunity to comment.

Although mandated by Fair Trading, the decision to incorporate as a company is neither theirs, nor that of the Board. Only our members, voting on motions put to a general meeting, can approve the change in jurisdiction and entity, and the adoption of a new Constitution which will be required to give effect to the new structure.

The Board's view

The Board accepts the Fair Trading's position and will be recommending that members approve the new Constitution and authorise the actions necessary to establish the new entity.

Consultation with our members

We anticipate seeking approval of those changes at a general meeting, possibly in tandem with the 2018 Annual General Meeting. Prior to putting the motions to members, the Board initiated a process of consultation, which began with the President's message to members in the *Winter Cat Affairs* and includes this statement and attached feedback form.

Members may wish to comment on the proposals by returning the Comments Form to us by 21 September 2018. Return of the form will not constitute a formal vote on the issues canvassed. Rather it allows the Board and management to receive and evaluate the responding members' views of the proposed changes.

What the changes mean – in summary

For simplicity, further references are to "association" and "company" except where the full description is necessary.

Incorporation as a company will:

- Mean that we are no longer bound geographically to only NSW-based activities (our name notwithstanding) though there are no current plans to expand beyond NSW other than as occurs via our on-line presence
- Simplify some aspects of our governance and compliance obligations (no longer having to deal with both NSW and Commonwealth agencies on what are essentially identical governance matters)
- Not affect our current stated purpose, the flexibility to pursue that purpose, transparency or good governance. With no change proposed to the objects specified in our Constitution, we will remain a charity focused on feline care, health, welfare and wellbeing. Our current governance practices already fulfil the requirements of our incorporation as a company
- Maintain the accountability of the Board and management to our members.

Naming the new company

The opportunity will be taken, concurrently, to seek approval to register the new company as “The Cat Protection Society of NSW” (removing “Incorporated” from the name, but not replacing it with “Limited”). That contraction, quite common in the not-for-profit sector, is at the discretion of ASIC and can only occur after the incorporation of The Cat Protection Society of NSW Limited. The intention is to shorten the name to its key elements and simplify our branding.

The Proposed Constitution

The amended Constitution proposes no changes to our purpose or governance structures / processes (other than as are required to facilitate incorporation as a company). In many practical respects, amendments in the new Constitution involve little more than the change of name and working with ASIC in lieu of Fair Trading. This is further discussed later.

Membership

Existing Adult Members, Pensioner Members, Life Members and Life Governors at the time of adoption of the new Constitution will retain their standing with the new entity (for the remainder of the current membership period in the case of Adult and Pensioner Members). New members will be appointed as at present (by application and subject to the approval of the Board).

Change of financial year-end

The change from a 31 May to a 30 June year-end is being recommended to align our financial year with key providers and agencies.

Transfers of assets / employees

The Society's property, assets, reserves and employees will automatically transfer to the new entity once final approval of Fair Trading is given.

Australian business number (ABN)

To facilitate the transition of ownership of assets and the continuity of trading facilities with suppliers, we will seek to also transfer the current ABN to the new company.

The Approval Processes

Conversion to a company requires that a number of steps be completed in a set order.

1. Obtain member approval for the changes and the new Constitution

At the General Meeting called for this purpose (which the Board hopes will be at the AGM), members will, in general terms, be asked to:

- *approve the transition of Cat Protection from an incorporated association to be registered as a company limited by guarantee, subject to the requisite approvals of Fair Trading and ASIC;*
- *approve / adopt the new Constitution in replacement of the 2014 document; and*
- *authorise the Board and management to pursue such actions and applications as will facilitate the continued conduct of our activities as a Charity (ACNC), Deductible Gift Recipient (ATO) and holder of a Fundraising Authority (Fair Trading).*

The resolutions to be put to the meeting are outlined at the end of this document and will be detailed in the Notice of Meeting to be sent to members in due course. The draft resolutions outlined in the Notice may vary slightly from those below, arising from any feedback we receive from members during the consultation process.

2. Obtain Fair Trading approval to become a company in lieu of an incorporated association

It is a requirement that Fair Trading approves of the change of jurisdiction from NSW to the Commonwealth. That approval requires a formal application for which member approval is needed. Allowing that Fair Trading has directed that we make this change, no resistance to the application is anticipated.

3. **Obtain ASIC approval of incorporation of new company**

After Fair Trading approval is given for the change of jurisdiction, we can apply to the ASIC to incorporate the new company. We have reserved the name *Cat Protection Society of NSW Limited* ahead of any formal application.

4. **Obtain final Fair Trading approval for the change of jurisdiction and transfer of assets / employees to the company.**

Again, in light of their desire to move us to the Commonwealth, we expect no resistance from Fair Trading.

Amendments to the proposed Constitution

Our current Constitution was adopted only in 2014 and reflected a strong governance model and provisions which already largely meet the statutory requirements for companies. Most of the changes to be put forward now will be in terminology to accommodate the change of entity-type and the move to a Commonwealth, rather than NSW-based, regulatory environment.

The areas in which the new Constitution differs from the 2014 version are highlighted below.

The new Constitution will completely replace the current document and will be binding on all members. For this reason, members are encouraged to read the entire Constitution. A copy showing the changes is published on our website.

The majority of the changes throughout the document are repeated references which simply reflect:

- the transition from an Association to a Company;
- the change in governing legislation to the Commonwealth's Corporations Act 2001; and
- the interaction with a new regulator, Australian Securities and Investments Commission (ASIC).

The following table summarises those repeated references which occur throughout the document:

Current Constitution terminology	Proposed Constitution terminology
The Cat Protection Society of NSW <i>Incorporated</i>	The Cat Protection Society of NSW <i>Limited</i>
<i>Association</i>	<i>Company</i>
<i>Associations Incorporation Act 2009</i>	<i>Corporations Act 2001</i>
<i>Model Rules</i>	<i>Replaceable Rules in line with the Corporations Act</i>
<i>Public Officer</i>	<i>Secretary</i>

None of the above (which are referred to below as “terminology”) alters the essential character or conduct of the organisation. The following table examines each Clause in turn. Excluding the changes in terminology, the Constitution remains largely unchanged in key areas of its objects, membership, directors and not-for-profit status.

Clause(s)	Topic	Reason / comment
1	Definitions	Unchanged except for terminology.
2	Interpretation	
3	Model / replaceable rules	
4	Powers and Actions	
5	Name	"Limited" vs "Incorporated". We will initially be required to register the Company with "Limited" in its name, and then seek approval from ASIC to remove "Limited" from the name, if the Members so resolve.
6	Objects	The objects are unchanged – they very adequately define our purpose. Those objects also meet the requirements of our continued registration as both a Charity and a Deductible Gift Recipient.
7	Liability	Unchanged except for terminology.
8 - 9	Winding-up	Unchanged except for terminology.
10 – 16	Membership: Classes of membership	Unchanged (Adult, Pensioner, Life Members and Life Governors).
	Continuity of membership	Existing Adult and Pensioner Members (in whichever class) at the time of adoption of the Constitution will retain their membership until the expiry date of that period of membership. The memberships of existing Life Governors and Life Members at the time of adoption of the Constitution will continue indefinitely (subject to the unchanged rules governing the cessation of membership – clause 16). Only changes are in terminology (association/company; Public Officer/Secretary).
17 - 29	General meetings of members	Previously, 10% of the total number of members could requisition a general meeting. That will now be 5%, in line with the provisions of the Corporations Act. No other changes other than terminology.
31	Appointment of Directors	Unchanged. Of the maximum 7 Directors, 5 Appointed Directors are nominated and elected by the

Clause(s)	Topic	Reason / comment
	President and Vice-President	<p>members. Those 5, in turn, appoint the 2 Expert Directors.</p> <p>The holders of these offices are determined by the Board. No change to either incumbent is contemplated in the new Constitution, with annual elections for the roles continuing.</p>
32	<p>Transition for Directors</p> <p>Retirement and Rotation of Directors</p>	<p>Persons holding the office of Director at the time of incorporation of the new company will continue to hold office until the AGM at which they would have been required to retire under the current Constitution.</p> <p>Essentially unchanged. The provisions of the Constitution dealing with the appointment / election of Directors were significantly revised in 2014. The current Constitution provides a mechanism for the election of approximately half the Board every year and limits the term of each appointment to a maximum of two years before a Director must either retire or stand for re-election.</p>
33	Vacation of Office	Unchanged except for terminology.
34	<p>Appointment of Chief Executive Officer</p> <p>Public Officer and other officers</p>	<p>Unchanged – Board appoints CEO and CEO is not a member of the Board.</p> <p>Reference to Public Officer deleted. Appointment of Secretary covered by amended Clause 50.</p>
35	Powers of Directors	Unchanged except for terminology.
36	Attorneys and Returning Officers	Unchanged except for terminology.
37	Negotiable instruments	Unchanged except for terminology.
38 - 42	Meeting of Directors	Unchanged except for terminology.
43	Disclosure of Directors' Interests	Unchanged except for terminology.
44	Disputes between members	Unchanged.
45	Board Committees	Unchanged.

Clause(s)	Topic	Reason / comment
46	Written resolutions	Unchanged except for terminology.
47	Defects in appointments	Unchanged.
48 - 49	Minutes of meetings	Unchanged except for terminology.
50	Secretary	Deals with the appointment of Company Secretary (subject to Corporations Act requirements) in lieu of the former Public Officer role.
51	Other officers	Unchanged except for terminology.
52	Execution of documents	
53	Inspection of records	
54	Accounts and reporting to members	
55	Audit and financial year	Replaces "Association" with "Company" and changes the financial year-end from 31 May to 30 June.
56	Notices generally	Unchanged except for terminology.
57	Notices of general meetings	
58	Indemnity and insurance	
Appendix A	Notice of Proxy	Unchanged except for terminology.
Appendix B	Rules Governing Elections	Unchanged except for terminology.

Members are invited to offer comments/feedback on Cat Protection's proposed incorporation as a company limited by guarantee. **A feedback form is enclosed. Please note that this form does not constitute a vote on these matters.**

Any decisions on the proposed transfer from incorporated association to incorporation as a company limited by guarantee can be made only by those members present and entitled to vote at a general meeting called for that purpose.

Please return the form by 21 September 2018 to Cat Protection Society, 103 Enmore Road, Newtown, 2042. By email: gm@catprotection.org.au or fax to 9557 8052

If you have any questions please contact Neil Williams, General Manager, on 9519 7201 or gm@catprotection.org.au

Thank you!

Member comments regarding Cat Protection corporate structure transfer from incorporated association to company limited by guarantee

<i>Proposed change</i>	<i>Feedback – please provide your view – agree / disagree – and any other comments</i>
A move from an incorporated association to a company limited by guarantee	
The new Constitution	
Any other comments?	
Do you have any questions?	

Member's name: _____

Address: _____

Please return the form by 21 September 2018 to Cat Protection Society, 103 Enmore Road, Newtown, 2042. By email: gm@catprotection.org.au or fax to 9557 8052