

Constitution

Ageing Australia Ltd

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Ageing Australia Ltd
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Ageing
Australia

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Constitution

Preliminary

1. Definitions

- 1.1 The words and phrases used in this Constitution have the meanings as set out at Schedule 1.
- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as it is given in the Corporations Act or the Relevant Laws, as is applicable. Where an expression is defined in this Constitution and is also defined in the Corporations Act or the Relevant Laws or where a provision of the Corporations Act or the Relevant Laws deals with the same matter as the relevant clause of this Constitution, the expression has the same meaning as in that provision of the Corporations Act or the Relevant Laws, as is applicable.

2. Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa (whether or not incorporated);
 - (d) a reference to a person includes that person's executors, administrators, successors, substitutes and permitted assigns;
 - (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (g) a reference of a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (h) headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Constitution;
- (i) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
- (j) the meaning of general words is not limited by specific examples introduced by including, for example of similar expressions.

3. Interpretation subject to Corporations Act and Relevant Laws

- 3.1 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.
- 3.2 This Constitution is to be interpreted subject to the Corporations Act and Relevant Laws. If there is any inconsistency, the Relevant Laws prevail.
- 3.3 To the extent that Relevant Laws require this Constitution to include provisions so that the Company can hold a registration or exemption status, those provisions are taken to form part of this Constitution.

Vision and Purpose

4. Vision

The Company's vision is to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged and community care sector.

5. Purpose

- 5.1 As a charity and public benevolent institution, the Company's Purpose is to lead, advocate and provide support, advice and guidance to aged care providers who relieve suffering of those in need to ensure a high-performing, trusted and sustainable aged and community care sector so that older Australians can live their best lives.
- 5.2 In support of the Purpose set out in clause 5.1, the Company's supporting purposes are to:
 - (a) encourage and support the aged care sector in Australia to be equitable, diverse and high-quality;
 - (b) represent, advocate for and provide guidance and encouragement to a diverse range of Australian care providers and the broader community to improve the care being provided to older Australians;

- (c) advocate to influence, shape and develop the immediate and long term strategic direction, policies and vision for the betterment of care for older Australians in Australia;
- (d) work collaboratively with and provide support to other stakeholders to build a diverse and dedicated workforce responsible for providing care to people in need;
- (e) coordinate, promote and influence the development and delivery of research, education and other key programs aimed at the continuous improvement of services and care outcomes for older Australians in need; and
- (f) do all lawful things consistent with, necessary or desirable to support and further the principal purpose.

5.3 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the Purpose in this clause; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 5.1.

6. Income and property of the Company

6.1 The income and property of the Company must be applied solely towards the promotion of the Purpose.

6.2 Except as permitted under clause 40, no income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments made to a Member in good faith with prior Board approval up to a fair and reasonable amount for:

- (a) services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) expenses properly incurred for the Company;
- (c) rent for premises let to the Company; or
- (d) interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

Membership

7. Classes of Members and eligibility

- 7.1 The Members of the Company comprise persons and organisations who provide Aged and Community Care Services.
- 7.2 The Board may from time-to-time adopt, amend and / or replace By-laws establishing and regulating membership, including without limitation as to classes of membership, voting rights, eligibility criteria and Membership Fees.

8. Admission

- 8.1 The number of Members of the Company is unlimited.
- 8.2 The Board may, in its absolute discretion, admit as a Member of the Company an applicant which:
 - (a) provides Aged and Community Care Services and meets any other eligibility criteria for membership as determined by the Board from time to time;
 - (b) applies for membership to the Company in writing and in a prescribed form;
 - (c) and agrees to be bound by this Constitution and any By-laws.
- 8.3 An applicant for membership agrees to provide the Company with information about its Operations so as to enable the Board to assess the application for membership. An applicant must provide accurate information and will immediately notify the Company if any information provided for this purpose is inaccurate or misleading.
- 8.4 The Board does not have to give any reason for rejecting an application for membership.

9. Register of Members

- 9.1 Upon acceptance of the application for membership and receipt of payment by the Company of the prescribed Membership Fee from the applicant, the applicant will be admitted as a Member and will be entered into the Register.
- 9.2 The Secretary must maintain the Register which must include:
 - (a) the name and address of each Member;
 - (b) the date on which the Member was admitted as a Member of the Company;

- (c) and the date (where applicable) when each Member resigns or ceases to be a Member.

9.3 The Register must otherwise be maintained in accordance with the Corporations Act.

9.4 If a Member changes address for notices it must notify the Secretary in writing of its new address as within 28 days of the change.

10. Rights and obligations of Members

10.1 A Member has the right to receive notice of, participate in the requisition of, attend, speak at, vote at and join in the demand for a poll at general meetings of the Company. These rights are suspended while Membership Fees are unpaid.

10.2 Each Member of the Company has one vote in general meetings.

10.3 Members have the right to be permitted to nominate a representative to serve on committees established from time to time by the Board, where the Board calls for such nominations from Members.

10.4 Membership rights and privileges apply only whilst the person or organisation is a Member and may not be transferred or transmitted.

11. Member Representatives

11.1 A Member who is a body corporate must, by written notice to the Secretary, appoint a person to act as its Member Representative.

11.2 The Member Representative must be at least 18 years of age and meet any other eligibility requirements set out in By-laws.

11.3 A Member may replace its Member Representative at any time by written notice to the Secretary.

12. Membership Fee

12.1 The Board may from time to time determine the Membership Fee payable by each Member.

12.2 The Board will determine the Membership Fee period, and the Membership Fee will be due and payable by a Member:

- (a) for the initial Membership Fee, at the time of applying for Membership; and

- (b) for all subsequent years, within 90 days from the commencement of the relevant Membership Fee period.

12.3 Each Member agrees to provide the Company with information about its Operations so as to enable the Board to determine the Membership Fee applicable to that Member. Each Member agrees to provide accurate information and will immediately notify the Company if any information provided for this purpose is inaccurate or misleading.

13. Ceasing to be a Member

13.1 A Member may resign from membership by giving notice in writing to the Secretary. The resignation takes effect when the Secretary receives the Member's notice or on a later date specified in the notice.

13.2 A Member will cease to hold membership with the Company if:

- (a) the Member ceases to meet the eligibility criteria for membership set out in 8.2;
- (b) the Member fails to pay the Membership Fee in accordance with clause 12.2, unless the Board determines otherwise;
- (c) the Member does not renew the membership by the due date;
- (d) on resolution of the Board, has a debt to the Company which remains unpaid for one year or more;
- (e) on resolution of the Board, becomes untraceable for 3 months because the Member cannot be contacted using the address on the register of Members;
- (f) dies or, in the case of a body corporate, is wound up or deregistered;
- (g) becomes bankrupt, has a liquidator appointed or makes any arrangement or composition with the Member's creditors generally; or
- (h) if the Member is an individual, becomes of unsound mind or is liable to be dealt with in any way under the law relating to mental health.

13.3 Any Member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of the Membership Fee; and
- (b) will remain liable for and will pay to the Company all Membership Fees and moneys which were due at the date it ceased to be a Member.

14. Disciplining Members

- 14.1 The Board may warn, censure, suspend or expel a Member if the Member:
- (a) engages in Unacceptable Conduct, subject to:
 - (i) the decision being made by two-thirds majority of all Directors present and voting (excluding any Director on an approved leave of absence or with a conflict of interest);
 - (ii) the Member being afforded a reasonable opportunity to respond, in accordance with any By-laws, to the Board's allegations; and
 - (iii) the Member's appeal rights (if any) set out in the By-laws;
 - (b) refuses or neglects to comply with the provisions of this Constitution or the By-laws; or
 - (c) is charged with an indictable offence and is either found guilty by a court or pleads guilty to the charge.

Affiliation

15. Affiliates

- 15.1 The Board may, in its absolute discretion, admit as an Affiliate of the Company an applicant which meets the eligibility criteria determined by the Board from time to time.
- 15.2 An Affiliate is not a Member and may not vote at any general meeting of the Company.
- 15.3 An Affiliate shall pay such fees and enjoy such rights as may be determined by the Board from time to time.
- 15.4 An Affiliate may resign by giving notice in writing to the Secretary. The resignation takes effect when the Secretary receives the Affiliate's notice or on a later date specified in the notice.
- 15.5 An Affiliate will cease to be an Affiliate of the Company, if:
- (a) the Affiliate fails to pay its fees as required under the By-laws;
 - (b) the Affiliate no longer meets the eligibility criteria established pursuant to clause 15.1;
 - (c) the Affiliate does not renew the affiliation with the Company by the due date;

- (d) on resolution of the Board, has a debt to the Company which remains unpaid for one year or more;
 - (e) on resolution of the Board, becomes untraceable for 3 months because the Affiliate cannot be contacted using the address on the register of Affiliates;
 - (f) dies or, in the case of a body corporate, is wound up or deregistered;
 - (g) becomes bankrupt, has a liquidator appointed or makes any arrangement or composition with the Affiliate's creditors generally;
 - (h) if the Affiliate is an individual, becomes of unsound mind or is liable to be dealt with in any way under the law relating to mental health; or
 - (i) the Board in its absolute discretion determines that the Affiliate should cease to be an Affiliate, without the need to provide any reasons for the decision.
- 15.6 Affiliates agree to be bound by this Constitution and any By-laws adopted by the Board from time to time to the extent applicable to the Affiliate.
- 15.7 A person's or an organisation's affiliate rights and privileges apply only whilst the person or the organisation is an Affiliate and may not be transferred or transmitted.
- 15.8 Any Affiliate ceasing to be an Affiliate:
- (a) will not be entitled to any refund (or part refund) of any Affiliate fees paid; and
 - (b) will remain liable for and will pay to the Company all Affiliate fees and moneys which were due at the date it ceased to be an Affiliate.

General meetings

16. Calling an Annual General Meeting

- 16.1 The Company must hold an Annual General Meeting each year. The requirements for convening an Annual General Meeting may otherwise be as set out in the Corporations Act and the Relevant Laws.
- 16.2 The business of an Annual General Meeting is to:
- (a) present the Company's annual financial statements, the Directors' and the auditor's reports;

- (b) declare the Director election results;
- (c) appoint an auditor if that office is or will become vacant;
- (d) consider any other matter required by the Corporations Act or the Relevant Laws; and
- (e) consider any special business, the general nature of which is specified in the notice of meeting.

17. Calling Special General Meetings

- 17.1 General meetings other than Annual General Meetings are called Special General Meetings.
- 17.2 A Special General Meeting may be called, at any time, by a minimum of two Directors.
- 17.3 A Member may only:
 - (a) request the Board to call a Special General Meeting;
 - (b) or call and arrange to hold a Special General Meeting, in accordance with the requirements of the Corporations Act.
- 17.4 The notice of Special General Meeting must specify the general nature of special business, unless the Corporations Act or the Relevant Laws require otherwise.

18. Notice of general meeting

- 18.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 18.2 A notice calling a general meeting:
 - (a) must specify the place, date and time of the meeting. If the meeting is to be held in two or more places, the notice must specify the technology that will be used to facilitate the meeting; and
 - (b) must specify a return address (postal and electronic) for the purposes of proxy appointment.
- 18.3 Notice of every general meeting must be given to:
 - (a) every Member;
 - (b) every Director;

- (c) the Secretary; and
 - (d) the Auditor, if required under the Corporations Act.
- 18.4 No other person is entitled to receive notice of a general meeting, unless otherwise determined by the Board.
- 18.5 The Board may postpone or cancel any general meeting prior to the meeting taking place, whenever they think fit (other than a meeting called as the result of a request under clause 17.3). For the avoidance of doubt, the Board may not cancel the Annual General Meeting.
- 18.6 The Board must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 18.3 entitled to receive notices from the Company (including a proxy appointment form).
- 18.7 A general meeting and any resolution passed at the meeting is not invalid merely because of:
 - (a) the accidental omission to give notice of the meeting;
 - (b) or the non-receipt of any such notice.

Proceedings at general meetings

19. Quorum

- 19.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 19.2 A quorum of Members is twenty-five (25) Members present in person, through their Member Representative, or by proxy.
- 19.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case it will stand adjourned to another day, time and place determined by the Board.

20. Chair of general meeting

- 20.1 The Chairperson, or in the Chairperson's absence the Deputy Chairperson will be the Chair of a general meeting.

- 20.2 The Directors present may elect an alternative Chair of a general meeting if:
- (a) there is no Chairperson or Deputy Chairperson;
 - (b) the Chairperson or Deputy Chairperson is not present within 15 minutes after the time appointed for the start of the general meeting; or
 - (c) the Chairperson or Deputy Chairperson is unwilling to act as Chair of the general meeting.
- 20.3 If no election is made under clause 20.2, then:
- (a) the Members may elect one of the Directors present as Chair; or
 - (b) if no Director is present or is willing to take the Chair, the Members may elect one of the Member Representatives present as Chair for that general meeting.
- 20.4 If there is a dispute at a general meeting about a question of procedure, the Chair of the general meeting may determine the question.
- 20.5 The Chair of a general meeting does not have a casting vote in addition to his or her deliberative vote.

21. Adjournment

- 21.1 The Chair of a general meeting at which a quorum is present:
- (a) in their discretion may adjourn the general meeting with the Members' consent and
 - (b) must adjourn the general meeting if the Members direct them to do so.
- 21.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 21.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 21.4 Notice of an adjourned general meeting must only be given in accordance with clause 18.1 if a general meeting has been adjourned for more than 21 days.

22. Decision on questions at general meetings

- 22.1 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by the Chair or in accordance with the Corporations Act.
- 22.2 Unless a poll is demanded:

- (a) a declaration by the Chair that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

22.3 The demand for a poll may be withdrawn.

23. Taking a poll

23.1 A poll will be taken when and in the manner that the Chair directs.

23.2 The result of the poll will form the resolution of the meeting at which the poll was demanded.

23.3 The Chair of a general meeting may determine any dispute about the admission or rejection of a vote.

23.4 The Chair's determination under clause 23.3, if made in good faith, will be final and conclusive.

23.5 A poll demanded on the election of the Chair or the adjournment of a general meeting must be taken immediately.

23.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

24. Use of technology

24.1 Subject to the Corporations Act, a meeting of Members (including an Annual General Meeting):

- (a) may be held in one or more places and may, at the election of the Board, acting reasonably, be conducted in a wholly virtual format or as a Hybrid Meeting; and
- (b) be held using any technology approved by the Board that gives Members as a whole a reasonable opportunity to participate.

Votes of Members

25. Votes by proxy

25.1 A Member may appoint a proxy to act on the Member's behalf at any general

meeting at which that Member may attend and vote.

- 25.2 A proxy must be a Member or a Member Representative of a Member and be over 18 years of age.
- 25.3 A proxy may exercise the right to vote on behalf of a Member at general meeting but is not otherwise authorised to exercise a Member's rights.

26. Document appointing proxy

- 26.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by the Corporations Act.
- 26.2 For the purposes of clause 26.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Board.
- 26.3 A proxy's appointment is valid at an adjourned general meeting.
- 26.4 Unless otherwise provided for in the proxy's appointment, the appointment of the proxy will be taken to confer an authority for the proxy to vote in a manner as the proxy sees fit.
- 26.5 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the Chair is taken to be appointed as the Member's proxy.

27. Lodgement of proxy

- 27.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 27.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office; or

- (b) a place, or electronic address specified for that purpose in the notice of meeting.

28. Validity of proxy vote

A vote cast in accordance with an appointment of proxy will be valid unless any written notification from the appointer of the revocation of appointment is received by the Company before the relevant general meeting or adjourned general meeting.

29. Postal or electronic ballot

- 29.1 Subject to the provisions of the Corporations Act, the Board may, in its absolute discretion, 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 or electronic ballot in such form and returnable in such manner as the Board decides, provided that notice of any postal or electronic ballot shall be given to each Member in the manner provided in clause 18.
- 29.2 A resolution or special resolution approved by the Members voting by such ballot shall have the same force and effect as such a resolution would have if carried by a majority (or in the case of a special resolution, 75%) of the Members at a duly constituted general meeting of the Company competent to pass such a resolution.

Appointment and removal of Directors

30. Number of Directors

- 30.1 The Board shall comprise up to eleven (11) Directors as follows:
 - (a) up to five (5) Directors appointed by the Board in accordance with clause 31 (**Appointed Directors**) as follows:
 - (i) up to three (3) persons appointed by the Board who, in the opinion of the Board, possess such qualifications or experience in any discipline, profession or field of knowledge which may be beneficial to the Company and who are independent of the Company as determined by the Board and set out in By-Laws (**Independent Directors**); and
 - (ii) up to two (2) persons appointed by the Board who are Officers of Members which deliver Aged and Community Care Services in at least three States and Territories of Australia (**Multi State Directors**); and

- (b) up to six (6) persons who are Officers of Members elected by the Members in accordance with clause 33 (**Elected Directors**).

31. Eligibility and suitability to be a Director

31.1 A person is eligible to become a Director if the person:

- (a) in the case of an Elected Director or Multi-State Director, is an Officer of a Member;
- (b) is over the age of 18 years;
- (c) consents in writing to become a Director;
- (d) is not prohibited, disqualified or otherwise prevented from being a Director under the Corporations Act or Relevant Laws; and
- (e) is not an employee of the Company.

31.2 In addition to clause 31.1, a person is suitable for election or appointment as a Director if they meet any criteria to be considered by a nominations committee convened under clause 32.2 or 33.1 (as applicable) which includes, without limitation all of the following criteria:

- (a) geographic location (State-based, rural, regional, metro);
- (b) criteria to ensure appropriate State and Territory Member representation;
- (c) gender and ethnic diversity;
- (d) for Multi-State Directors and Elected Directors:
 - (i) provider size (small, medium, large);
 - (ii) service types (residential aged care, home care, seniors housing, disability services etc.);
- (e) Director skills (clinical and corporate governance, finance, marketing, communications and stakeholder engagement etc.); and
- (f) any other suitability criteria set out by the Board in By-laws.

32. Appointed Directors

32.1 Subject to this Constitution, the Board must determine any procedures or matters in relation to the selection process to appoint Appointed Directors and may make By-laws for that purpose.

- 32.2 The procedure for the appointment of Appointed Directors is as follows, and any By-laws made pursuant to clause 32.1 must be consistent with the following procedure:
- (a) before one or more vacancies in Appointed Director positions becomes available, the Board must consider whether any vacancies in Appointed Director positions should be filled taking into account:
 - (i) whether a retiring Appointed Director is eligible for and may be reappointed; and
 - (ii) the eligibility and suitability criteria for Appointed Directors set out in clause 31; and
 - (b) the Board may, but is not required to, convene a nominations committee to call for Appointed Director candidates;
 - (c) the nominations committee may, but is not required to, interview all candidates for an Appointed Director position;
 - (d) the nominations committee must apply the eligibility and suitability criteria in clause 31 and any skills matrix and diversity matrix developed by the Board in considering Appointed Director candidates;
 - (e) the nominations committee must recommend candidates to be appointed as Appointed Directors as either Independent Directors or Multi-State Directors on the basis of their eligibility, skills, background and expertise deemed necessary or desirable by the Board (including, without limitation, to complement the Elected Directors) for the effective operation of the Board;
 - (f) the Board may appoint Appointed Directors after considering the recommendations from the nominations committee conducting the selection process (if applicable) or otherwise, at the conclusion of the appointment or reappointment process adopted by the Board; and
 - (g) the Board is not required to provide reasons for its decision to appoint or not appoint Appointed Directors.

33. Elected Directors

- 33.1 Prior to each Annual General Meeting where one or more vacancies in Elected Director positions will arise, the Board must consider whether any vacancies in Elected Director positions should be filled taking into account the eligibility criteria for Elected Directors set out in clause 31, and if so, convene a nominations committee to call for Elected Director candidates.
- 33.2 The nominations committee must review candidates for Elected Director positions in accordance with the eligibility and suitability criteria set out in clause 31 and provide a summary to the Members on the Elected Director candidates to assist the Members in electing Elected Directors at the Annual General Meeting.

- 33.3 Where an election is necessary for an Elected Director, an election will be held at the Annual General Meeting or in accordance with clause 29. If there is only one nominee eligible to fill a position of an Elected Director, that nominee is deemed to have been elected into the position of the Elected Director at the conclusion of the Annual General Meeting.
- 33.4 The Board may specify the format and protocols to apply for any election necessary under this clause 33 where two or more nominees receive equal votes.

34. Term

- 34.1 An Appointed Director will hold office for a term of up to 3 years from the date of their appointment, as determined by the Board at the time of the appointment.
- 34.2 Subject to clause 35, an Elected Director will hold office for a term of 3 Years:
- (a) commencing immediately after the Annual General Meeting at which their election was declared; and
 - (b) concluding at the end of the third Annual General Meeting after the one at which they were declared elected.
- 34.3 If a Director has served 9 years or more continuously, then the Director may complete serving their current term of office but does not become eligible to be elected or appointed (whether or not to a casual vacancy) until they have not been a Director for a subsequent continuous period of 3 years.
- 34.4 Clause 34.3 does not apply to the extent that the Board resolves, by two-thirds majority (excluding the Director to which the vote relates, who must abstain from the vote), that the Director may stay in office for a further period not exceeding one year.

35. Casual vacancies

- 35.1 Where the office of an Appointed Director becomes vacant, the Board may appoint another eligible person in their place to hold office for the balance of the term of the original Appointed Director, unless the Board determines some other term of office up to a maximum of 3 years.
- 35.2 Where the office of an Elected Director becomes vacant, the Board may appoint another eligible person in the vacant place until the end of the next Annual General Meeting. If the Members elect a person to fill the Elected Director position in accordance with clause 33, the person elected will serve only the balance of the term of the original Elected Director.

36. Less than minimum number of Directors

- 36.1 The Board may continue to act notwithstanding a vacancy in their number, however if the number of Directors falls below 3, then for so long as the number is below this minimum, the Board shall only act in emergencies, for the purposes of filling vacancies or to convene a general meeting of the Company.

37. Suspension or Removal of Directors

- 37.1 If the conduct or position of any Director is such that continuance in office appears to a two-thirds majority of the Directors to render it undesirable that they continue to be a Director of the Company, the Board may suspend and recommend to Members the removal of that Director.
- 37.2 Within 30 days of the suspension, the Board must call a general meeting, at which the Members may pass a resolution for the removal of the Director from office in accordance with the Corporations Act. If no such resolution is passed, the Director will be reinstated.
- 37.3 The Director must be informed that they may:
- (a) submit a written statement to the Company for circulation to the Members before the general meeting at which the resolution is to be put to a vote; and
 - (b) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.

38. Chairperson and Deputy Chairperson

- 38.1 The Board must appoint an Independent Director to be Chairperson.
- 38.2 The Chairperson shall hold office for a period as determined by the Board (provided the term does not exceed 3 years) and may be reappointed for further terms.
- 38.3 The Board must appoint one of the Directors to be Deputy Chairperson. The Deputy Chairperson shall hold office for a period as determined by the Board (provided the term does not exceed 3 years) and may be reappointed for further terms.
- 38.4 The Chairperson will be the Chair of any Board meeting. If the Chairperson is absent or unwilling to chair, the Deputy Chairperson will be the Chair of any Board meeting.

- 38.5 If no Chairperson or Deputy Chairperson is appointed or if the Chairperson or Deputy Chairperson is not present at any Board meeting within 15 minutes after the time appointed for the meeting to begin, the Directors present must appoint one of their number to be Chair of the meeting.
- 38.6 If there is a dispute at a Board meeting about a question of procedure, the Chair of the meeting may determine the question.
- 38.7 The Board may create such other office bearer positions as it determines from time to time.

39. Vacation of office

- 39.1 The office of a Director immediately becomes vacant if the Director:
- (a) is prohibited by the Corporations Act, the Relevant Laws or any other applicable law from holding office or continuing as a Director;
 - (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing the Director's affairs, to administer it, or becomes in the reasonable opinion of the Board incapable of performing the Director's duties;
 - (c) resigns by notice in writing to the Company;
 - (d) is removed by a resolution of the Company in accordance with the Corporations Act;
 - (e) is removed by a resolution of the Members as described in clause 37.1;
 - (f) is absent from Board meetings for three consecutive meetings without leave of absence from the Directors;
 - (g) in the case of a Multi-State Director:
 - (i) the Member of which the Multi-State Director is an Officer ceases to be a Member;
 - (ii) the Member of which the Multi-State Director is an Officer ceases to have Operations in at least 3 States or Territories; or
 - (iii) the Multi-State Director ceases to be an Officer of that Member or is unable to provide satisfactory evidence that the Director remains eligible to be a Multi- State Director under this Constitution or By-Laws;
 - (h) in the case of an Elected Director:
 - (i) the Member of which the Elected Director is an Officer ceases to be a Member; or

- (ii) the Elected Director ceases to be an Officer of that Member or is unable to provide satisfactory evidence that the Director remains eligible to be an Elected Director under this Constitution or By-Laws; or
- (i) in the case of an Independent Director is considered by the Board to be no longer independent for the purposes of clause 30.1(a).

Director remuneration

40. Payments to Directors

40.1 Despite clause 6:

- (a) the Directors may be paid reasonable remuneration for undertaking the ordinary duties of a Director as determined by the Board. The Directors must not otherwise be paid any other remuneration for those duties;
- (b) the Directors may be reimbursed for reasonable travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of a Director where payment does not exceed any amount previously approved by the Board; and
- (c) the Directors may be paid for any service rendered to the Company in a professional or technical capacity outside the scope of the Director's ordinary duties where:
 - (i) the service and amount payable is on reasonable and on proper terms; and
 - (ii) the provision of that service has the Board's prior approval.

40.2 The Company may make a payment relating to an indemnity in favour of the Director and permitted by the Corporations Act or a contract of insurance.

40.3 Subject to the application of the Corporations Act and Relevant Laws, the Board may from time-to-time adopt, amend and / or replace By-laws establishing and regulating remuneration of Directors.

Powers and duties

41. Powers and duties of the Board

- 41.1 The business of the Company is managed by the Board who may exercise all powers of the Company that this Constitution, the Corporations Act and the Relevant Laws do not require to be exercised by the Company in general meeting.
- 41.2 The powers under clause 41.1 are subject to:
- (a) this Constitution;
 - (b) the Corporations Act and Relevant Laws; and
 - (c) such resolution, not being inconsistent with any resolution passed by the Members in general meeting.
- 41.3 A resolution under clause 41.2(c) does not invalidate any prior act of the Board which would have been valid before the resolution was passed or made.
- 41.4 Directors are not entitled to appoint an alternate director in their absence.

42. Delegation

- 42.1 The Board may delegate any of its powers, other than those which by law must be dealt with by the Directors as a board, to a person, committee or committees.
- 42.2 The Board may at any time revoke any delegation of power to a delegate.
- 42.3 A delegate must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.
- 42.4 A delegate may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in it.

43. By-laws

The Board may from time to time make, vary and rescind By-laws in relation to the Company. The By-laws for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.

Proceedings of Directors

44. Directors' meetings

- 44.1 Subject to this clause 44, the Board may meet together, adjourn and regulate their meetings as they think fit.
- 44.2 The Board must hold a minimum of four Board meetings each Financial Year.
- 44.3 A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting, on at least 48 hours written notice of the meeting to each Director. A Board meeting may be called on less than 48 hours written notice where the Director calling the meeting considers, acting reasonably and in good faith, there are matters requiring deliberation by the Board on less than 48 hours' notice.
- 44.4 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.
- 44.5 Subject to the Corporations Act, a Board meeting may be held in one or more places and conducted in a wholly virtual format or as a Hybrid Meeting provided the Directors are able simultaneously to hear each other and to participate in discussion.
- 44.6 A Director who is unable to participate in a meeting called in accordance with this clause 44 must submit their apologies before the meeting.
- 44.7 A Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 44.8 A quorum is a majority of Directors. For the purpose of determining a quorum, any Directors that are not permitted to vote on a matter but are present at the meeting or have been granted leave of absence will not form part of the quorum.
- 44.9 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the Chair of the meeting may adjourn the meeting to a further date.

45. Decisions on questions

- 45.1 Subject to this Constitution, questions arising at a Board meeting are to be decided by a majority of votes of the Directors present and voting and, subject to clause 47.1, each Director has one vote.
- 45.2 The Chair of a Board meeting does not have a casting vote in addition to their deliberative vote.

46. Directors' interests

- 46.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.
- 46.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.
- 46.3 A Director is not disqualified from contracting with the Company in any respect, merely because of their role as a Director.
- 46.4 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as Auditor in the Company; and
 - (c) act in a professional capacity other than as Auditor for the Company, and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 46.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting;
 - (b) or vote on the matter, unless permitted by the Corporations Act, Relevant Laws or by unanimous vote of the non- conflicted Directors to do so, in which case the Director may:
 - (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- 46.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

47. Written resolutions

- 47.1 The Board may pass a resolution without a Board meeting being held if the majority of the Directors entitled to vote on the resolution (excluding any Directors that have been granted leave of absence or are not permitted to vote on the matter) provide a document containing a statement that they are in favour of the resolution set out in the document.
- 47.2 For the purposes of clause 47.1:
- (a) separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy; or
 - (b) a Director is taken to have signed and agreed to the resolution if that Director replies via electronic communication that they agree to the passing of the resolution (whether or not the Director has physically signed the document) and the Company may rely on the reply as evidence of that Director's agreement with the resolution.
- 47.3 Any document referred to in this clause 47 may be in the form of a facsimile or electronic transmission.
- 47.4 The minutes of Board meetings must record that a resolution was passed in accordance with this clause 47.

48. Validity of acts

- 48.1 A Board act or decision will not be invalid by reason only of a defect or irregularity in connection with the election or appointment of a Director.
- 48.2 For entered and signed minutes, unless the contrary is proved:
- (a) the meeting is deemed to have been convened and held;
 - (b) all proceedings that are recorded in the minutes as having taken place are deemed to have taken place; and
 - (c) all appointments that are recorded in the minutes as having been made are deemed to have been validly made.

49. Minutes and registers

- 49.1 The Board must cause minutes to be made of:
- (a) the names of the Directors present at all Board meetings and committee meetings;
 - (b) all proceedings and resolutions of general meetings, Board meetings and committee meetings;
 - (c) all resolutions passed by the Board in accordance with clause 45;
 - (d) all appointments of Officers;
 - (e) all orders made by the Board and committees; and all disclosures of interests made under clause 46.
- 49.2 Minutes must be signed by the Chair of the meeting or by the Chair of the next meeting of the relevant body.
- 49.3 The Company must keep all registers required by this Constitution and the Corporations Act and Relevant Laws.

Committees

50. Committees

- 50.1 The Board may establish and terminate committees from time to time, as necessary for the good governance and operation of the Company.
- 50.2 In the absence of any provision in the committee charter, meetings and proceedings of any committee are governed by the provisions of this Constitution relating to Board meetings apply to each committee.

Chief Executive Officer

51. Chief Executive Officer

- 51.1 A CEO of the Company will be appointed by the Board on such terms and conditions as the Board sees fit.
- 51.2 The CEO will be responsible to the Board.

Secretary

52. Secretary

- 52.1 There must be at least one Secretary of the Company appointed by the Board on such terms and conditions as the Board sees fit.
- 52.2 The Secretary must keep the minutes of meetings and records:
- (a) of all appointments of the Directors; and
 - (b) required under this Constitution, the Corporations Act and Relevant Laws.
- 52.3 The Secretary must notify regulators as required under the Corporations Act and Relevant Laws of all notifiable information within the required timeframes.

Inspection of records

53. Inspection of records

- 53.1 Except as otherwise required by the Corporations Act or Relevant Laws, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 53.2 Except as otherwise required by the Corporations Act or Relevant Laws, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or the Board.

Notices

54. Service of notices

- 54.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution either personally, by sending it by post, or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

54.2 A notice is deemed to be served:

- (a) if sent by post, on three days following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be deemed to have been served on the fifth day following the day on which it is posted; and
- (b) if sent by electronic means, on the same day that it is sent.

54.3 A Member whose address recorded in the Register is not in Australia may specify in writing an address that is either within or outside of Australia to be taken to be the Member's address for the purposes of this clause 54.

54.4 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

54.5 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

54.6 All notices sent by post outside Australia must be sent by prepaid airmail post.

Audit and accounts

55. Audit and accounts

55.1 The Board must cause the Company to keep written financial records in relation to the business of the Company as required by law.

55.2 The Board must appoint an auditor and cause the financial records of the Company to be audited as required by law.

Winding up

56. Winding up and revocation of deductible gift recipient status

56.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 56.1(b), contracted before the person ceased to be a Member);
 - (d) payment of costs, charges and expenses of winding up; and adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.
- 56.2 Subject to clause 56.3, if any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but will be given or transferred to another charitable institution, body, entity or organisation which, by its constitution or governing rules:
- (a) having similar purposes to the Purpose of the Company;
 - (b) is a registered charity under the Relevant Laws if the Company had been;
 - (c) is income tax exempt under Commonwealth taxation laws if the Company had been; and
 - (d) whose governing documents prohibit 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, such charitable institution, body, entity or organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of the Australian Capital Territory for determination.
- 56.3 Upon the winding up of the Company or the revocation of the endorsement of the Company as a deductible gift recipient, any surplus comprising of DGR Contributions shall be transferred to a charitable institution, body, entity or organisation:
- (a) having similar purposes to the Purpose of the Company;
 - (b) is a registered charity under the Relevant Laws if the Company had been;
 - (c) is income tax exempt and can receive income tax deductible gifts under Commonwealth taxation laws if the Company had been; and
 - (d) whose governing documents prohibit 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, such institution, body, entity or organisation to be determined by the Members at or before the winding up of the Company or the revocation of the endorsement of the Company as a deductible gift recipient, and in default, by application to the Supreme Court of the Australian Capital Territory for determination.

Indemnity and insurance

57. Indemnity

- 57.1 The Company indemnifies Indemnified Officers out of its assets against any Liability incurred by the Indemnified Officer in or arising out of:
- (a) Liability arising under a claim made by a third party against the Company in respect of the Indemnified Officer; or
 - (b) the discharge of the Indemnified Officer's duties, but only to the extent that:
 - (c) the Indemnified Officer has acted in good faith and is not otherwise entitled or actually indemnified by a third party;
 - (d) the Company is not precluded by law from doing so;
 - (e) the Indemnified Officer is not in breach of any contract of employment or employment conditions they have with the Company; and
 - (f) the liability is not a cost or expense for an unsuccessful application to a Court for relief under the Corporations Act, or the defence of civil or criminal proceedings where judgement is given against the Indemnified Officer or in which the Indemnified Officer is not acquitted.
- 57.2 The Company may execute any deed in favour of any Indemnified Officer to confirm the indemnities conferred by clause 57.1 in relation to that person.
- 57.3 Clause 57.1 applies whether or not any deed is executed under clause 57.2.

58. Insurance

- 58.1 The Company may pay or agree to pay premiums for directors and officers insurance to insure Indemnified Officers against any liability incurred by the Indemnified Officer referred to in clause 57.
- 58.2 The Company may execute any deed in favour of any Indemnified Officer to take out insurance referred to in clause 58.1, on such terms as the Board considers appropriate.

Amendments to Constitution

59. Amendments to Constitution

- 59.1 This Constitution must not be amended other than in accordance with the Corporations Act and Relevant Laws. A special resolution under this clause (unless it expressly provides otherwise) does not take effect if it would cause the Company to lose any entitlements to registration under the Corporations Act or Relevant Laws.

Schedule 1 - Definitions

Affiliate means any person approved to be an affiliate of the Company pursuant to clause 15.1;

Aged and Community Care Services means the provision, or intended provision within 12 months, of care or accommodation services, retirement living and disability support services for older, disabled and other persons in need within Australia;

Annual General Meeting means the general meeting of the Company designated as the Annual General Meeting;

Appointed Director means a Director appointed as either an Independent Director or Multi-State Director in accordance with clause 30.1(a);

Auditor means the Company's auditor;

Board means the board of Directors of the Company from time to time;

By-laws means by-laws, rules or conventions made by the Board under clause 43;

CEO means the Chief Executive Officer of the Company;

Chair means the chairperson of a general meeting of Members or a Board meeting, as the case may be;

Chairperson means the person elected in accordance with clause 38;

Company means Ageing Australia Ltd;

Constitution means the constitution of the Company as amended from time to time;

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

Deputy Chairperson means the person elected in accordance with clause 38;

DGR Contributions means any:

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

Director includes any person occupying the position of director of the Company;

Directors means all or some of the Directors acting as the Board;

Elected Director means a Director elected pursuant to clause 30.1(b) or appointed under clause 35;

Financial Year means from 1 July to 30 June;

Hybrid Meeting means a meeting held in two or more locations where some or all of the participants' attendance is enabled by audio and video conferencing or similar technology;

Indemnified Officer means any current and former Directors and Officers of the Company and any subsidiary entity, and includes without limitation, members of committees established under clause 50, the CEO and the Secretary;

Independent Director means a Director appointed pursuant to clause 30.1(a)(i);

Liability includes any cost (including legal or professional fees), charge, loss, damage, expense or penalty;

Member means any entity approved to be a member of the Company pursuant to clause 8.2;

Member Representative means a person appointed under clause 11;

Membership Fee means the membership fee to be paid by a Member in accordance with clause 12;

Multi State Director means a Director appointed pursuant to clause 30.1(a)(ii);

Officer has the same meaning as in the Corporations Act but excludes a receiver, receiver and manager, an administrator, a liquidator or a trustee;

Operations means revenue from the provision of Aged and Community Care Services;

Purpose has the meaning given in clause 5;

Register means the register of Members of the Company;

Relevant Laws means laws (including subordinate legislation or regulations) relating to the registration, reporting or governance obligations of the Company and includes:

- (a) Australian Charities and Not-for-Profits Commission Act 2012 (Cth);
- (b) Income Tax Assessment Act 1997 (Cth); and
- (c) Charities Act 2013 (Cth);

Secretary means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries;

Special General Meeting means any general meeting of the Company other than the Annual General Meeting;

Unacceptable Conduct means conduct of a Member, a Member Representative or an Officer of a Member which, in the reasonable opinion of the Board:

- (a) is, has been or will be prejudicial to the Company's interests;
- (b) is inconsistent with any Members' charter established by the Company;
- (c) is not that of a fit and proper person or a person of good fame and character;
- (d) is unbecoming of Members; or
- (e) is conduct similar to the above which is set out in By-laws; and

Year, in relation to an Elected Director's term of office, means the period of approximately one calendar year between Annual General Meetings.



**SIGNED by the Chair of the Ageing Australia Board
Michael Reid AM**

17 November 2025