

Constitution



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contents

1	Preliminary	4	14	Proceedings at General Meetings	14
1.1	Definitions and Interpretation	4	14.1	Quorum	14
1.2	Application of the Corporations Act	5	14.2	Chairperson	14
2	Objects of the Company	5	14.3	Adjournment of Meeting	14
3	Company Powers	6	14.4	Entitlement to Vote	15
4	Income and Property	6	14.5	Poll	15
4.1	Distributions to Members	6	14.6	Manner of taking Poll	15
4.2	Payment for Services rendered	6	14.7	Casting Vote by Chairperson	15
4.3	Payment to Directors	6	14.8	Proxies	16
5	Amendment	7	15	Minutes of Proceedings	16
6	Limited Liability	7	16	Board of Directors	17
7	Limit of Contribution by Members in Winding Up	7	16.1	Number of Directors	17
8	Excess Property on Winding Up	7	16.2	Office Bearers	17
9	Accounts and Audit	7	16.3	Qualification	18
10	Membership	8	16.4	Continuing Directors	18
10.1	Classes of Membership	8	16.5	Retirement of Directors by rotation	18
10.2	Eligibility and Application for Membership	8	16.6	Appointment of Directors by Members	18
10.3	Admission to Membership	8	16.7	Power of Board to fill casual vacancies, etc.	20
10.4	Conduct of Members	9	16.8	Ceasing to be a Director	20
10.5	Censure, suspension or expulsion of Members for misconduct	10	17	Powers and Duties of the Board	21
10.6	Cessation of Membership	10	17.1	General powers of the Board	21
10.7	Changes to classes of Membership	11	17.2	Control and Investment of Company's funds	21
10.8	Change of Ownership	11	17.3	Borrowing and Security	21
10.9	Representatives	11	18	Proceedings of the Board	21
11	Fees and Subscriptions	12	18.1	Meetings	21
12	Independent Chair	12	18.2	Voting	22
12.1	Appointment of Independent Chair	12	18.3	Quorum	22
12.2	Role of Independent Chair	12	18.4	Chairperson	22
13	Meetings	13	18.5	Validity of Acts	22
13.1	Annual General Meetings	13	18.6	Circulatory Resolutions and use of Technology	23
13.2	Convening of other General Meetings	13	19	Committees and Advisory Committees	23
13.3	Notice of General Meetings	13	19.1	Committees	23
13.4	Postal Ballots	14	19.2	Advisory Committees	24
			20	Interest of Directors	24
			21	Chief Executive Officer and Secretary	24
			22	Officers - Indemnity, Insurance and Access	25

1 Preliminary

1.1 Definitions and interpretation

1.1.1 In this constitution:

- a. **Board** means the board of directors of the Company for the purposes of the Corporations Act being the whole or any number (not being less than a quorum) of the board of the Company for the time being acting as such in accordance with this Constitution but does not include Independent Chair appointed under clause 12.1.
- b. **Company** means the company established or continued in existence under this Constitution.
- c. **Constitution** means this constitution for the time being in force.
- d. **Corporations Act** means the Corporations Act 2001 or any statutory modification, amendment or re-enactment thereof for the time being in force and any reference to a provision is a reference to that provision as modified, amended or re-enacted.
- e. **Director** means a person appointed under clause 16.1.2 or appointed to fill a casual vacancy under clause 16.7 or elected to office by resolution of the Members under clause 16.6 and does not include the Independent Chair appointed under clause 12.1
- f. **Independent Chair** means a person who is appointed by the Board pursuant to clause 12.1
- g. **Member** means a member for the time being of the Company appearing as such in the register of members and includes Full Members, Associate Members and Life Members.
- h. **Representative** means a representative of a corporate Member appointed pursuant to section 250D of the Corporations Act.
- i. **Secretary** means the person or persons for the time being appointed by the Board as secretary of the Company pursuant to clause 21.1.

1.1.2 A Member is to be taken to be present at a general meeting if the Member is present in person or by proxy, attorney or Representative.

1.1.3 Unless the contrary intention appears in the Constitution:

- a. words importing the singular include the plural, and words importing the plural include the singular;
- b. words importing a gender include every other gender;
- c. words used to denote persons generally or importing a natural person include any company, corporation, body corporate or other body (whether or not the body is incorporated);

- d. a reference to a person includes that person's successors, legal personal representatives and permitted transferees;
- e. a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- f. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.1.4 In the Constitution headings and boldings are for convenience only and do not affect its interpretation.

1.2 Application of the Corporations Act

This Constitution contains clauses setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company. It is to be interpreted in accordance with the Corporations Act and unless the contrary intention appears, a word or an expression that is defined in the Corporations Act has the same meaning in this Constitution. However, the replaceable rules under the Corporations Act do not apply to the Company.

2 Objects of the Company

The objects for which the Company is established are:

- 2.1 promoting, encouraging and assisting the health and needs of the aged;
- 2.2 providing information to health professionals, carers and the public about the health and needs of the aged and their care;
- 2.3 researching the health and needs of the aged;
- 2.4 promoting best practice in the care of the aged and the prevention of diseases in the aged;
- 2.5 promoting and developing the highest ethical standards of service by Members in the provision of services to the aged;
- 2.6 acting as a co-ordinating, advising and liaising body for Members who provide services to the aged including:
 - 2.6.1 disseminating information about administrative and financial matters affecting the interests of Members;
 - 2.6.2 providing administrative and other assistance and services to Members and
 - 2.6.3 disseminating information about existing and proposed legislation and policies concerning the care of the aged;
- 2.7 establishing relations with and further co-operation between other bodies whose objects are substantially similar to those of the Company.

3 Company Powers

Solely for the purpose of carrying out the objects set to in clause 2, the Company may, in any manner permitted by the Corporations Act:

- 3.1 exercise any power;
- 3.2 take any action; and
- 3.3 engage in any conduct or procedure,

which, under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its constitution.

4 Income and Property

4.1 Distributions to Members

The income and property of the Company, however derived, shall be applied solely towards the promotion of the objects of the Company as set forth in the Constitution, and no portion of the income or property of the Company shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to any Member.

4.2 Payment for Services rendered

Nothing in clause 4.1 prevents the payment in good faith of remuneration to any officer or servant of the Company or to any Member in return for any services actually rendered to the Company nor for goods supplied in the ordinary and usual course of business nor prevents the payment of interest at a commercial rate on money borrowed from any Member.

4.3 Payment to Directors

The Directors shall not be paid by way of remuneration for their services provided that:

- 4.3.1 reimbursement for out-of-pocket expenses incurred in carrying out the duties of a director shall be paid where payment does not exceed any amount previously approved by the Board;
- 4.3.2 payment for any service rendered to the Company in a professional or technical capacity shall be made where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
- 4.3.3 payment as an employee of the Company shall be made where the terms of employment have been approved by resolution of the Board.

5 Amendment

No modification or appeal of this Constitution or any provision of this Constitution will be effective unless it is passed as a special resolution in accordance with Corporations Act. If the board thinks fit, it may submit a special resolution to the vote of all members entitled to vote by means of a postal ballot in such form and returnable in such manner that the board decides.

A special resolution passed in accordance with the Corporations Act has the same force and effect as such a resolution would have if carried by such a majority at a duly constituted meeting of the company competent to pass such a resolution

6 Limited Liability

The liability of Members is limited.

7 Limit of Contribution by Members in Winding Up

Each Member undertakes to contribute to the property of the Company, in the event of its being wound up while the Member's membership is current or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of the Company contracted before the Member ceases to be a Member and the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding TWENTY DOLLARS (\$20.00).

8 Excess Property on Winding Up

If, upon the winding up or dissolution of the Company, there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 4, such institution or institutions to be determined by the Members at or before the time of dissolution, and in default thereof to such other body as is approved as recipient by the Commissioner of Taxation of Australia.

9 Accounts and Audit

- 9.1 The Board shall, in accordance with the requirements of the Corporations Act:
 - 9.1.1 cause proper accounting and other records to be kept, and
 - 9.1.2 cause to be made out and laid before each annual general meeting of the Company a balance sheet and profit and loss account made up to a date not more than five months before the date of the meeting, or such other date as may from time to time be prescribed by the Corporations Act.

- 9.2 A properly qualified auditor or auditors shall be appointed and his or their duties regulated in accordance with the requirements of the Corporations Act.

10 Membership

10.1 Classes of Membership

The membership of the Company shall consist of the following classes:

- 10.1.1 Full Members;
- 10.1.2 Associate Members; and
- 10.1.3 Life Members.

10.2 Eligibility and Application for Membership

- 10.2.1 Full Membership shall be open to any legal person that provides aged care services to the community or that owns, manages or conducts homes, hospitals, retirement villages, aged care or bush nursing facilities, and/or provides day care, community care or domiciliary care services to the community or has a demonstrated commitment to promoting the health and needs of the aged.
- 10.2.2 Associate membership shall be open to any legal person that has an interest in or commitment to promoting, encouraging or assisting the health and needs of the aged but is not eligible for Full Membership under clause 10.2.1.
- 10.2.3 Every applicant for Full and Associate membership must complete an application for membership in the form approved by the Board from time to time and lodge it with the Secretary. The application must set forth:
 - a. the full name and address of the applicant;
 - b. the nature of the applicant's eligibility for membership;
 - c. if for Full Membership, the full name and address of the natural person nominated by the applicant to be the applicant's Representative; and
 - d. such other information as the Board may require.
- 10.2.4 Life membership shall be open to any legal person:
 - a. whose personal assistance, in the case of a natural person, is desired by the Company;
 - b. who are invited by the Board or any general meeting of the Company to become a Life Member; and
 - c. who agree in writing to become a Member.

10.3 Admission to Membership

- 10.3.1 Every application for Full or Associate membership shall, unless it is impractical to do so, be considered by the Board at its first regular meeting following the lodging of the application. The Board may, in its absolute discretion, accept or reject an application for Full or Associate membership and shall (through the Secretary or otherwise) advise the applicant of its decision,

but is not bound to give any reason for the rejection of any application. The Board's decision shall be final, conclusive and binding on the applicant and shall not be subject to any challenge or review whatsoever.

- 10.3.2 When a person has been accepted or invited to become a Member the Secretary shall forthwith send to the applicant a request for payment of the entrance fee (if any) and first annual subscription fee (if any).

- 10.3.3 Every person who, being eligible to become a Member in accordance with the provisions of clause 10.2:
 - a. agrees in writing to become a Member;
 - b. pays such entrance fee or annual subscription as are required under clause 11; and
 - c. in the case of an application for Full or Associate membership, whose application for membership has been approved by the Board in accordance with clause 10.3.1, becomes a Member.

10.4 Conduct of Members

- 10.4.1 At all times while a Member's membership of the Company is current the Member:
 - a. is bound by and must comply in all respects with any Code of Ethical Conduct for Members approved by the Board;
 - b. must, if the Member is the owner or operator of a residential aged care facility or other service or facility in relation to which accreditation is a condition of government funding, obtain and maintain such accreditation in respect of every such service or facility operated by the Member;
 - c. must, if the Member is the owner or operator of a facility which becomes subject to sanctions under the Aged Care Act 1997 (Commonwealth), take all necessary steps to ensure that such sanctions are withdrawn at the earliest possible opportunity;
 - d. must apply such a standard of care and quality to all services provided or business conducted by the Member as is consistent with the standard which might reasonably be expected by other Members and with the standards set out in any Code of Ethical Conduct for Members approved by the Board; and
 - e. is responsible for notifying the Company of any acts, omissions or events by or in relation to the Member which relate to matters under this clause 10.4.1 or which otherwise affect or may affect the Member's compliance with the Constitution,

but a Member will not be in breach of paragraph b. or c. only by reason that the Member has commenced owning or operating an unaccredited service or facility, or a facility which is subject to sanctions, with the intention of obtaining accreditation or having the sanctions lifted, and makes all reasonable efforts to do so, or if the Board is satisfied that other exceptional circumstances exist.

- 10.4.2** No Member may without the prior written authority of the Board or the Board's duly authorised delegate purport to speak on behalf of or represent the Company at any meeting, consultation, forum or other gathering.

10.5 Censure, suspension or expulsion of Members for misconduct

- 10.5.1** The Board may by resolution censure, suspend or expel a Member from the Company in any of the following situations:
- if the Member is in breach of any of the obligations set out in clause 10.4.1 or 10.4.2;
 - if the Member wilfully refuses or neglects to comply with any other provisions of the Constitution;
 - if the Member is guilty of any other conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company.
- 10.5.2** A resolution of the kind referred to in clause 10.5.1 will have no effect unless:
- the Member to whom the resolution relates is given at least one week's notice of the Board's intention to consider the resolution and the substance of what is alleged against the Member;
 - the Board meets within 21 days after giving the Member notice under paragraph a. to consider the resolution; and
 - at the Board meeting which considers the resolution, and before the passing of the resolution, the Member has an opportunity to give orally or in writing such explanation or defence as the Member may think fit.
- 10.5.3** A Member who is the proposed subject of a resolution of the kind referred to in clause 10.5.1 may by notice in writing, lodged with the Secretary at least 24 hours before the time for the holding of the Board meeting at which such resolution is to be considered, elect to have the question dealt with by the Members in general meeting.
- 10.5.4** If an election of the kind referred to in clause 10.5.3 is made, the Board shall call a general meeting to consider the resolution to censure, suspend or expel the Member. Such resolution will be effective, and the Member will be censured, suspended or expelled accordingly, if passed by at least two-thirds of those present and voting (such vote to be taken by ballot).
- 10.5.5** The decision of the Board or of the Members in general meeting, as the case may be, in relation to any resolution of the kind referred to in clause 10.5.1 shall be final, conclusive and binding on the Member and shall not be subject to any challenge or review whatsoever.

10.6 Cessation of Membership

Membership of the Company is continuous and a Member ceases to be a Member if the Member:

- 10.6.1** after payment of the current subscription, resigns by giving 7 days written notice of the intention to resign;
- 10.6.2** ceases to qualify for Membership or becomes ineligible for Membership for any cause whatsoever;
- 10.6.3** fails for a period of three (3) months from the date when the same became due and payable to pay the annual subscription or any instalment of his subscription or any contribution or other moneys due to the company;
- 10.6.4** is convicted of any felony or other indictable offence;
- 10.6.5** is adjudged bankrupt or if the Member makes any assignment of the Member's estate or enters into any composition with the Member's creditors generally or becomes an insolvent under administration within the meaning of the Law;
- 10.6.6** dies;
- 10.6.7** is of unsound mind or a person whose person or estate is liable to be dealt with in any way under a Law relating to mental health;
- 10.6.8** being a company, goes into liquidation, is placed under administration, management or receivership or a resolution is passed that it be wound up except for the purpose of reconstruction or amalgamation; or
- 10.6.9** the Board passes a resolution for the expulsion of the Member pursuant to clause 10.5.1

10.7 Changes to classes of Membership

- 10.7.1** The Board may dissolve any present or future class or classes of membership of the Company and may create new or further class or classes of membership.
- 10.7.2** The Board may from time to time temporarily or permanently close any class of membership.

10.8 Change of Ownership

If, in the case of a corporate member, there is a change in more than 50% of the beneficial ownership of the Member, the Board may enquire into the matter in any way it sees fit and may at its discretion, require the Member to re-apply for membership.

10.9 Representatives

- 10.9.1** Subject to clause 10.9.2, every Member which is not a natural person shall exercise its rights and powers and otherwise act as a Member solely by its Representative as agent.
- 10.9.2** A Member may by written notice given to the Secretary of the Company remove the Member's Representative and appoint another person in his or her place.

11 Fees and Subscriptions

- 11.1** All Members regardless of their class of membership (except for any Member who is a proposing member, that is one who has consented to become a Member pursuant to section 117(2) of the Corporations Act) are liable to pay such annual subscription and contributions as the Board may from time to time determine.
- 11.2** If at any time there is more than one class of Member, the Board may determine that there are different amounts of annual subscription or other contribution for each class.
- 11.3** The annual subscription is payable in advance on the date determined by the Board and no subsequent resignation, suspension, termination or forfeiture of membership by a Member exempts the Member from payment of the current year's subscription or entitles the Member to any pro-rata reimbursement of the annual subscription or any other fee.
- 11.4** No Member (and no Representative of a Member) is entitled to attend, speak and vote at a general meeting of the Company if the Member's annual subscription is 3 months or more in arrears at the date of the meeting.

12 Independent Chair

12.1 Appointment of Independent Chair

Subject to the consent of the person concerned, the Victorian Association of Health and Extended Care ACN 085 716 909 and the Aged Care Association of Victoria Limited ABN 42 006 552 843, must appoint a person to be Independent Chair of the Company from the date this Constitution is adopted by the Company until the conclusion of the Company's 2008 annual general meeting.

12.2 Role of Independent Chair

For the duration of his or her appointment the Independent Chair:

- 12.2.1** shall preside at meetings of the Board and shall be chairperson at every general meeting of the Company;
- 12.2.2** does not have a vote or a second or casting vote at any meeting of the Board or general meeting of the Company;
- 12.2.3** is entitled to payment as an employee of the Company.

13 Meetings

13.1 Annual General Meetings

- 13.1.1** An annual general meeting of the Company shall be held in accordance with the requirements of the Corporations Act and at such times and places as the Board may determine.
- 13.1.2** The ordinary business to be conducted at an annual general meeting shall be:
- to receive and consider the accounts, balance sheets and the reports of the directors and of the auditors and of any other documents required by law to be laid before the meeting;
 - to elect directors in place of those retiring or ceasing to hold office or, if that election has already taken place by way of postal ballot pursuant to clause 13.4, to declare the results of that ballot; and
 - to transact any other business which under the Constitution or the provisions of the Corporations Act ought to be transacted at an annual general meeting.
- 13.1.3** No business shall be transacted at an annual general meeting other than:
- the ordinary business referred to in clause 13.1.2; and
 - any special business set out in the notice of meeting.

13.2 Convening of other General Meetings

The Board may, whenever it thinks fit, convene a general meeting and must convene a general meeting on a requisition of Members as provided for by the Corporations Act.

13.3 Notice of General Meetings

- 13.3.1** All business conducted at an annual general meeting, other than ordinary business referred to in clause 13.1.2, and all business conducted at any other general meeting of the Company shall be special business.
- 13.3.2** Subject to the provisions of the Corporations Act, and of the Constitution, not less than 21 clear days notice of a general meeting shall be given to the Members, directors and auditors of the Company, specifying the place, day and hour of the meeting and in the case of special business the general nature of that business.
- 13.3.3** Notice of general meetings of the Company specifying the matters referred to in clause 13.3.2 must be given in accordance with the provisions of the Corporations Act.
- 13.3.4** The accidental omission to give notice of a general meeting to, or the non-receipt of any such notice by, any of the required recipients shall not invalidate any resolution passed at any such meeting.

13.4 Postal Ballots

Subject to the provisions of the Corporations Act, whenever the Board thinks fit it may submit any question or resolution to the vote of all Members entitled to a vote at a general meeting of the Company by means of a postal ballot in such form and returnable in such manner as the Board decides. A resolution approved by a majority or specific majority of the Members voting by such ballot shall have the same force and effect as such a resolution would have if carried by such a majority or specific majority at a duly constituted general meeting of the Company competent to pass such a resolution.

14 Proceedings At General Meetings

14.1 Quorum

14.1.1 Twenty Members present in person, by proxy or by Representative and entitled to vote shall be a quorum for a general meeting and no business shall be transacted at the general meeting unless a quorum is present at the commencement of business.

14.1.2 If within half an hour from the time appointed for any general meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved, and in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and such other time and place as the Board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present (being not less than 3 in number) shall be a quorum.

14.2 Chairperson

The Independent Chair shall be chairperson of every general meeting of the Company until the conclusion of the Company's 2008 annual general meeting. Thereafter, the president of the Company shall be chairperson of every general meeting of the Company or, if there is no president, or if the president is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the most senior vice-president (if any) shall be the chairperson and if no vice-president has been appointed, is present or willing to act then the Members present shall elect one of their number to be chairperson of the meeting.

14.3 Adjournment of meeting

The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, 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. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

14.4 Entitlement to Vote

14.4.1 Associate and Life Members are entitled to attend any meeting of Members but are not entitled to vote.

14.4.2 Subject to clauses 11.4 and 14.4.1, Members (or Representatives of Members) having the right to vote may vote in person or by one proxy (who must be a Member or the Representative of a Member) or by attorney or, in the case of a corporate Member, by Representative. On a show of hands and on a poll each Member (having the right to vote) present, in person, by proxy, attorney or Representative, shall have the number of votes calculated by dividing by 5,000 the annual subscription fee, required to be determined by the Board under clause 11. However:

- a. the divisor of 5,000 must be adjusted each year after the first annual general meeting of the Company by the same percentage increase or decrease, if any, as the annual subscription fees but exclusive of GST; and
- b. fractions in this calculation must be rounded up to the nearest whole number.

14.5 Poll

At any general meeting a resolution put to the vote of the meeting shall 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:

14.5.1 by the chairperson; or

14.5.2 by at least five Members present in person, by proxy or by Representative.

Unless a poll is so demanded a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

14.6 Manner of taking Poll

If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval of adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith.

14.7 Casting Vote by Chairperson

In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote. However, when the chairperson is the Independent Chair, he or she does not have a vote nor a second or casting vote.

14.8 Proxies

- 14.8.1** The instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- 14.8.2** The instrument appointing a proxy shall be lodged at the registered office of the Company or such other place as is specified for that purpose in the notice convening the meeting:
- not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - in the case of a poll, not less than 24 hours before the time appointed for taking the poll.
- In default, the instrument of proxy shall not be treated as valid.
- 14.8.3** The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct the Member's proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as the proxy thinks fit.
- 14.8.4** The instrument appointing a proxy may be in a common or usual form or in such form as the Board may approve and which meets the requirements of the Corporations Act.
- 14.8.5** A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or the revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

15 Minutes of Proceedings

- 15.1** Minutes of all proceedings of general meetings and of meetings of directors shall be entered, within one month after the relevant meeting is held, in books kept for that purpose and shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.
- 15.2** Any minute so entered and purporting to be so signed shall be prima facie evidence of the proceedings to which it relates.
- 15.3** Where minutes have been so entered and signed then, unless the contrary is proved:
- 15.3.1** the meeting shall be deemed to have been duly convened and held;

- 15.3.2** all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and
- 15.3.3** all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

16 Board of Directors

16.1 Number of Directors

- 16.1.1** The Board shall consist of at least 5 and no more than 12 directors.
- 16.1.2** The following shall, subject to their consent, take office as directors for the period from the date this Constitution is adopted by the Company until the conclusion of the Company's 2008 annual general meeting:
- 7 nominees of the Victorian Association of Health and Extended Care ACN 085 716 909
 - 5 nominees of Aged Care Association of Victoria Limited ABN 42 006 552 843
- 16.1.3** Apart from any increases or reductions made in accordance with clause 16.1.1 the number of Board positions may only be increased or reduced by resolution of the Members.

16.2 Office Bearers

- 16.2.1** The office bearers of the Company shall consist of a president and such other office bearers including a vice-president and a deputy vice-president as the Board may from time to time in its discretion appoint. Every office bearer must be a director of the Company.
- 16.2.2** Each office-bearer position becomes vacant at the beginning of the first meeting of the Board after each annual general meeting of the Company.
- 16.2.3** When an office bearer position becomes vacant under clause 16.2.2 or because its holder retires or ceases to be a director, the Board must at the Board meeting where that vacancy arises (or otherwise at the first reasonable opportunity) elect from among its number a replacement to hold the vacant office.
- 16.2.4** On a Board resolution to fill a vacant office:
- each director present in person is entitled to one vote;
 - no director may appoint another as his or her proxy;
 - election of the office bearer will be by majority of votes cast;
 - subject to paragraphs a., b. and c., the Board shall determine the method of election of office bearers from time to time.

16.3 Qualification

- 16.3.1** Subject to the provisions of the Corporations Act and the Constitution, any natural person over the age of eighteen years who is the Representative of a Member may be appointed as a director.

16.4 Continuing Directors

The directors who are appointed to office under clause 16.1.2 continue in office until the conclusion of the 2008 annual general meeting of the Company or they cease to be a director as provided for in clause 16.8. At the 2008 annual general meeting of the Company all of those directors must retire, but shall, subject to the provisions of the Constitution and the Corporations Act, be eligible for election by Members.

16.5 Retirement of Directors by rotation

- 16.5.1** At each annual general meeting of the Company after the 2008 annual general meeting, one-third of the directors, or if their number is not a multiple of three then the number nearest to one-third, shall retire from office, but shall, subject to the provisions of the Constitution and the Corporations Act, be eligible for re-election.
- 16.5.2** The one-third or nearest number to one-third to retire at the annual general meeting to be held in each year shall be the directors who have been the longest in office. As between 2 or more directors who have been in office an equal length of time the director or directors to retire shall in default of agreement between them be determined by lot to be drawn at least 60 days before the annual general meeting.
- 16.5.3** For the purpose of determining the length of time a director has been in office:
- The length of time a person appointed as a director under clause 16.1.2 has been in office shall not be counted;
 - subject to paragraph c., a person is deemed to have commenced holding office on the date of that person's most recent election or appointment to office;
 - a person who has been appointed pursuant to clause 16.7 to fill a casual vacancy holds office in lieu of the director who most recently held that Board position and must retire on the date on which the director who most recently held that Board position would have been required to retire under this clause.
- 16.5.4** A retiring director shall act as a director throughout the annual general meeting at which he or she retires.

16.6 Appointment of Directors by Members

- 16.6.1** No person, (other than a retiring Director or a Director appointed under clause 16.7) shall be eligible for election by the Members at any annual general meeting of the Company unless that person is nominated in accordance with clauses 16.6.2 16.6.3 and 16.6.4.

- 16.6.2** No later than 45 days before each annual general meeting the Secretary must send a notice calling for Members to nominate their Representatives for election to any vacant Board position or positions which will arise following that annual general meeting.

- 16.6.3** Any Member (other than a Life or Associate Member) may nominate its Representative for election to a Board position.

- 16.6.4** A nomination under clause 16.6.2 must be:
- in writing;
 - in the form approved by the Board from time to time;
 - signed by the Member and (if the Member is not also the nominee) signed by the nominee;
 - lodged with the Secretary at least 30 days before the annual general meeting at which the vacancy or vacancies will arise.

- 16.6.5** A nomination by a Member will not be valid, nor will the Member (or the Member's Representative) be included on the lists to be prepared under clauses 16.6.6 and 16.6.7, if at the time of nomination or subsequently the Member:

- owns or operates a service or facility in relation to which accreditation is a condition of government funding, but such Member fails to obtain or maintain such accreditation in respect of every such service or facility operated by the Member; or
- owns or operates a facility which is or becomes subject to sanctions under the Aged Care Act 1997 (Commonwealth),

unless the Board is satisfied that the Member has commenced owning or operating such service or facility with the intention of obtaining accreditation or having the sanctions lifted, and makes all reasonable efforts to do so, or that other exceptional circumstances exist.

- 16.6.6** A list of the names of each person nominated pursuant to clause 16.6.2 to fill a vacancy on the Board, together with the name of the Member of whom the nominee is Representative (if any), must be posted in a conspicuous place in the registered office of the Company for at least 28 days immediately preceding the annual general meeting at which the vacancy or vacancies will arise.

- 16.6.7** If the number of eligible persons nominated for election by the Members as Directors exceeds the number of vacancies which will arise at an annual general meeting, the Board will in its discretion:
- submit the list of eligible nominees to the Members by postal ballot pursuant to clause 13.4; or
 - issue balloting lists at the general meeting,
- and each Member voting any such ballot in person or by post or proxy or Representative (and not ineligible to vote in accordance with clause 14.4 or clause 11.4) shall be entitled to vote for any number of such candidates not exceeding the number of vacancies.

16.6.8 If the place of any elected director who retires by rotation, vacates office, or otherwise ceases to hold office by virtue of any of the provisions of the Constitution or the Corporations Act is not filled up, the Board may fill up any such vacancy as a casual vacancy pursuant to the provisions of clause 16.7.

16.7 Power of Board to fill casual vacancies, etc.

The Board shall have power at any time, and from time to time, to appoint a qualified person as a member of the Board, either to fill a casual vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number fixed or determined by or pursuant to clause 16.1.

16.8 Ceasing to be a Director

The office of a director shall immediately become vacant if the director:

- 16.8.1** becomes prohibited from being or ceases to be a director by virtue of the Corporations Act or any order made thereunder;
- 16.8.2** dies;
- 16.8.3** resigns his or her office by notice in writing to the Company;
- 16.8.4** 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;
- 16.8.5** for a continuous period of more than three months is absent without permission of the Board from meetings of the Board held during that period;
- 16.8.6** holds any office of profit under the Company or receives any payment from the Company except as permitted under and in accordance with the provisions of the Constitution;
- 16.8.7** is the Representative of a Member which:
 - a. owns or operates a service or facility in relation to which accreditation is a condition of government funding, but such Member fails to obtain or maintain such accreditation in respect of every such service or facility operated by the Member; or
 - b. owns or operates a facility which is or becomes subject to sanctions under the Aged Care Act 1997 Act 1997 (Commonwealth),
unless the Board is satisfied that the Member has commenced owning or operating such service or facility with the intention of obtaining accreditation or having the sanctions lifted, and makes all reasonable efforts to do so, or that other exceptional circumstances exist;
- 16.8.8** ceases to be the Representative of a Member, which is deemed to be the case if the Member becomes insolvent, enters administration or makes any arrangement or composition with its creditors generally;

16.8.9 is removed from office by resolution of the Members pursuant to the provisions of the Corporations Act;

16.8.10 retires by rotation and is not then re-elected;

17 Powers and Duties of the Board

17.1 General powers of the Board

The management of the business and affairs of the Company shall be vested in the Board who may, in addition to the specific powers conferred on the Board by the Constitution, exercise all powers of the Company, which are not by the Corporations Act or by the Constitution required to be exercised by the Company in general meeting, subject however to the provisions of the Constitution and of the Corporations Act, or to such resolution or regulation, not being inconsistent with those provisions, as may be passed or made by the Company in general meeting; provided however that no such resolution or regulation shall invalidate any prior act of the Board, which would have been valid if such resolution or regulation had not been passed or made.

17.2 Control and Investment of Company's funds

17.2.1 The Board shall control the Company's funds and manage its financial affairs.

17.2.2 All cheques and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by any 2 members of the Board or in such other manner as the Board may from time to time determine.

17.3 Borrowing and Security

The Board may, at its discretion, exercise all the powers of the Company to raise or borrow money and to secure its repayment in such manner and on such terms and conditions as it thinks fit, including the issue of bonds, debentures, or other securities charged on all or any part of the undertaking assets or rights of the Company, including its unpaid subscriptions.

18 Proceedings of the Board

18.1 Meetings

18.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time, and the Secretary shall on the requisition of a director, convene a meeting of the Board.

18.1.2 It shall not be necessary to give notice of a meeting of the Board to a director whom the Secretary, when giving the notice to the other directors, reasonably believes to be outside the Commonwealth of Australia.

18.2 Voting

Subject to the Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the directors present shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairperson of the meeting shall have a second or casting vote. However, when the Independent Chair presides at a meeting of the Board he or she does not have a vote nor a second or casting vote.

18.3 Quorum

The quorum necessary for the transaction of the business of the Board shall be a majority of Board members.

18.4 Chairperson

18.4.1 From the date of his or her appointment under clause 12.1 until the conclusion of the Company's 2008 annual general meeting the Independent Chair shall preside as chairperson at every meeting of the Board but if the Independent Chair is not present within ten minutes after the time appointed for holding the meeting, or if, being present, he or she is unwilling to preside, the president (if any) shall be chairperson, or if no president has been appointed or is not present at the meeting then the directors present may choose one of their number to be chairperson of the meeting.

18.4.2 From the conclusion of the 2008 annual general meeting of the Company the president shall preside as chairperson at every meeting of the Board, but if there is no president, or if at any meeting he or she is not present within ten minutes after the time appointed for holding the meeting, or if, being present, he or she is unwilling to preside, the senior vice-president (if any) shall be chairperson, or if no vice-president has been appointed or is not present at the meeting then the directors present may choose one of their number to be chairperson of the meeting.

18.5 Validity of Acts

18.5.1 The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board, the continuing member or members of the Board may act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Company, but for no other purpose.

18.5.2 All acts done by any meeting of the Board, by any committee, by any advisory committee or by any director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Board, committee, advisory committee or director, or that the directors or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director, committee member or advisory committee member (as the case may be).

18.6 Circulatory Resolutions and use of Technology

18.6.1 A resolution in writing signed by all the directors for the time being entitled to receive notice of meetings of the Board shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held provided that the directors signing the resolution would constitute a quorum and would have power to pass such resolution at a meeting of the Board. Any such resolution may consist of several documents in similar form each signed by one or more directors. Any such document sent by a director by facsimile transmission, or other means of communication approved by the directors, shall be deemed to have been signed by such director and to suffice for the purpose of this clause.

18.6.2 The contemporaneous linking together by telephone, videoconferencing or any other technology of a number of the directors not less than a quorum shall be deemed to constitute a meeting of the directors and all the provisions hereof as to meetings of the directors shall apply to such meetings by such technology as long as the following conditions are met:

- all the directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of such meeting and to be linked by the relevant technology for the purposes of the meeting;
- notice of any such meeting may be given by telephone, facsimile, e-mail or other form of technology;
- each of the directors taking part in such meeting must be able to hear each of the other directors taking part in the meeting; and
- at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the directors to all the other directors taking part.

18.6.3 A meeting of directors held using a form of technology in accordance with clause 18.6.2 is deemed to have been held at the place determined by the chairperson of the meeting, provided that at least one of the directors who took part in the meeting was at that place for the duration of the meeting.

19 Committees and Advisory Committees

19.1 Committees

The Board may delegate any of its powers and/or functions (not being duties imposed on the Board as the directors of the Company by the Corporations Act or the general law) to one or more committees consisting of such Member or Members as the Board thinks fit. Any committee so formed shall conform to any regulations or directions that may from time to time be made or given by the Board, and subject thereto shall have power to co-opt any Member or Members.

19.2 Advisory Committees

The Board may appoint one or more advisory committees consisting of such Members or persons as the Board thinks fit. Such advisory committees shall act in an advisory capacity only. They shall conform to any regulations or directions that may from time to time be made or given by the Board and subject thereto shall have power to co-opt any person. All members of such advisory committees shall have one vote.

20 Interest of Directors

- 20.1** A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest unless section 191(2) of the Corporations Act says otherwise.
- 20.2** A director who has a material personal interest in a matter that is being considered at a directors' meeting must not be present while the matter is being considered at the meeting, or vote on the matter, unless permitted to do so under section 195 of the Corporations Act.
- 20.3** Nothing contained in the foregoing provisions of this clause 20 shall prohibit or in any way restrict a director being present at, being counted in a quorum and/or from voting at any meeting of the Board in circumstances where it is not unlawful or is permissible to do so under the Corporations Act.
- 20.4** No act of the Board or the Company (including any contract, agreement or arrangement entered into by the Company) shall be void or voidable by reason only of a failure of the directors or any of them to comply with:
- 20.4.1** the provisions of clause 20.1 or 20.2; or
- 20.4.2** the provisions of Division 2 of Part 2D.1 of the Corporations Act.

21 Chief Executive Officer and Secretary

- 21.1** The Board may appoint a chief executive officer and shall appoint a secretary of the Company, and may, at the Board's discretion, appoint the same person to both offices.
- 21.2** The Board shall decide the terms and conditions of the chief executive officer's appointment (if one is appointed), but the chief executive officer shall at all times be subject to and shall act in accordance with any directions which may from time to time be given by the Board.
- 21.3** The Board may delegate exclusively or non-exclusively any of its powers and/or functions (not being duties imposed on the Board as the directors of the Company by the Corporations Act or the general law) as the Board thinks fit. In the absence of there being a chief executive officer in office such functions as the chief executive officer would otherwise fulfil may for the time being be fulfilled by the Secretary.

- 21.4** The Board may dismiss any chief executive officer and also any Secretary and make new appointments.

22 Officers - Indemnity, Insurance and Access

- 22.1** In this clause 22 the following expressions shall have the following meanings:

22.1.1 **Officer** means every person who at any time is or has at any time been:

- a. a director or Secretary of the Company; or
- b. the Independent Chair of the Company; or
- c. a person:
 - i. who makes, or participates in making, decisions that affect the whole, or a substantial part, of the affairs of the Company; or
 - ii. who has the capacity to affect significantly the Company's financial standing; or
- d. in accordance with whose instructions or wishes the Directors are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors of the Company);

22.1.2 **"duties of the Officer"** includes, in any particular case where the directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment (in any capacity) of an Officer by the Company or, where applicable, a subsidiary of the Company, to any other corporation;

22.1.3 **To the relevant extent** means:

- a. to the extent the Company is not precluded by law from doing so;
- b. to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
- c. where the liability is incurred in or arising out of the conduct of the business of another corporation, or in the discharge of the duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation;

22.1.4 **Liability** means all liabilities, losses, damages, costs, charges, expenses and penalties of any kind including, but not limited to, liability for negligence, also for legal costs incurred in defending any proceedings (whether civil, criminal, judicial or administrative) or appearing before any court, tribunal, government authority or otherwise.

- 22.2** The Company shall indemnify each Officer out of the assets of the Company to the relevant extent against any liability incurred by the Officer in or arising out of the conduct of the business of the Company, or in or arising out of the discharge of the duties of the Officer.
- 22.3** Where the directors consider it appropriate, and to the extent to which the Company is not precluded by law from doing so, the Company may execute a deed of indemnity in such terms as the directors consider appropriate, in favour of any Officer.
- 22.4** Where the directors consider it appropriate, and to the extent to which the Company is not precluded by law from doing so, the Company may:
- 22.4.1** make payments of amounts by way of premium in respect of any contract effecting insurance on behalf, or in respect of, an Officer against any liability incurred by the Officer in, or arising out of, the conduct of the business of the Company, or in or arising out of, the discharge of the duties of the Officer; and
 - 22.4.2** bind itself in any deed (in such terms as the directors consider appropriate) with any Officer to make the payments.
- 22.5** Where the directors consider it appropriate, the Company may:
- 22.5.1** give a director or former director access to various Company papers, including documents provided or available to the directors and other papers referred to in those documents; and
 - 22.5.2** bind itself in a deed (in such terms as the directors consider appropriate) with a director or former director to give that access.
- 22.6** Nothing contained in clause 22.5, or in any deed entered into between the Company and any director or former director pursuant to that clause shall in any way exclude, limit or restrict the right of access to the Company's books conferred on such persons by the Corporations Act.