



NGE Capital Limited

## **Notice of Annual General Meeting and Explanatory Statement**

*The Annual General Meeting of*

### **NGE CAPITAL LIMITED**

*ACN 112 618 238*

*will be held at*

*3:30 pm Melbourne time on 26<sup>th</sup> May 2022*

*at*

*NGE Capital Limited*

*Level 31 120 Collins Street, Melbourne, Victoria, 3000*

#### **No Attendance in Person**

Shareholders will not be able to attend the AGM in person

#### **Remote Attendance**

Shareholders can participate remotely in the AGM by joining a teleconference using the following dial-in details:

Australia: 1300 264 803  
International: +613 8687 0650

Meeting registration commences at 3:10 pm Melbourne time, 26 May 2022

#### **Voting**

Shareholders will not be able to cast direct votes. Shareholders are only able to vote by submitting a proxy form in accordance with the Notice of AGM.

This Notice of Annual General Meeting and Explanatory Statement should be read in its entirety. If shareholders are in doubt as to how they should vote, they should seek advice from their accountant, solicitor or other professional advisor without delay

# NGE CAPITAL LIMITED

ACN 112 618 238

Registered office: Level 4 100 Albert Road South, Melbourne Victoria 3205

## NOTICE OF ANNUAL GENERAL MEETING

Notice is given that the Annual General Meeting (Meeting) of Members of NGE Capital Limited (Company) will be held as a virtual meeting using the technology specified in this Notice at 3.30 pm Melbourne time on 26<sup>th</sup> May 2022.

## AGENDA

The Explanatory Statement and proxy form which accompany and form part of this Notice, describe in more detail the matters to be considered. Please consider this Notice, the Explanatory Memorandum and the proxy form in their entirety.

### ORDINARY BUSINESS

#### Receipt and consideration of Accounts & Reports

To receive and consider the financial report of the Company and the related reports of the Directors (including the Remuneration Report) and the Auditor's Report for the year ended 31 December 2021.

*Note: Except for as set out in Resolution 1, there is no requirement for shareholders to approve these reports. Accordingly, no resolution will be put to shareholders on this item of business.*

#### Resolution 1: Adoption of Remuneration Report

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*"That for the purpose of section 250R(2) of the Corporations Act 2001 and for all other purposes, the Remuneration Report (included in the Directors' Report) for the year ended 31 December 2021 be adopted."*

#### Resolution 2: Re-election of Ilan Rimer as a Director of the Company

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*"That Ilan Rimer, being a director who retires pursuant to the Constitution of the Company and being eligible for re-election offers himself for re-election, is hereby re-elected as a Director of the Company."*

#### Resolution 3: Renewal of Clause 47 of the Constitution – proportional takeover provisions

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

*"That with effect from the date on which this resolution is passed and in accordance with Sections 136 and 648D of the Corporations Act 2001, the Constitution of the Company is altered by renewing Clause 47 of the Constitution in the form set out in Schedule 1 to this Notice for a period of three years."*

By order of the Board

Leslie Smith

**Company Secretary**

Dated: 22 April 2022

1. **Entire Notice:** The details of the resolution contained in the Explanatory Memorandum accompanying this Notice of Meeting should be read together with, and form part of, this Notice of Meeting.
2. **Voting:** The Company has determined that for the purposes of the Annual General Meeting, shares will be taken to be held by the persons who are registered as holding the shares at 7:00 pm Melbourne time 2 days before the date of the Annual General Meeting. Only those persons will be entitled to vote at the Annual General Meeting and transfers registered after that time will be disregarded in determining entitlements to attend and vote at the Annual General Meeting.
3. **Voting Exclusion Statement:**

**Resolution 1**

The Company will disregard any votes cast on this resolution (in any capacity) by or on behalf of a member of the Key Management Personnel (being those persons described as such in the Remuneration Report) or a Closely Related Party of such a member, unless the vote cast as proxy for a person entitled to vote is in accordance with a direction on the proxy form.

Any undirected proxies held by Directors or other Key Management Personnel or their Closely Related Parties (excluding the Chairman) will not be voted on this resolution. Accordingly, if you intend to appoint a member of Key Management Personnel as your proxy, please ensure that you direct them how to vote. If you intend to appoint the Chairman of the meeting as your proxy, you can direct him to vote by marking the box for Resolution 1. By marking the Chairman's box on the proxy form you expressly acknowledge that the Chairman of the meeting will vote as indicated on the proxy form even if the resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel for the Company, which includes the Chairman. The Chairman will vote undirected proxies in favour of Resolution 1.

## EXPLANATORY MEMORANDUM

### Receipt and consideration of Accounts & Reports

The Corporations Act requires the Company's Annual Report for the financial period ending 31 December 2021 (which incorporates the Company's financial report, reports of the Directors (including the Remuneration Report) and the Auditor's Report) to be received and considered before the Annual General Meeting. The Annual Report is available at <http://www.ngecapital.com.au/investor-information/annual-reports/>. Except for as set out in Resolution 1, no resolution is required on these reports.

**Resolution 1: Adoption of Remuneration Report**

Section 250R(2) of the Corporations Act requires that a resolution to adopt the Remuneration Report must be put to the vote at the Annual General Meeting. Section 250R(3) of the Corporations Act requires that the vote on this Resolution is advisory only and does not bind the Directors or the Company.

The Remuneration Report is set out in the Directors' Report in the Company's 2021 Annual Report. The Remuneration Report sets out the Company's remuneration arrangements for the Directors and senior management of the Company.

The Remuneration Report is available at <https://ngecapital.com.au/download/appendix-4e-and-2021-annual-report/>

In accordance with Section 250SA of the Corporations Act 2001, Shareholders will be provided with a reasonable opportunity to ask questions concerning, or make comments on, the Remuneration Report at the Annual General Meeting.

In accordance with Division 9 of Part 2G.2 of the Corporations Act, if twenty five (25%) per cent or more of votes that are cast are voted against the adoption of the Remuneration Report at two consecutive Annual General Meetings, Shareholders will be required to vote at the second of those Annual General Meetings on a resolution (a "spill resolution") that another meeting be held within 90 days at which all of the Company's Directors (other than the Managing Director) must go up for re-election.

The Directors will consider the outcome of the vote and comments made by Shareholders on the Remuneration Report at the Meeting when reviewing the Company's remuneration policies.

It is noted that at the Company's last Annual General Meeting, the votes cast against the remuneration report represented less than twenty-five (25%) percent of the total votes cast and accordingly, a spill resolution will not under any circumstances be required for the Annual General Meeting.

***Directors' Recommendations***

The Directors recommend that shareholders vote in favour of this resolution.

**Resolution 2: Re-election of Ilan Rimer as a Director of the Company**

The Constitution of the Company requires that at every Annual General Meeting, one third (or if that is not a whole number, the next lowest whole number) of the other Directors (not counting the Managing Director), shall retire from office and provides that such Directors are eligible for re-election at the meeting. Ilan Rimer retires by rotation and, being eligible, offers himself for re-election.

Mr Rimer has extensive experience in management consulting, corporate strategy and new business development. He is the founder of two Australian technology businesses and was most recently a Non-Executive Director for Australian Business Volunteers. Previously he held roles at Bain and Company, PwC, Australia Post, Visy Industries, and Stellar Asia-Pacific.

Mr Rimer holds a Master of Business Administration from Oxford University and a Bachelor of Commerce (Hons) from Monash University. He is a graduate of the Australian Institute of Company Directors.

Mr Rimer is Chair of the Audit Committee, member of the Investment Committee and Chairs the Board on remuneration matters.

***Directors' Recommendations***

The Directors (with Ilan Rimer abstaining), recommend that shareholders vote in favour of this resolution.

The Chairman of the meeting intends to vote undirected proxies in favour of this resolution.

### **Resolution 3: Renewal of Clause 47 of the Constitution – proportional takeover provisions**

Section 648G of the Corporations Act 2001 governs proportional takeover provisions within company constitutions. Under Section 648G, for proportional takeover provisions to remain in effect, they must be renewed every three years by a special resolution of members.

The Company last renewed its proportional takeover provisions within the Company's Constitution on 31 May 2019, and accordingly Clause 47 will cease to operate from 31 May 2022 unless it is renewed prior to that time. The Directors believe it is appropriate to renew Clause 47 in the Company's Constitution in the same form as last approved by Shareholders in 2019. The terms of Clause 47 are set out in Schedule 1 of this Notice.

This Resolution seeks to renew the operation of Clause 47 of the Company's Constitution. Once renewed, Clause 47 will operate for three years from the date this resolution is passed, unless renewed earlier by shareholder resolution, and after that time it will again cease to apply unless renewed by a further special resolution of Shareholders.

The renewal of Clause 47 by shareholders will renew the Company's ability to refuse to register Shares acquired under a proportional takeover bid unless and until a resolution of Shareholders approving the proportional takeover bid is passed.

If this resolution is passed, then within 21 days after the date of the meeting, holders of not less than 10% (by number) of the Company's shares have the right to apply to the court to have the resolution set aside. The court may set aside the resolution if the Court is satisfied in all circumstances that it is appropriate to do so.

Section 648G of the Act requires that where the Company is seeking approval of its shareholders to renew proportional takeover provisions, the Company include certain information in the notice of meeting. The required information is set out below.

#### **What is a proportional takeover bid?**

A proportional takeover bid is a takeover bid that is sent to all shareholders in a class, offering to purchase only a specified proportion of each shareholders shares. If a shareholder accepts, the shareholder disposes of that specified portion and retains the balance.

#### **Effects of the proportional takeover provisions**

The effect of Clause 47 (Proportional takeovers) is that:

- (a) If a bidder makes a proportional takeover bid for any class of shares in the Company, the Directors must ensure that a meeting of members of that class is convened where a resolution to approve the proportional takeover bid is voted on. The vote is decided on by a simple majority, with each shareholder having one vote for each fully paid share. The bidder and its associates are excluded from voting on that approving resolution;
- (b) The meeting and the vote on the approving resolution must take place more than 14 days before the last day of the bid period;
- (c) If the approving resolution is rejected before the deadline, the bid cannot proceed, and the offer will be taken to have been withdrawn. Any transfers giving effect to takeover contracts for the bid will not be registered and all offers under the takeover bid are taken to be withdrawn and all takeover contracts must be rescinded;
- (d) If the approving resolution is not voted on, the bid will be taken to have been approved; and
- (e) If the approving resolution is passed (or taken to have been approved), the transfers must be registered (subject to other provisions of the Corporations Act and the Company's Constitution).

The proportional takeover provisions do not apply to full takeover bids and, if this resolution is approved, will only apply until 26 May 2025 unless renewed by shareholders.

#### **Reasons for proposing the renewal of the proportional takeover provisions**

A proportional takeover bid may result in control of the Company changing without Shareholders having an opportunity to dispose of all of their Shares. By making a proportional bid, a bidder can obtain practical control of the Company by acquiring less than a majority interest. Shareholders are exposed to the risk of not being able to exit their investment in the Company by selling their entire shareholding. The bidder may be able to acquire control of the Company without payment of an adequate control premium.

The Board believes that the proportional takeover provisions are desirable to give shareholders protection from the risks inherent in proportional takeover bids.

The proportional takeover provisions allow shareholders to decide if a proportional takeover bid is acceptable in principle and may assist in ensuring that any proportional takeover bid is appropriately priced.

To assess the merits of the proportional takeover provisions, shareholders should make a judgement as to what events are likely to occur in relation to the Company during the three-year life of the proposed new provisions.

### **Knowledge of any acquisition proposals**

Apart from the general considerations above, as at the day on which this Notice is prepared, no Director is aware of a proposal by any person to acquire, or to increase the extent of, a substantial interest in the Company.

Those Directors who are also Shareholders have the same interest in the passing of this resolution as all Shareholders.

### **Review of advantages and disadvantages of Clause 47 during the period during which the provisions have been in effect.**

While the proportional takeover provisions were in effect, there were no proportional takeover bids for the Company. The Directors are therefore unable to point to any specific advantages or disadvantages evident from the operation of the Provisions during that period.

### **Potential advantages and disadvantages of renewal of Clause 47**

The Directors consider that one potential advantage to them of including clause 47 in the Company's Constitution is that by providing a right for shareholders to decide by a majority vote whether an offer under a proportional takeover bid should proceed, the Directors will be able to formally ascertain the views of shareholders in respect of a proportional takeover bid. The Directors otherwise do not believe the renewal of Clause 47 has any potential advantages or disadvantages for any of them.

The Directors note that it could be argued that the proportional takeover provisions are an advantage to them as a takeover defence mechanism that could be exploited to entrench the incumbent Board. However, the Directors believe that this argument ignores the basic object of the proportional takeover provisions which is to empower Shareholders, not Directors.

The potential advantages for Shareholders of the proportional takeover provisions include:

- Shareholders will have the opportunity to decide by majority vote whether an offer under a proportional takeover bid should proceed;
- the provisions may protect Shareholders from being locked in as a minority;
- the provisions may increase the bargaining power of Shareholders and may assist in ensuring that any proportional takeover bid is adequately priced; and
- each individual Shareholder may better assess the likely outcome of the proportional takeover bid by knowing the view of the majority of the shareholders and assist in deciding whether to accept or reject an offer under a proportional takeover bid.

The potential disadvantages for shareholders include:

- the likelihood of a proportional takeover bid succeeding may be reduced, and this may discourage proportional takeover bids;
- proportional takeover bids for shares in the Company may be discouraged;
- Shareholders may lose an opportunity to sell some of their shares at a premium; and
- individual Shareholders may consider that the proportional takeover provisions would restrict their ability to deal with their Shares as they see fit.

The Directors consider that the potential advantages for shareholders of the proportional takeover provisions outweigh the potential disadvantages.

### **Directors' Recommendations**

The Directors recommend that shareholders vote in favour of this resolution.

The Chairman of the meeting intends to vote undirected proxies in favour of this resolution.

## PROXY AND VOTING INSTRUCTIONS

1. For the purposes of the Corporations Act, the Company has determined that all securities of the Company recorded on the Company's register as at 7.00 pm Melbourne time on 24<sup>th</sup> May 2022 (being the date 2 days before the date of the Annual General Meeting) will be taken, for the purposes of the Annual General Meeting, to be held by the persons who held them at that time.
2. The details of the Resolutions contained in the Explanatory Statement accompanying this Notice of Meeting should be read together with, and forms part of this Notice of Meeting.
3. A shareholder entitled to attend and vote is entitled to appoint not more than two proxies. Where more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the shareholder's voting rights. If the shareholder appoints two proxies and the appointment does not specify this proportion, each proxy may exercise half of the votes. A proxy need not be a shareholder of the Company.
4. If a proxy is not directed how to vote on an item of business, the proxy may vote or abstain from voting on that resolution as they think fit.
5. If a proxy is instructed to abstain from voting on an item of business, they are directed not to vote on the shareholder's behalf on the poll and the shares that are the subject of the proxy appointment will not be counted in calculating the required majority.
6. Shareholders who return their proxy forms with a direction on how to vote but do not nominate the identity of their proxy will be taken to have appointed the Chairman of the meeting as their proxy to vote on their behalf.
7. If a proxy form is returned but the nominated proxy does not attend the meeting, or does not vote on the resolution, the Chairman of the meeting will act in place of the nominated proxy and vote in accordance with any instructions.
8. Proxy appointments in favour of the Chairman of the meeting, the secretary or any Director that do not contain a direction on how to vote will be used where possible to support each of the resolutions proposed in this Notice.
9. Where a voting exclusion applies, the Company need not disregard a vote if it is cast by a person excluded from voting as a proxy for a person who is entitled to vote in accordance with the directions on the proxy form, or where it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form to vote as the proxy decides.
10. A proxy form is attached. If required it should be completed, signed and returned to the Company's registered office in accordance with the instructions set out in the proxy form by no later than 3.30 pm Melbourne time on 24<sup>th</sup> May 2022.



## GLOSSARY

The following terms have the following meanings in this Explanatory Statement:

“\$” means Australian Dollars;

“**Annual Report**” means the Directors’ Report, the Financial Report, and Auditor’s Report, in respect to the year ended 31 December 2021;

“**ASIC**” means the Australian Securities and Investment Commission;

“**Auditor’s Report**” means the auditor’s report on the Financial Report;

“**Board**” means the Directors acting as the board of Directors of the Company or a committee appointed by such board of Directors;

“**Chairman**” means the person appointed to chair the Meeting of the Company convened by the Notice;

“**Closely Related Party**” of a member of the Key Management Personnel means:

- (a) a spouse, child or dependent of the member;
- (b) a company the member controls;
- (c) a private trust of which the member is a beneficiary; or
- (d) a person prescribed by the Corporations Regulations 2001 (Cth) for the purposes of the definition of ‘closely related party’ in the Corporations Act.

“**Company**” means NGE Capital Limited ACN 112 618 238;

“**Constitution**” means the constitution of the Company as at the date of the Meeting;

“**Corporations Act**” means the Corporations Act 2001 (Cth);

“**Director**” means a Director of the Company;

“**Directors’ Report**” means the annual directors’ report prepared under Chapter 2M of the Corporations Act for the Company and its controlled entities;

“**Explanatory Memorandum**” means the explanatory memorandum which forms part of the Notice;

“**Financial Report**” means the annual financial report prepared under Chapter 2M of the Corporations Act for the Company and its controlled entities;

“**Key Management Personnel**” means those persons having authority and responsibility for directing and controlling the activities of the Company, including any director (whether executive or otherwise) of the Company.

“**Meeting**” has the meaning given in the introductory paragraph of the Notice;

“**Notice**” means the Notice of Meeting accompanying this Explanatory Statement;

“**Proxy Form**” means the proxy form attached to the Notice;

“**Remuneration Report**” means the remuneration report which forms part of the Directors’ Report of NGE Capital Limited for the financial year ended 31 December 2021 and which is set out in the 2021 Annual Report.

“**Resolution**” means a resolution referred to in the Notice;

“**Schedule**” means schedule to the Notice;

“**Section**” means a section of the Explanatory Memorandum;

“**Share**” means a fully paid ordinary share in the capital of the Company;

“**Shareholder**” means shareholder of the Company.

## Schedule 1 – Clause 47 of the Company’s Constitution

### 47. Proportional takeovers

47.1 If offers are made under a proportional takeover bid for securities of the Company:

47.1.1 the registration of a transfer giving effect to a takeover contract for the bid is prohibited unless and until a resolution (an approving resolution) to approve the bid is passed in accordance with this clause;

47.1.2 a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the bid was made, held bid class securities is entitled to vote on an approving resolution;

47.1.3 the Directors may determine whether an approving resolution is voted on:

(a) at a meeting, convened and conducted by the Company, of the persons entitled to vote on the resolution; or

(b) by means of a postal ballot conducted by the Company in accordance with the procedure set out in this clause; and

47.1.4 an approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.

47.2 The provisions that apply to a general meeting of the Company apply, with such modifications as the Directors decide are necessary, to a meeting convened under this clause.

47.3 In a postal ballot:

47.3.1 the Company must send a notice of postal ballot and ballot paper, to all persons holding shares in the relevant class, at least 14 days (or any shorter period the Directors decide) before the ballot closing date;

47.3.2 non receipt of a notice of postal ballot or ballot paper, or accidental failure to give a notice of postal ballot or ballot paper to a shareholder entitled to receive them, does not invalidate the postal ballot or any resolution passed under the postal ballot;

47.3.3 the notice of postal ballot must contain the text of the proposed resolution and the ballot closing date, and may contain any other information the Directors consider appropriate;

47.3.4 each ballot paper must specify the name of the shareholder entitled to vote;

47.3.5 a postal ballot is only valid if the ballot paper is properly completed and:

(a) if the shareholder is an individual, signed by the individual or a duly authorised attorney; or

(b) if the shareholder is a corporation, executed by the corporation in any way permitted by its constitution or the Corporations Act or by a duly authorised officer or duly authorised attorney;

47.3.6 a postal ballot is only valid if the Company receives the ballot paper (and any authority under which the ballot paper is signed or a certified copy of the authority) before the close of business on the ballot closing date at the registered office or share registry of the Company or any other place specified for that purpose in the notice of postal ballot; and

47.3.7 a person may revoke a postal ballot vote by notice received by the Company before the close of business on the ballot closing date.