



EXPLANATORY MEMORANDUM

PROPOSAL FOR AMENDMENTS
TO THE YHA LTD CONSTITUTION



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1. PROPOSAL



YHA Ltd (ACN 008 387 791) is proposing to make a number of amendments to its Constitution which are being presented to eligible members of YHA Ltd (**Members**) for consideration at the upcoming Annual General Meeting (**AGM**). Eligible Members are entitled to vote to approve the proposed amendments at the AGM to be held on **17 April 2021 at 11.00am** at The Big Dig Archaeology Education Centre, Sydney Harbour YHA, 110 Cumberland Street, The Rocks, Sydney, NSW 2000.

Members are encouraged to read this Explanatory Memorandum in full prior to deciding whether or not to vote on the resolution.

Recommendation: The Board of Directors unanimously recommends that Members vote in favour of the resolution.

Special Resolution – Amendments to YHA Ltd's Constitution

To consider and, if thought fit, to pass the following as a special resolution:

THAT in accordance with section 136(2) of the Corporations Act 2001 (Cth), YHA Ltd's Constitution be modified by making the amendments contained in the document tabled at the Annual General Meeting and signed by the Chair for the purposes of identification.

To be passed, a special resolution must be approved by at least 75% of Members voting at the Annual General Meeting either in person or by proxy.

The Chair intends to vote all available proxies **in favour** of this resolution.

The Explanatory Memorandum summarises the reasons behind the proposal and explains the changes that would be made if the special resolution is passed.

Further information regarding the AGM can be found at www.yha.com.auYHALtd2021AGM/

If you have any questions, please do not hesitate to raise them prior to the meeting. Please contact: Silke Kerwick, Corporate Affairs Manager, YHA, Ph: (02) 9261 1111; or email yha@yha.com.au

On behalf of the Board
Stephen Lynch, Company Secretary

2. INTRODUCTION

The board of directors of YHA Ltd (**Board of Directors**) has formally resolved to recommend that Members vote in favour of the resolution.

This Explanatory Memorandum has been prepared to assist members of YHA Ltd (**Members**) with making decisions in relation to amendments to YHA Ltd's Constitution (**Constitution**) to be proposed at the Annual General Meeting (**AGM**) scheduled for 17 April 2021 in Sydney. Should the resolution be passed at the AGM, then the amendments to the Constitution will be effective immediately.

By way of background, YHA Ltd (**YHA** – trading as YHA Australia) was founded in Australia over 80 years ago, in 1939 as an organisation run by groups of volunteers who opened and ran the first hostels. Since those humble beginnings from one hostel at Warrandyte in Victoria, the organisation has now grown to a network of 61 hostels across every State and Territory of Australia, with substantial property assets across Australia. The network comprises properties owned and/or operated by YHA and also includes Associate hostels (which are mainly in regional areas).

In 2020, YHA turned over \$25 million (which was almost half as much as the previous year, due to the impact of the COVID-19 pandemic). The organisation currently has a property portfolio worth \$235 million and liabilities (mainly bank borrowings) of \$100 million. With the ongoing closure of Australia's international borders continuing into 2021, and the likelihood of the trading downturn continuing into 2022, the Board of Directors are closely monitoring YHA's financial position and reviewing a range of options for the continued and future financing of YHA's operations.

One such financing option is to enable YHA to issue mutual capital instruments (**MCI**s), which would allow YHA to raise funds through this new financial instrument which is available to eligible mutual entities in Australia, including YHA. The proposed MCI-related amendments to the Constitution would enable YHA to issue MCIs in future if the Board of Directors considered it necessary or desirable to do so at that time. This would allow YHA to raise money through the issuance of shares, instead of relying solely on debt or retained earnings from profits. The ability to raise additional funds by issuing MCIs would generate capital for innovation and growth. The terms of issue, including terms for payment of dividends, would be determined by the Board of Directors of YHA at the time of offering of MCIs (subject to alignment with the terms of MCIs which would be set out in the Constitution if the amendments proposed at the AGM are approved by Members).

As YHA is a mutual entity that can become an 'MCI mutual entity' for the purposes of the Corporations Act, it can issue MCIs if it amends the Constitution to enable this. The proposal ensures protection of YHA's mutual status by giving MCI Holders limited rights, including no more than one vote at a general meeting, no matter how many MCIs they would hold.

YHA is also proposing to make two non-MCI related modifications to the Constitution as follows:

- i) one relating to the tenure of Directors (to clarify the time gap required between potential terms on the Board once an initial term limit of nine years has been reached)
- ii) one clarifying the process for 'circulating resolutions' whereby a decision of Directors is taken other than at a face-to-face meeting.

Additionally, some grammatical amendments are proposed to terminology, including regarding potential MCI Holders (who could be either individual or institutional investors i.e. singular or plural bodies).

Modifications to the Constitution are subject to the approval of Members, (i.e. 75 percent of Members voting either in person or by proxy at the AGM must be in favour for the special resolution to pass).

Members are encouraged to read this Explanatory Memorandum and to vote. To view the full wording of the modifications, please visit www.yha.com.au/YHALtd2021AGM/

3. YOUR VOTE

The Board of Directors
of YHA Ltd recommend
that you vote
IN FAVOUR
of the resolution.

ELIGIBILITY

The following members of YHA Ltd (Members) may vote, in accordance with YHA Ltd's Constitution. Each eligible voting Member has one vote.

Persons eligible to vote on the resolution proposed at the Annual General Meeting (AGM) are Members in each of the Honorary Life, Life, Adult, and Group Membership categories, who:

- a) if the Member is a natural person, is at least 18 years of age, or, in the case of a Representative of an eligible body corporate or unincorporated entity which is a Member, is at least 18 years of age; and
- b) are not employees of YHA Ltd; and
- c) do not have any fees which are due and payable by the Member to YHA, which remain unpaid.

Only persons who were Members of YHA Ltd at 26 February 2021 will be eligible to vote.

IT'S EASY TO VOTE

- 1** Read the Notice of Annual General Meeting and Explanatory Memorandum
- 2** Vote in person at the meeting:
Saturday 17 April 2021, 11.00am
at The Big Dig Archaeology Education Centre, Sydney Harbour YHA
110 Cumberland Street, The Rocks, NSW 2000
- 3** If you are unable to vote in person you can appoint a proxy to vote for you. For your convenience, a completed proxy form can be lodged electronically, or you can download a proxy form from www.yha.com.au/YHALtd2021AGM/ and email it to yha@yha.com.au

The deadline to lodge your proxy is **11.00am on Thursday 15 April 2021 (AEST)**.



4. AMENDMENTS TO PERMIT ISSUANCE OF MUTUAL CAPITAL INSTRUMENTS (MCIs)

1. In 2019, Federal Parliament passed new legislation that formally recognised mutual entities, such as YHA Ltd. The *Treasury Laws Amendment (Mutual Reforms) Act 2019* (Cth) (**Mutual Reforms**) commenced on 6 April 2019. The Mutual Reforms amended the *Corporations Act 2001* (Cth) (**Corporations Act**) to, among other things:
 - a) introduce the concept of a “mutual entity” into the Corporations Act (being a company in which each person has no more than one vote at a general meeting for each capacity in which the person is a member); and
 - b) expressly permit certain mutual entities (including YHA Ltd) registered as public companies under the Corporations Act to issue equity capital without risking their mutual structure or status.
2. The Mutual Reforms enable eligible mutual entities such as YHA Ltd to raise funds through the issuance of mutual capital instruments (**MCIs**), a bespoke new financial instrument for mutual entities. This would allow YHA Ltd to raise money through the issuance of shares, instead of relying solely on debt or retained earnings from profits or compromising YHA Ltd’s mutual status.
3. The ability to raise additional funds by issuing MCIs removes a significant barrier to investment, innovation, growth and competition in the sector. Mutual entities such as YHA Ltd could issue MCIs to provide greater value to YHA Ltd’s Members, invest in more products and services and advance the other mutual objectives of YHA Ltd.
4. As YHA Ltd is a “mutual entity” that can become an “MCI mutual entity” for the purposes of the Corporations Act, it can issue MCIs if it amends its Constitution to enable this.
5. The proposed amendments would enable YHA Ltd to issue MCIs in future if the Board of Directors considers it necessary or desirable to do so, while protecting YHA Ltd’s mutual status. If YHA Ltd decides to issue MCIs, YHA Ltd will remain a mutual entity, because holders of MCIs will have limited rights, including no more than one vote at a general meeting of YHA Ltd no matter how many MCIs they hold.
6. For further detail, please refer to the copy of the Constitution marked to show the proposed changes to it available at www.yha.com.au/YHALtd2021AGM/
7. In addition, please refer to the MCIs Fact Sheet below which explains what a “mutual entity” is, what the key features of an MCI will be, and the impact that an issuance of MCIs may have on the Members of YHA Ltd.



5. OTHER AMENDMENTS TO THE CONSTITUTION

Certain other amendments to YHA Ltd's Constitution (**Constitution**) are proposed to be moved by the same resolution as the MCI amendments.

These are marked on the same copy of the Constitution marked to show all proposed changes – available at www.yha.com.au/YHALtd2021AGM/

1. Amendment regarding continuous service of Directors

In its current form, the Constitution provides under rule 7.1(f) that a director cannot be elected, re-elected, appointed or re-appointed as a director if they have held office as a director for nine continuous Annual General Meetings (**Term**). Under rule 7.1(g), a director who has served a Term, and who therefore may not be elected, re-elected, appointed or re-appointed as a director by virtue of rule 7.1(f), becomes eligible again for election or appointment once they have not been a director for at least 11 continuous months.

A new rule 7.1(h) is proposed to clarify that under rule 7.1, in order to determine whether a Director has served a Term, a break in a director's period of service which is 11 months or less during the Term is to be disregarded, such that the director's period of service is deemed to be continuous.

2. Amendment regarding circulating resolutions

In its current form, the Constitution does not provide for the passing of a resolution by the directors, without a directors' meeting being held.

A new rule 7.19 is proposed which provides that directors may pass a resolution without a directors' meeting being held, provided that all of the directors 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. This proposed rule follows the replaceable rule in the *Corporations Act 2001* (Cth) with respect to the passing of circulating resolutions by directors.

3. Grammatical amendments

Grammatical amendments have been made throughout the Constitution to pronoun terminology with respect to both Members and MCI holders.



6. FACT SHEET – MCIs

CHANGES TO THE CONSTITUTION TO PERMIT ISSUANCE OF MUTUAL CAPITAL INSTRUMENTS

A copy of YHA Ltd's Constitution (**Constitution**) marked to show the proposed changes to it is available at www.yha.com.au/YHALtd2021AGM/

1. What is a mutual entity?

A mutual entity is an organisation based on the principle of mutuality: people organising together to meet their shared needs. The mutual sector is very diverse with mutual entities operating in almost every sector of the Australian economy.

Until recently, there was no legal definition of "mutual entity". As of 2019, the *Corporations Act 2001* (Cth) (**Corporations Act**) now includes a definition of "mutual entity" for the first time in Australia's history. Essentially, a "mutual entity" is a company where no person has more than one vote at a general meeting for each capacity in which the person is a member.

It's great to have official recognition at last, and this definition of "mutual entity" is also important because only mutual entities can issue mutual capital instruments (**MCIs**).

YHA Ltd is a "mutual entity" and, if it amends its Constitution, it will be able to become an "MCI mutual entity" by issuing MCIs, if the Board of Directors considers it necessary or desirable to do so.

2. What are mutual capital instruments (MCIs)?

MCIs are a new type of share which can be issued by certain mutual entities such as YHA Ltd. MCIs allow mutual entities to raise capital while retaining their status as mutual entities.

Introduced by the *Treasury Laws Amendment (Mutual Reforms) Act 2019* (Cth) (**Mutual Reforms**), MCIs are fully paid shares with non-cumulative dividends, meaning YHA Ltd is not required to pay any unpaid dividends. YHA Ltd will have full discretion over whether to pay dividends and the conditions around any financial returns.

The proposed changes to the Constitution provide for MCI Holders to have certain voting rights, including no more than one vote at a general meeting (see over). YHA Ltd's Board of Directors will have discretion to decide the other entitlements, requirements and obligations which attach to MCIs.



6. FACT SHEET – MCIs (CONTINUED)

3. What are the proposed changes to the Constitution?

The proposed changes will allow YHA Ltd to issue MCIs in future, if the Board of Directors decides it is necessary or desirable to do so. MCIs would give YHA Ltd access to capital that will better equip us to invest, grow, innovate and compete, while remaining committed to our future as a mutual entity.

A copy of the Constitution marked to show the proposed changes to it is available at www.yha.com.au/YHALtd2021AGM/

4. Why is YHA Ltd proposing these changes to the Constitution?

The Mutual Reforms herald a new era for mutual entities in Australia and better enable mutual entities to continue to invest, innovate, grow and compete, while maintaining our mutuality. Our Board of Directors and YHA Ltd management have given careful consideration to the proposed changes. We believe the changes are an important step which will give YHA Ltd more flexibility in future to raise capital as a modern mutual and will allow us to continue to put the interests of our Members first.

6. Is YHA Ltd planning to issue MCIs?

YHA Ltd has no current plans to issue MCIs but the Board of Directors and management consider it important to update the Constitution following Mutual Reforms.

This will give YHA Ltd the flexibility to issue MCIs should it be necessary or desirable to do so in future (for example, to pursue business opportunities).

Any decision to issue MCIs in future would need to be approved by the Board of Directors, who would need to determine that this decision was in the best interests of YHA Ltd and our Members.

7. Will holders of MCIs be Members of YHA Ltd?

The Board of Directors may choose to issue MCIs to Members and/or to non-Members.

YHA Ltd's Members are its customers. A person is a "Member" of YHA Ltd if they are admitted to Membership in accordance with rule 5 of the Constitution and entered in the Register of Members.

An MCI Holder is not a "Member" as defined in the Constitution, but they will be considered a "member" of YHA Ltd for the technical purposes of the Corporations Act. This is because MCIs are a type of share, which can be issued by mutual entities (even if they are companies limited by guarantee).

As an MCI Holder is not a "Member" under the Constitution merely by virtue of holding an MCI, MCI Holders will not be entitled to the services and benefits that Members are entitled to (unless an MCI is issued to an existing Member or an MCI Holder separately becomes a Member by being admitted to membership under the Constitution).

8. Will holders of MCIs have voting rights?

Yes. In most instances, the proposed changes provide for MCI Holders to have the same voting rights as Members. For example, the proposed changes provide for MCI Holders to have one vote (provided they are not an employee of YHA Ltd) at a general meeting, including in an election of directors.

However, MCI Holders cannot have more than one vote at a general meeting, no matter how many MCIs they hold, and an MCI Holder who is also a Member has only one vote.

In addition, MCI Holders will count towards a quorum at a general meeting and the Patron, President and Vice-Presidents must be Members or MCI Holders.

Would holders of MCIs be eligible for election as a director?

Yes, provided they have been a Member for one year prior to the Annual General Meeting and they meet all other eligibility requirements. This is because the Board of Directors considers it important that MCI Holders, as members of and stakeholders in the company, have similar voting and governance rights as Members.

The nomination and election of directors must comply with the Constitution and all relevant By-laws. The Board of Directors would, accordingly, update the relevant By-laws prior to issuing any MCIs.

6. FACT SHEET – MCIs (CONTINUED)

9. Do the proposed changes mean YHA Ltd is demutualising?

No, YHA Ltd is committed to our future as a mutual and the proposed changes will retain YHA Ltd's status as a mutual now and into the future. Nothing in the proposed amendments or issuing of MCIs will mean that YHA Ltd ceases to be a "mutual entity" and the Mutual Reforms specifically provides for mutuals to issue MCIs as a new type of capital without losing their mutual status.

This is not a move towards a demutualisation or public listing, but rather positively affirms YHA Ltd's status as a mutual entity in light of the recent developments in legislation.

10. Do the proposed changes mean YHA Ltd will no longer use the term "not for profit"?

Yes. To avoid legal risks, YHA Ltd will no longer use the term "not for profit" to describe its operations if the proposed changes pass. This is because the proposed changes give YHA Ltd the ability to issue MCIs which carry rights to dividends.

However, YHA Ltd will continue to be owned and run by its members and, unless it issues MCIs, all profits will continue to be retained by YHA Ltd and returned to Members through improved services and other Member benefits.

Going forward, YHA Ltd will use the terms "for-purpose" and "mutual entity" to describe its operations.

11. Would MCI Holders have priority over Members in a winding-up of YHA Ltd?

The Board of Directors has the power to provide in the terms of issue of any MCIs that MCI Holders will have, on a winding-up of YHA Ltd, the right to payment of the Subscription Price (which is essentially the amount YHA Ltd was originally paid in return for issuing the MCIs) or any other amount stated in, or calculated under, the terms of issue of the MCIs. The terms of issue cannot grant any other right to participate in the surplus assets or profits of YHA Ltd.

The Constitution currently provides for the Members and MCI Holders to vote, by ordinary resolution, on which company, fund, institution or authority (provided it meets the criteria set out in the Constitution) will receive any property remaining after the payment of all of YHA Ltd's debts and liabilities, to the extent the Board of Directors do not wish to decide or do not decide this.

In addition, the Constitution will continue to provide that each Member's or former Member's liability on a winding-up of the company will be capped at \$1.



If you have any questions or comments about the changes,
or about attending or voting at the AGM,
please see www.yha.com.auYHALtd2021AGM/
or contact YHA, Ph: (02) 9261 1111; email yha@yha.com.au