

**Company Constitution of
Goodwin Aged Care Services Limited**

A Public Company Limited by Guarantee

ACN: 120 298 946

As amended 10 November 2017

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Constitution of Goodwin Aged Care Services Limited

PART A – COMPANY NAME AND TYPE

1. Definitions and Interpretation

Definitions

1.1 The following words have these meanings in this Constitution unless a contrary intention appears:

- (a) **Act** means the *Corporations Act 2001* (Cth);
- (b) **Advisory Committee** means for the purpose of this Constitution, a Residents General Forum established in accordance with sub-clauses 59.1, 59.2 and 59.3 that can only act in an advisory capacity subject to and in accordance with clause 59.10 and cannot bind the Company or the Board;
- (c) **Annual General Meeting** means the Annual General Meeting of the Company;
- (d) **Australian Law** means a law of the Commonwealth or of a State or Territory;
- (e) **Board** means the Board of Directors elected or appointed in accordance with this Constitution, including the Chair and Vice-Chair;
- (f) **Board Appointed Director** means a person appointed as a Director under sub-clause 30.1;
- (g) **By-Laws** means the by-laws of the Company as created and amended from time to time in accordance with clause 58;
- (h) **Chair** means the chair elected in accordance with sub-clause 25.2;
- (i) **Chairperson** means;
 - (i) in relation to a General Meeting – the chairperson appointed under clause 19; or
 - (ii) in relation to a Board meeting – the chairperson appointed under sub-clause 34.9 or 34.10.
- (j) **Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Company in accordance with this Constitution and includes an Acting Chief Executive Officer;
- (k) **Company** means the Company referred to in sub-clause 2.1;
- (l) **Company Secretary** means the secretary of the Company as appointed under this Constitution from time to time;
- (m) **Constitution** means this Constitution as amended or supplemented from time to time;
- (n) **Director** means any person holding the position of a director of the Company, including the Chair and Vice-Chair and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company;
- (o) **General Meeting** means the Annual General Meeting or any Special General Meeting of the Company;
- (p) **Interim Director** means a person appointed as a Director under clause 31.1;

- (q) **Majority** means over fifty percent (50%);
- (r) **Member** means a member of the Company pursuant to clause 7 who the Board determines, in its sole discretion, meets the criteria in sub-clause 8.1;
- (s) **Nominee** means a person who is validly nominated for election at an Annual General Meeting in accordance with sub-clause 24.5;
- (t) **Non-Member** means a Member who has not paid all the annual membership fees due and payable under clause 11;
- (u) **Objects** mean the objects of the Company as set out in clause 5;
- (v) **Officer** of the Company means:
 - (i) a director of the Company;
 - (ii) the secretary, public officer, or principal officer of the Company, the holder of any other office of the Company (however described) or a person occupying any of the above mentioned offices, whether validly appointed or not; or
 - (iii) any other person:
 - A. who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
 - B. who is concerned in or takes part in the management of the Company's affairs (but does not include a patron or holder of another honorary office of the Company if the office does not give its incumbent a right to participate in the management of the Company's affairs).
- (w) **Patron** means any person appointed pursuant to clause 9;
- (x) **Representative or Authorised Representative** means the legal personal representatives and permitted assigns of a person;
- (y) **Resident** means each person legally entitled to reside in any Village under the control or management of the Company;
- (z) **Resident Director** means a Director who is a resident, resident's representative, or relative of a resident;
- (aa) **Residents General Forum** means the forum established under clause 59;
- (bb) **Special General Meeting** means a special general meeting of the Company;
- (cc) **Special Resolution** has the meaning given to that term in the Act;
- (dd) **Village** means each residential centre or complex under the management of the Company being:
 - (i) culturally, operationally and nominally separate and distinct from each other centre or complex; and
 - (ii) prescribed by resolution of the Board from time to time.
- (ee) **Vice-Chair** means the vice-chair elected accordance with sub-clause 25.2.

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other genders;
- (c) the reference to a person includes a natural person and any partnership, association, body, instruction, authority or entity whether incorporated or not;
- (d) references to a person includes the legal personal representatives, employees, agents, contractors, successors, and permitted assigns of that person;
- (e) the words “writing” and “written” include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (g) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (i) headings do not affect the interpretation of this Constitution; and
- (j) a word or phrase defined in the Act has the meaning given by the Act, unless a contrary intention appears in this Constitution.

2. Company Name

2.1 The name of the Company is **Goodwin Aged Care Services Limited** (“the Company”).

3. Company Type

3.1 The Company is a public company limited by guarantee under the Act.

4. Replaceable Rules

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

5. Objects

5.1 The primary Objects of the Company are, through direct services and support, to:

- (a) provide accommodation and care for aged people;
- (b) promote and improve the welfare of aged people;
- (c) provide home help for the aged;
- (d) provide direct relief of sickness, suffering, distress, misfortune and disability for aged people;
- (e) provide other aged care and related health care services; and
- (f) do all other things which are incidental or conducive to these objects.

6. Company Powers

- 6.1 Subject to sub-clause 6.2 the Company has the legal capacity and powers of an individual and all the powers of a body corporate, including such powers as are necessary or convenient to carry out objects:
- a) Employ, appoint and/or engage and at its discretion remove, dismiss or suspend any employees, officers, staff, servants, agents, contractors, tradespersons or professional persons;
 - b) Determine wages, salaries and gratuities of appointees and employees;
 - c) Establish and support, or aid in the establishment and support, of services, institutions, funds, trusts, schemes and conveniences calculated to benefit employees or past employees of the Company and their dependants, and the granting of pensions, allowances or other benefits to employees or past employees of the Company and their dependants, and the making of payments towards insurance or superannuation in relation to any of those purposes;
 - d) Print and publish by any technological means newsletters, periodicals, books, leaflets or other documents;
 - e) Receive or make gifts, grants, devises, bequests, subscriptions or donations from or to any person, fund, authority, organisation or institution and accept any gift whether subject to special trust or not and to act as trustee of money or other property vested in the Company on trust;
 - f) Take any measures from time to time as the Company may deem expedient or appropriate for the purpose of procuring contributions to the funds of the Company, whether by way of donations, subscriptions, grants or otherwise;
 - g) Draw, make, accept, endorse, discount and issue cheques, bank drafts, bills of exchange, promissory notes and other negotiable instruments;
 - h) Borrow or raise money in such manner and on such terms as the Company may think fit;
 - i) Secure the repayment of money raised or borrowed or the payment of a debt or liability of the Company by giving mortgages, charges or securities upon or over all or any of the real or personal property of the Company;
 - j) Invest in authorised trustee investments of any monies of the Company not immediately required for any of its objects or purposes in any manner in which trustees are authorised by law to administer money held on trust;
 - k) Enter into contracts;
 - l) Establish and support or aid in the establishment or support of, any other service formed for any of the objects, consistent with any of the aforesaid objects of the Company;
 - m) Establish, maintain and manage any building or works and arrange for the construction maintenance and alteration of buildings or works and expend money and do any other thing necessary, convenient or advisable in relation to any building or works to achieve the aims of the Company;
 - n) Purchase, take on lease or in exchange and the hiring or otherwise acquiring of any real or personal property that may be deemed necessary or convenient to achieve the aims of the Company;

- o) Buy, sell and supply of and deal in, goods or services of any kind to achieve the aims of the Company;
- p) Do any other lawful act as may be necessary, incidental or conducive to the achievement of the aforesaid objects of the Company including to co-operate with any person or organisation on matters relating to the objects of the Company.

6.2 The Company may only exercise the powers in sub-clause 6.1 to:

- (a) Carry out the Objects of the Company set out in sub-clause 5.1; and
- (b) Do all things incidental or convenient in relation to the exercise of power under paragraph 6.2(a).

PART B - MEMBERSHIP

7. Admission

7.1 The Members of the Company are:

- (a) the persons who are registered in the Register of Members of the Company as Members; and
- (b) any other person admitted to membership by the Board in accordance with this Constitution.

8. Members

Eligibility

- 8.1 To be eligible to be a Member of the Company a person must be a Resident or an individual interested in the aged care industry.
- 8.2 The Board may only admit a person who meets the criteria in sub-clause 8.1 to be a Member of the Company.

Application for Membership

8.3 Every applicant for membership in the Company must submit an application to the Board:

- (a) in writing;
- (b) signed by the applicant;
- (c) accompanied by the appropriate membership fee; and
- (d) otherwise in a form approved by the Board from time to time.

Consideration of Membership Application

- 8.4 The Board must consider any application for membership which meets the requirements in sub-clause 8.3, as soon as reasonably practicable after it receives the application.
- 8.5 If the Board accepts a person's application for membership, the Company Secretary must notify the person in writing that they are accepted as a member of the Company.
- 8.6 If the Board refuses a person's application for membership, the Company Secretary must:
 - (a) notify the person in writing; and

(b) return the person's membership fee (if any).

8.7 The Board is not required to give any reason for the rejection of an application.

8.8 The Board must not refuse any application for membership received from, or on behalf of, a person who is a Resident.

Rights of Members

8.9 A Member has:

(a) the right to attend, speak and vote at all General Meetings; and

(b) the right to appoint a proxy to attend and vote on its behalf at a General Meeting;

9. Patrons

9.1 The Board may invite any person who it determines to be of appropriate standing in the community to be a patron of the Company.

9.2 The position of Patron is an honorary office of the Company and does not give its incumbent a right to participate in the management of the Company's affairs.

9.3 The term of patronage will be determined by the Board. A term of patronage may be terminated without notice, by the Board.

9.4 A patron of the Company is a person who, having accepted an invitation from the Board:

(a) is to increase the public profile of the Company in such a way as to promote the objectives and good standing of the Company;

(b) may act in a representative capacity on behalf of the Company at public functions;

(c) may make public statements on behalf of the Company at functions that have been pre-approved by the Board for the patron to attend.

9.5 A patron is prevented from acting in any way that may impede the objectives of the Company.

10. Members Obligations

10.1 This Constitution constitutes a contract between each Member and the Company in accordance with section 140(1) of the Act and each Member agrees to be bound by the Constitution and By-Laws.

10.2 All Members must comply with and observe the Constitution and By-Laws and any determination or resolution which may be made or passed by the Company or the Board.

10.3 All Members submit to the jurisdiction of the Australian Capital Territory in respect of any disputes between a Member and the Company or a Member and another Member.

11. Membership Fee

11.1 Each Member must pay any annual membership fee to the Company as determined by the Board from time to time.

11.2 The Board may from time to time, vary the membership fee for Members or proposed Members who are Residents at its sole discretion as it sees fit.

- 11.3 The Membership Fee covers the 12 month period from 1 July to 30 June and is due for payment on 1 July each year or any other timings as the Board may determine from time to time.

12. Non-payment of Membership Fees

- 12.1 A Member whose membership fees are in arrears more than two (2) months – is no longer a Member;
- 12.2 The Board may, at its sole discretion and on such terms as it thinks fit, reinstate as a Member a person whose membership ceased because of clause 12.1 if the person pays all their outstanding membership fees.

13. Cessation of Membership

- 13.1 In addition to sub-clause 12.1, a person immediately ceases to be a Member if they:
- (a) or their representative give the Company Secretary written notice of their resignation as a Member;
 - (b) die;
 - (c) become of unsound mind or whose estate becomes liable to be dealt with in any way under a law relating to mental health;
 - (d) commit an act of bankruptcy or become bankrupt or insolvent or make an arrangement or composition with creditors of the person's joint or separate estate generally; or
 - (e) in the Board's opinion:
 - (i) cease to satisfy the eligibility criteria to be a Member as specified in sub-clause 8.1;
 - (ii) refuse or neglect to comply with the provision of this Constitution or By-Laws; or
 - (iii) are guilty of any conduct which is unbecoming of a Member or prejudicial to the interest of the Company.
- 13.2 The Company Secretary must notify the person in writing if their membership is terminated as a result of paragraph 13.1(e) and provide the reason for the termination.
- 13.3 In the case of paragraph 13.1(e), the Board may decide, instead of terminating the Member's membership, to censure, or suspend the Member's membership privileges on such terms and conditions as the Board sees fit.
- 13.4 Decisions of the Board under sub-clause 13.3 are final and cannot be appealed.

14. Appeal against Cessation of Membership

Right to Appeal

- 14.1 If any person ceases to be a Member as a result of paragraph 13.1(e) ("**Terminated Member**"), the Terminated Member may lodge a written appeal ("**Appeal**") to the Company Secretary to be reinstated. The Appeal will be considered at the next Annual General Meeting.
- 14.2 The Chairperson of the Annual General Meeting must allow the Terminated Member to present their case for reinstatement, orally or in writing.

- 14.3 If the Members at the Annual General Meeting vote by Special Resolution to overturn the Board's decision, the Terminated Member is immediately reinstated as a Member of the Company.

PART C - GENERAL MEETINGS

15. Annual General Meeting

- 15.1 The Company must hold an Annual General Meeting in accordance with the Act.
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16. Special General Meetings

- 16.1 Any general meeting, other than the Annual General Meeting, is a Special General Meeting.
- 16.2 The Board may convene a Special General Meeting:
- (a) as required under this Constitution;
 - (b) if requisitioned by the Members as required under section 249D of the Act; or
 - (c) at anytime it thinks fit.
- 16.3 Members may convene a Special General Meeting if the Directors do not call and arrange to hold a general meeting within 21 days after the request is given to the company pursuant to paragraph 16.2(b) and may call and arrange to hold a general meeting in accordance with sections 249E or 249F of the Act.
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17. General Meetings

Notice of General Meeting

- 17.1 The Board must give at least twenty one (21) days notice of every General Meeting to:
- (a) every Member;
 - (b) every Director; and
 - (c) the auditor(s) of the Company
- except:
- (d) for Special Resolutions which requires notice in accordance with the Act; or
 - (e) where there is an agreement for shorter notice between the Members in accordance with the Act.
- 17.2 A notice of a General Meeting must include:
- (a) the place of the meeting;
 - (b) the date of the meeting;
 - (c) the time of the meeting; and
 - (d) the business to be transacted at the General Meeting; and
 - (e) if a special resolution is to be proposed at the meeting - an intention to propose the special resolution and state the resolution.
-

Postponement of Meeting

- 17.3 Subject to the Act, the Board may postpone, cancel or change the venue of a General Meeting by giving at least seven (7) days written notice before the time the General Meeting was to be held to:
- (a) every Member;
 - (b) every Director; and
 - (c) the auditor(s) of the Company.
- 17.4 A notice postponing, cancelling or changing the venue for a General Meeting must specify the new date, time and place of the General Meeting.

Failure to Receive Notice

- 17.5 The failure or non-receipt of a notice of a General Meeting by any person entitled to receive a notice does not invalidate any act, matter or thing done or resolution passed at the General Meeting if the failure or non-receipt occurred by accident or error.
- 17.6 A Member who attends the General Meeting waives any objection that Member may have in relation to receiving a notice of the General Meeting.

Use of Technology

- 17.7 A General Meeting may, at the sole discretion of the Board, be held in two or more places linked together by any technology that:
- (a) gives the Members present at those places a reasonable opportunity to participate in proceedings;
 - (b) enables the Chairperson to be aware of proceedings in each place; and
 - (c) enables the Members in each place to vote on a show of hands and on a poll.
- 17.8 If a General Meeting is held in two or more places in accordance with sub-clause 17.7:
- (a) a Member present at one of the places is taken to be present at the General Meeting; and
 - (b) the Chairperson of that General Meeting may determine at its sole discretion which place the meeting is taken to have been held.

Attendance at General Meeting

- 17.9 The Board may, invite a person or persons to attend and speak at any General Meeting.

PART D - PROCEEDINGS AT GENERAL MEETINGS

18. Quorum

- 18.1 For the purpose of this clause 18, “**Member**” includes a person attending as a proxy or a representative of a person who is a Member.
- 18.2 No business can be transacted at a General Meeting unless a quorum of Members is present.
- 18.3 The quorum for any General Meeting is ten percent (10%) of the Members.
- 18.4 If a quorum is not met within 30 minutes of the start of the meeting, the meeting:

(a) if convened by the requisition of Members – is dissolved; and

(b) in any other case - stands adjourned to:

(i) the same day in the following week at the same time and place; or

(ii) to such other day, time and place as the Chairperson may determine.

18.5 If a quorum is not met within 30 minutes of the start of an adjourned meeting the meeting is dissolved.

18.6 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.

19. Presiding at General Meetings

19.1 The Board Chair presides at every General Meeting as the Chairperson.

19.2 If:

(a) there is no Chair;

(b) the Chair is not present within fifteen (15) minutes after the time appointed for the General Meeting; or

(c) the Chair is present but unwilling to act,

then the Vice-Chair is the Chairperson for that meeting and if the Vice-Chair is not present or unwilling to preside, then the Members must elect one of the Board members present to be the Chairperson for that meeting.

20. Adjourning meeting

20.1 The Members present at a General Meeting may by Majority resolution adjourn the meeting.

20.2 If a General Meeting is adjourned for thirty (30) days or more, the Company Secretary must give all Members notice of the time and place of the adjourned General Meeting twenty one (21) days prior to the adjourned General Meeting.

20.3 A notice of an adjourned meeting does not need to state the business to be transacted.

20.4 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.

21. Proceedings and Voting

Proceeding

21.1 The Chairperson may conduct the General Meeting as he or she sees fit, including, but not limited to:

(a) adopting any procedure necessary for the proper and orderly debate or discussion of matters;

(b) limiting the time that a person may speak on a matter;

(c) deciding the validity of proxies pursuant to sub-clause 22.2; and

(d) the proper and orderly procedure for casting, counting and recording of votes.

21.2 The Chairperson's decision on conducting a General Meeting under sub-clause 21.1 is final and binding.

Voting by Show of Hands

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

(a) by the Chairperson; or

(b) by at least ten percent (10%) of Members present, in person or by proxy.

Minutes of Meeting

21.4 The Company Secretary must record in writing, the proceedings of a General Meeting.

21.5 Except where a poll is demanded, conclusive evidence of the result of a resolution is:

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

(b) an entry in the minutes of the Company showing the result of the resolution,

21.6 A resolution is carried if it is supported by a Majority of Members present at a General Meeting in person or by proxy.

Poll

21.7 Any poll must be taken in such a manner as the Chairperson directs.

21.8 The person or persons who demanded a poll may withdraw the demand for a poll before the poll is conducted.

21.9 The result of any poll is the resolution of the General Meeting at which the poll was demanded.

21.10 Notwithstanding sub-clause 21.7, a poll demanded on the election of the Chairperson or on a question of adjournment must be taken immediately.

Votes

21.11 On a show of hands every person present who is a Member, an authorised representative, attorney or proxy of a Member has one vote.

21.12 On a poll every Member present:

(a) in person;

(b) by proxy;

(c) by attorney; or

(d) by other duly authorised representative,

has one vote on their own behalf and one vote for every proxy they hold.

21.13 A Non-Member may not vote at any General Meeting.

Casting Vote

21.14 The Chairperson of a General Meeting has a second or casting vote if the vote on any resolution before that General Meeting is tied.

Objection to Qualification to Vote

21.15 A person may only raise an objection to the qualification of a person to vote before or immediately after the result of a resolution.

21.16 Any objection to the qualification of a person to vote must be referred to the Chairperson of the meeting.

21.17 The Chairperson must make a decision as to whether a person is entitled to vote.

21.18 The Chairperson's decision on whether a person is entitled to vote is final and binding.

22. Proxy

Proxy

22.1 A Member may by written instrument appoint:

(a) the Chairperson; or

(b) a Member,

to act as their proxy to attend, speak and vote in their place at a General Meeting.

Instrument of Proxy

22.2 An instrument appointing a proxy is not valid and must not be recognised by the Chairperson of the General Meeting unless it complies with this clause 22.

22.3 An instrument appointing a proxy must be sent by the Member to the Company Secretary at least forty-eight (48) hours before the time for holding the General Meeting or adjourned General Meeting at which the Member proposes to vote.

22.4 The instrument appointing a proxy must be in accordance with section 250A of the Act.

22.5 An instrument appointing a proxy must be in writing and signed by:

(a) the Member; or

(b) the Member's attorney.

22.6 An instrument appointing a proxy must include the power of attorney or other authority (or a certified copy of that power or authority), under which it is signed.

22.7 A Member may instruct his or her proxy to vote in favour of or against any proposed resolutions.

Rights of Proxy

22.8 A proxy may vote as he or she thinks fit, unless otherwise instructed.

22.9 The instrument appointing a proxy confers authority on the proxy to demand or join in demanding a poll.

Restriction on Proxy

22.10 A Non-Member cannot appoint a person to act as their proxy to attend and speak in their place at a General Meeting.

Validity of Proxy

22.11 A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding:

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

if no indication in writing of such death, unsoundness of mind or revocation has been received by the Company Secretary before the commencement of the General Meeting or adjourned General Meeting at which the instrument is used.

PART E – BOARD OF DIRECTORS

23. Number of Directors

23.1 The Board of Directors must have at least five (5) Directors and a maximum of ten (10) Directors, including the Chair and Vice-Chair.

23.2 The Chair and Vice-Chair are Directors of the Company.

Restriction on residents or their representatives being a Director

23.3 Subject to sub-clause 23.4, at any time a maximum of two (2) Directors of the Board elected under clause 25 may be:

- (a) Residents;
- (b) a Resident's representative; or
- (c) a relative of a Resident.

23.4 If a Director becomes a Resident or becomes a relative of a Resident after their election as a Director, notwithstanding sub-clause 23.3, the Director and other Resident Directors may continue to serve as Directors until the end of their current term.

23.5 To avoid doubt, sub-clause 23.3 does not apply to Directors appointed to the Board pursuant to clause 30 or clause 31.

Restriction on Board Appointed Directors

23.6 A maximum of two (2) Directors of the Board may be Board Appointed Directors pursuant to clause 30.

23.7 To avoid doubt, sub-clause 23.6 does not apply to Interim Directors appointed by the Board under clause 31.

Restriction on an employee being a Director

23.8 An employee of the Company may not be nominated or elected as Director of the Company.

24. Eligibility to be a Director

Eligibility

24.1 A person may not be nominated, elected or appointed as a Director unless:

- (a) the person is a Member;
- (b) the person has the necessary skills and qualifications;
- (c) the Board has no reason to believe they are not of good character; and
- (d) the Board has no reason to believe they would not devote themselves in good faith to the best interests of the Company and its Residents.

Skills and Qualifications

24.2 For the purpose of this clause 24, a person possesses the necessary skills to be a Director of the Board only if they possess or have previously demonstrated experience in corporate governance and expertise in one or more of the following occupational skills:

- (a) accommodation for the aged;
- (b) aged care;
- (c) property management and development;
- (d) asset management;
- (e) management;
- (f) social policy;
- (g) law;
- (h) accountancy; or
- (i) corporate finance.

Confirmation of Skills

24.3 The Board must, as soon as possible, upon receiving a person's valid nomination for election to the Board determine, in its absolute discretion, whether the person meets the eligibility criteria in this clause 24 to be a Director.

Recommendations as Director

24.4 Subject to sub-clause 24.5, the Board must include a person in the nominations for Director if:

- (a) the Board determines the person meets the eligibility criteria in this clause 24 to be a Director; and
- (b) the person has submitted a valid nomination pursuant to sub-clause 24.5.

Valid nomination

24.5 A person's nomination for election as a Director is valid if the person's written nomination is:

- (a) signed by the nominated person;
- (b) signed by two Members nominating and seconding the person's nomination;
- (c) provided to the Company Secretary at least 56 days before the Annual General Meeting; and
- (d) in the form approved by the Board from time to time.

Notice of Nominees' Details

- 24.6 Details of Nominees for election to the Board at an Annual General Meeting must be notified to the Members at least 21 days before the Annual General Meeting.

25. Election of Directors

Election of Directors

- 25.1 Subject to sub-clause 23.6, at every Annual General Meeting of the Company, the Members will elect the Directors of the Company.
- 25.2 The election of Chair and Vice-Chair will be undertaken by Board Directors. Each will be elected for a three (3) year term and may be re-elected.

Re-Election of Directors

- 25.3 Subject to Clause 26 a Director may be re-elected to be a Director.

26. Term of Directors

Term

- 26.1 An elected Director's term of office commences from the end of the Annual General Meeting in which they were elected.
- 26.2 Subject to clause 33, an elected Director's term of office is three (3) years from the date elected.
- 26.3 A Director appointed under clause 30 is appointed for such period as the Board deems fit, but in any event for no more than 3 years.

Limit on length of term

- 26.4 A person must not be nominated, elected or appointed as a Director if a person's proposed term of directorship will exceed 12 years of continuous service as a Director of the Company commencing from the date of the October 2014 Annual General Meeting.
- 26.5 Sub-clause 26.4 does not apply to Appointment of Interim Directors

27. Directors' Duties and Interest

Duties under the Act

- 27.1 Each Director must:
- (a) comply with their duties under the Act and as applicable under Australian Law;
 - (b) act in the best interests of the Company; and
 - (c) avoid and disclose conflicts or potential conflicts of interest.

Director's Interest in a matter

- 27.2 A Director is not:

- (a) disqualified from holding any other office or place of profit with the Company unless being or becoming a Director would breach this Constitution or any law by reason of holding that office;
- (b) disqualified from holding any other office or place of profit with any company in which the Company is a shareholder or otherwise interested; and
- (c) liable to account to the Company for any profit arising from that office or place of profit.

27.3 If the disclosure on an interest is made before a transaction is entered into:

- (a) the Director may retain benefits under the transaction even though the Director has the interest; and
- (b) the Company cannot avoid the transaction merely because of the existence of the interest.

Obligation of confidentiality

27.4 Each Director and officer of the Company must keep the transactions and affairs of the Company confidential unless they are required to disclose them:

- (a) in the course of their duties as an officer of the Company;
- (b) by the Board; or
- (c) by law.

28. Remuneration of Directors

28.1 For the purposes of this clause 28, “**remuneration**” means any money, consideration or benefit except:

- (a) payments or reimbursement of out of pocket expenses incurred for the benefit of the Company or subsidiary of the Company; or
- (b) any wages received or payable to a person as an employee.

28.2 Directors may receive reasonable remuneration for their services as determined from time to time by Members in a General Meeting.

29. Removal of Director

29.1 Subject to the Act, a General Meeting may, by Majority resolution of Members, remove any Director before the expiration of his or her term of office.

29.2 A person automatically and immediately ceases to be a Director if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (b) becomes prohibited from being a Director of a Company by reason of any order made under the Act;
- (c) becomes of unsound mind or whose estate becomes liable to be dealt with in any way under the law relating to mental health;
- (d) resigns his or her office by notice in writing to the Company;

- (e) is absent for 3 consecutive Board meetings without permission of the Board;
- (f) is removed from office under sub-clause 29.1;
- (g) ceases to qualify as a Director under clause 24;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company, except as permitted under this Constitution or as a Resident of a Village; or
- (i) becomes an employee of the Company.

30. Board Appointed Directors

30.1 To assist the Board with identified skills deficiencies, the Board may appoint Directors of the Company as follows:

- (a) up to a maximum of two (2) Directors in accordance with sub-clause 23.6;
- (b) for a term that the Board deems appropriate but not exceeding three (3) years;
- (c) at any time the Board determines; and
- (d) start and end date of appointment need not coincide with the dates of Annual General Meetings.

30.2 To appoint a Board Appointed Director, the Board must assess and confirm that the person satisfies eligibility criteria under sub-clauses 24.1 and 24.2.

30.3 Members' approval is not required for an appointment of Board Appointed Directors.

31. Casual Vacancy

31.1 The Board may appoint any Member subject to the qualifications required pursuant to sub-clauses 24.1 and 24.2 as a Interim Director to fill a casual vacancy ('Interim Director').

31.2 An Interim Director will hold office until the next Annual General Meeting.

31.3 An Interim Director may continue to hold office if elected by the Members as a Director at the next Annual General Meeting.

32. Powers of Board

Exercise of Powers

32.1 Except for anything which this Constitution or the Act requires to be done by the Company in a General Meeting, the Board has the power to:

- (a) control and manage the business and affairs of the Company;
- (b) exercise all such power and do all such things as may be exercised or done by the Company; and
- (c) make, amend and repeal By-Laws in relation to the affairs of the Company.

32.2 The Board must exercise its powers to promote the Objects of the Company.

Liability of Board

- 32.3 No action must be taken against the Board or any Director for any act or decision it makes in accordance with this Constitution.

Limits to Delegation of Powers

- 32.4 The Board may not delegate:
- (a) its power of delegation;
 - (b) its power to determine the conditions for the inspection of the Company records; and
 - (c) any function imposed specifically on the Board under the Act.

33. Director Rotation

- 33.1 One third of the 2014 Directors in the Board must retire by rotation at every Annual General Meeting at each of the 2015, 2016 and 2017 Annual General Meetings, and thereafter the Board will use its best endeavours to ensure a third of Directors retire by rotation at each subsequent Annual General Meeting.
- 33.2 If the number of retiring 2014 Directors is not a multiple of three, then the number of Directors as close to one third as possible must retire by rotation.
- 33.3 To achieve one third of Directors retiring by rotation at each of the 2015, 2016 and 2017 Annual General Meetings, the retiring Directors will be determined by:
- (a) agreement with the relevant Directors(s); or
 - (b) failing agreement – by drawing of ballots from all Directors not elected at the 2015 or 2016 Annual General Meeting.
- 33.4 Subject to Part E of this Constitution, Directors that retire by rotation may be nominated, elected and/or appointed as a Director again from and at the Annual General Meeting at which they retire by rotation.

PART F – BOARD OF DIRECTORS' MEETINGS

34. Board Meetings

Board Meetings

- 34.1 The Board shall meet as regularly as it deems necessary to adequately carry out its duties and responsibilities but not less than at least five times each calendar year.
- 34.2 The Board must hold a Board meeting within three months of the last Board meeting.
- 34.3 The Board may adjourn and otherwise regulate its meetings and proceedings as it thinks fit.
- 34.4 The Chairperson or two members of the Board may at any time, and the Company Secretary will on the receipt of such request, call a meeting of the Board.

Notice of Board Meetings

- 34.5 All members of the Board must be given at least seven (7) days notice of a Board meeting, unless agreed otherwise by all the members of the Board.
- 34.6 The Secretary must give each member of the Board a written notice of a Board meeting in accordance with sub-clause 34.5 and the notice must:

- (a) specify the day, time and place of the meeting; and
- (b) state the business to be transacted.

Use of Technology

- 34.7 A Board meeting may be held using any technology consented to by all the members of the Board.
- 34.8 The consent to use of technology may be a standing one and a member of the Board may only withdraw consent within a reasonable period before the meeting.

Chairperson

- 34.9 The Chair presides at every Board meeting as Chairperson.

34.10 If:

- (a) there is no Chair; or
- (b) at any Board meeting the Chair is not present within ten minutes after the time appointed for holding the meeting; or
- (c) being present, the Chair is unwilling to preside,

then the Vice-Chair is to be Chairperson for that meeting and if the Vice-Chair is not present or unwilling to preside, then the members of the Board will choose one of the members of the Board present to be the Chairperson for that meeting.

35. Quorum

- 35.1 No business can be transacted at a Board meeting unless a quorum is present.
- 35.2 The quorum for any Board meeting is a majority of Directors.
- 35.3 If there are not enough members of the Board in office to form a quorum, the remaining members of the Board may act only:
- (a) to increase the number of members of the Board to a quorum;
 - (b) to call a General Meeting of the Company; or
 - (c) in an emergency requiring immediate attention.

36. Board Voting

Voting

- 36.1 Subject to sub-clauses 36.4 and 36.5, each member of the Board has one vote on any resolution of the Board.
- 36.2 All decisions of the Board are determined by Majority vote of members of the Board present at the Board meeting.
- 36.3 The Chairperson of the Board meeting has a second or casting vote if the vote on a resolution is tied.

Restrictions on Voting

- 36.4 A member of the Board may not vote in respect of any contract or proposed contract which he or she has an interest in.
- 36.5 A member of the Board may not vote in respect of any matter in which he or she has an actual or potential conflict of interest.
- 36.6 If a member of the Board votes in breach of sub-clauses 36.4 or 36.5, their vote does not count.

37. Resolution outside Board Meeting

- 37.1 A written resolution signed by majority of the Board entitled to vote is valid and effectual as if it had been passed at a Board meeting duly convened and held. The resolution must be drafted and circulated by the Company Secretary.
- 37.2 Any such resolution may consist of several documents in similar form, each signed by a majority of the Board.

38. Delegation of Powers

Power of Delegation

- 38.1 The Board may, by instrument in writing, delegate any of their powers and or functions in accordance with the Act to:
- (a) a committee or any number of committees as it sees fit (consisting of one or more of their number and others as it sees fit);
 - (b) a Director;
 - (c) an employee of the company; or
 - (d) or any other person or persons they select.
- except:
- (e) duties imposed on the Board as the Directors of the Company by the Act or the general law;
 - (f) the power to delegate under this clause 38; and
 - (g) those functions that cannot be delegated under this Constitution, the Act or any other law.

PART G - OFFICE BEARERS

39. Chair

Power of Chair

- 39.1 The Board may vest in the Chair such powers and authority as it may from time to time determine.
- 39.2 The Chair will exercise all such powers and authority in accordance with the Board's direction.

Appointment of Chair

- 39.3 If the position of Chair is vacant, the Board may appoint a Director to be the Chair to hold this position until the next AGM.

39.4 If the Chair becomes incapable of performing his or her duties, the Board may appoint another Director to act as Chair.

40. Vice-Chair

Power of Vice-Chair

40.1 The Board may vest in the Vice-Chair such powers and authority as it may from time to time determine.

40.2 The Vice-Chair will exercise all such powers and authority in accordance with the Board's direction.

Appointment of Vice-Chair

40.3 If the position of Vice-Chair is vacant, the Board may appoint a Director to be the Vice-Chair in accordance with the Board's direction

40.4 If the Vice-Chair becomes incapable of performing his or her duties, the Board may appoint another Director to act as Vice-Chair on a temporary basis in accordance with the Board's direction

41. Company Secretary

Power of Company Secretary

41.1 The Company Secretary must comply with the responsibilities and duties of a secretary as specified in the Act.

41.2 The Board may vest in the Company Secretary such powers and authority as it may from time to time determine.

41.3 The Company Secretary will exercise all such powers and authority in accordance with the Board's direction and the Act.

Appointment of Secretary

41.4 If the position of Company Secretary is vacant, the Board may appoint a person or persons to be the Company Secretary.

41.5 The Board may appoint more than one (1) secretary.

Ceasing to be Company Secretary

41.6 The Board may suspend or remove the Company Secretary at its sole discretion.

41.7 If the Company Secretary becomes incapable of performing his or her duties, or tenders their resignation as Company Secretary, the Board may appoint a person or persons to be the Company Secretary.

42. Chief Executive Officer

Appointment and Removal of Chief Executive Officer

42.1 The Board may, at its sole discretion, appoint, suspend or remove a Chief Executive Officer on such terms and conditions as the Board thinks fit.

Termination of Chief Executive Officer

- 42.2 A person automatically and immediately ceases to be the Chief Executive Officer if the Chief Executive Officer:
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (b) is convicted of a criminal offence which, the Board, in its sole discretion, determines would affect the person's ability to be the Chief Executive Officer;
 - (c) becomes of unsound mind or whose estate becomes liable to be dealt with in any way under the law relating to mental health;
 - (d) resigns his or her office by notice in writing to the Company; or
 - (e) is removed from office under sub-clause 42.1.

Powers of Chief Executive Officer

- 42.3 The Board may vest in the Chief Executive Officer such powers and authority as it may from time to time determine.
- 42.4 The Chief Executive Officer will exercise all such powers and authority in accordance with the Board's direction.
- 42.5 The Chief Executive Officer must act in accordance with, and must discharge all functions conferred on the Chief Executive Officer under, this Constitution or the Act.

PART H – ACCOUNTS AND RECORDS

43. Financial Records

- 43.1 The Company must keep the financial records (including accounts) required by the Act.
- 43.2 The financial records must be audited as required by the Act.
- 43.3 The audited financial records must be provided to Members as required by the Act.

44. Audit

- 44.1 The Company must appoint an auditor in accordance with the Act.

45. Inspection

- 45.1 A Member is not entitled to inspect the Company's books, unless authorised by:
- (a) the Board; or
 - (b) the Act.
- 45.2 The Board will determine, the times and places the records of the Company may be inspected by a Member should it agree to an inspection under sub-clause 45.1.
- 45.3 Subject to the Act, a Member may not request and is not entitled to receive any:
- (a) information concerning the business or trading of the Company;

- (b) trade secrets or processes of the Company; or
- (c) other information of or used by the Company.

46. Registers and Records

- 46.1 The Company must keep the registers and records required by the Act.
- 46.2 The Company must keep the registers and records for the minimum period as specified in the Act.
- 46.3 The Company must make the registers available to Members as required by the Act.
- 46.4 The Company Secretary must ensure the registers of the Company are accurate and up to date.

PART I - OTHER

47. Execution of Documents

Execution of Documents

- 47.1 The Company may execute any agreement, deed or other document in accordance with section 127 of the Act.

Common Seal

- 47.2 The Board:
 - (a) may decide whether or not the Company has a common seal; and
 - (b) is responsible for the safe custody of that seal (if any).

Use of Common Seal

- 47.3 The common seal (if any) may only be used with the authority of the Board.

48. Funds

Funds Management

- 48.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be, by:
 - (a) any two Directors; or
 - (b) in such other manner as the Board from time to time determines.
- 48.2 All payments made by electronic transfer must be authorised by:
 - (a) two (2) persons nominated by the Board; or
 - (b) in such other manner as the Board from time to time determines.

49. Notices to Members

- 49.1 The Company may give notice to a Member:

- (a) personally;
- (b) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by the Member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the Member.

50. Notices to Board Members

50.1 The Company may give notice to a member of the Board:

- (a) personally;
- (b) by sending it by post to the member of the Board's usual residential or business address or any other address nominated by them;
- (c) if a notice calling a meeting – by sending it to the fax or electronic address (if any) nominated by the member of the Board, only if all of the members of the Board have consented to the use of that technology; or
- (d) if any other notice – by sending it to the fax or electronic address (if any) nominated by the members of the Board.

51. Time of Service of Notice

51.1 A notice sent by post is taken to be given 1 business day after posting.

51.2 A notice sent by fax or other electronic means, is taken to be given:

- (a) if during ordinary business hours (9am – 5pm, Monday – Friday), excluding public holidays (“**Ordinary Business Hours**”) – at the time it is sent if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address; or
- (b) if outside Ordinary Business Hours – on the next business day after it is sent if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address.

52. Application of Income

Application of Income

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

Restrictions on Application of Income

52.2 The Company must not pay or transfer (directly or indirectly) by way of dividend, bonus or otherwise any portion of the income or property to any Member.

Payments to Members

52.3 Notwithstanding sub-clause 52.2, the Company may pay in good faith to any Member:

- (a) for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) for any out of pocket expenses incurred by any Member on behalf of the Company; or
- (c) for any other bona fide reason or purpose for the attainment of the Objects.

53. Members Liability

53.1 The liability of the Members is limited.

54. Members Contribution

54.1 Every Member of the Company guarantees to contribute to the assets of the Company in the event of the Company being wound up:

- (a) while they are a Member; or
- (b) within one year after ceasing to be a Member,
for:
 - (c) payment of the debts and liabilities of the Company (contracted before the time at which the Member ceases to be a Member);
 - (d) the costs, charges and expenses of winding up; and
 - (e) the adjustment of the rights of the contributories among themselves.

54.2 The maximum a Member is required to guarantee under sub-clause 54.1 is one hundred dollars (\$100).

55. Winding Up

55.1 If, upon the winding-up or dissolution of the Company, there remains any property whatsoever after satisfaction of all the Company's debts and liabilities, the property must:

- (a) be given or transferred to some other organisation:
 - (i) having objects similar to the objects of the Company; and
 - (ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under this Constitution; and
- (b) not be paid to or distributed among the Members.

55.2 If the Company is a deductible gift recipient when the Company is wound up or dissolved, any distribution or transfer under sub-clause 55.1 must be to an organisation that is a deductible gift recipient for the purposes of any Commonwealth taxation act.

55.3 The Members must determine before the time of the winding-up or dissolution the organisation which the property will be transferred to under sub-clause 55.1.

55.4 If no organisation is determined by the Members in accordance with sub-clause 55.2, a Director must apply to the Supreme Court for a determination on the organisation which the property will be transferred to.

56. Indemnity

Indemnity

56.1 Every person who is or has been a:

- (a) Director;
- (b) Chief Executive Officer (including as a Company Secretary); or
- (c) other officer of the Company,

is indemnified, to the maximum extent permitted by the Act and law, out of the property of the Company.

56.2 Subject to sub-clauses 56.3 and 56.4, the Company indemnifies the persons referred to in sub-clause 56.1 against any liability for costs and expenses incurred by that person:

- (a) in defending any proceedings (whether civil or criminal) relating to that person's position with the Company;
- (b) in connection with any administrative proceedings (whether civil or criminal) relating to that person's position with the Company; and
- (c) in connection with any application in relation to any proceedings (whether civil or criminal) relating to that person's position with the Company.

Limitation of Indemnity

56.3 The indemnity in sub-clause 56.2 only applies if:

- (a) judgment is given in that person's favour;
- (b) the person is acquitted;
- (c) the proceedings is withdrawn before judgment; or
- (d) relief is granted to that person under the Act by a court.

56.4 The indemnity in this clause 56 does not apply to a liability arising out of conduct involving a lack of good faith or dishonesty.

Insurance

56.5 Subject to the Act, the Company may enter into and pay premiums on contracts of insurance over a:

- (a) Director;
- (b) Chief Executive Officer (including as a Company Secretary); or
- (c) other officer of the Company,

in relation to any indemnity provided by the Company to them under this clause 56.

57. Alterations to Constitution

57.1 The Constitution may be altered, repealed and expanded by the Members in a General Meeting in accordance with the Act.

58. By-Laws

58.1 The Board may formulate, approve, issue, adopt, interpret and amend such By-laws for:

- (a) the proper advancement, management and administration of the Company;
- (b) the assessment of the qualifications of Members and applicants for membership;
- (c) the assessment of the qualifications of Directors and nominations of Directors;
- (d) the procedure for nomination and election of Directors;
- (e) the delegation of its powers or functions; and
- (f) the advancement of the Objects of the Company,

as it thinks necessary or desirable.

58.2 All By-laws must be consistent with this Constitution and the Act.

58.3 All By-laws made under this clause 58 are binding on the Company and its Members.

59. Residents General Forum

Establishment

59.1 The Board must establish a Residents General Forum.

59.2 The Board will appoint at least two (2) Directors to represent the Board at Residents General Forum meetings.

59.3 The Board will appoint a Director to be the chairperson of any Residents General Forum meetings.

Rights of Residents

59.4 The Residents of each Village may appoint, in such manner as the Board from time to time determines, two (2) persons (who may or may not be Members of the Company) to be members of the Residents General Forum. Each appointment will be valid for twelve months. A member of the Residents General Forum may be reappointed by the Residents of each Village for further terms of twelve months to a maximum of three terms.

59.5 Where there is a Residential Care Facility and Independent Living Units at the same Village, members of the Residents General Forum will be appointed to ensure representation of residents of both the Residential Care Facility and Independent Living Units. Should a representative not be available from the Residential Care Facility a family representative may be appointed, or failing this a second representative from the Independent Living Units may be appointed from the Village.

59.6 Each person appointed under sub-clause 59.4 is entitled to:

- (a) receive notice of any meeting of the Residents General Forum;
- (b) attend any meeting of the Residents General Forum; and
- (c) vote at any meeting of the Residents General Forum

Holding Residents General Forum Meetings

59.7 The Board must, at least twice in each calendar year, organise and hold a Residents General Forum meeting.

59.8 The following people are entitled to attend a Residents General Forum:

- (a) any members of the Board;
- (b) the person's appointed under sub-clause 59.4; and
- (c) any other person the Board determines from time to time.

59.9 The Residents General Forum will meet at such places and times as the Residents General Forum or Board determines from time to time.

Purpose of Residents General Forum

59.10 The Residents General Forum may review and formulate recommendations to the Board :

- (a) concerning the objectives and policy of and the provision of services by the Company;
- (b) for both the short and long term needs of the Company;
- (c) concerning the structure, procedures, functions and activities of the Company; and
- (d) on any matter, topic or thing referred to the Residents General Forum by the Board or the village representatives.

Power of Residents General Forum

59.11 The Residents General Forum acts as an Advisory Committee and cannot bind the Company or the Board.

60. Revocation of Deductible Gift Recipient Status

60.1 If the Company's endorsement as a deductible gift recipient is revoked, the Company must transfer to another organisation to which income tax deductible gifts can be made, any surplus:

- (a) gifts of money or property for the principal Objects of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal Objects of the Company; and
- (c) money received by the Company because of such gifts and contributions above.