

Constitution

The Aged-care Rights Service Incorporated

ABN 98 052 960 862

an incorporated association
incorporated under the Associations Incorporation Act 2009 (NSW)

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Preamble

Aged care is an essential support for the most vulnerable and dependent in the Australian community unable to care for themselves or rely on the assistance of unpaid family members. From its origins in the large indoor-relief institutions that developed from 1815 with the creation of the Benevolent Society of New South Wales, systems have been needed to provide support services, to make them accessible to those who need them and to regulate their operation to ensure that they are fit to the task. In practice the reality often falls well short of the ideal. Without legal support for care recipients and specialised educational and other interventions, there can be no guarantee of the quality of care, the rights of individual residents or protection and recognition for staff.

From the 1950s residential aged care in NSW came to be provided by nursing homes and homes for the aged, or hostels as the large hospitals that had hitherto provided long-term care for older patients began to focus on acute care and specialised medical practice. In 1962 nursing homes became eligible for subsidy from the Commonwealth government, leading to a rapid expansion of poorly regulated institutions. Alongside homes run by the State government and by church-based and charitable institutions, a significant number of homes were opened as businesses. As the for-profit sector soon became the largest sector in the State, the economics and quality of care often appeared to be in conflict. Both funding and staffing were at low levels. Despite being formally regulated under NSW legislation originally intended for private hospitals, the adequacy and quality of these homes varied greatly.

Although the Commonwealth funded residential facilities provided for the sequestration of long-term care, public attention was drawn to them from time to time as scandals involving abuse and neglect drew media attention. Under the banner of SWAG, the Social Welfare Action Group, a group of social workers, academics and student activists held a major public conference at the University of Sydney in 1981 that helped focus attention on the systemic nature of these problems. This was followed by a well-publicised phone-in on the 'Abuse of the Elderly' in March 1982, involving collaboration between SWAG, the Combined Pensioners Association, Redfern Legal Centre and the Australian Consumers Association, and provided with a small subsidy by the NSW government. The phone-in received over 500 calls in a single weekend, the overwhelming majority of them identifying neglect, physical abuse, financial abuse, sexual and emotional abuse in aged care facilities and boarding houses. These allegations and stories were produced in a report titled 'Prisoners of Neglect' published by SWAG.

Over the following three years campaigning continued for counter-measures to be taken. The Aged Care Coalition was formed to identify a means of improving the quality of life for older people living in supported accommodation. The coalition was comprised of seven organisations: Redfern Legal Centre; Social Welfare Action Group; Disabled Persons International; NSW Council of Social Service; NSW Combined Pensioners Association; Ethnic Communities Council; and the Australian Consumers Association. Members of the Coalition started visiting aged care organisations to follow up on complaints that kept coming in after the phone-in. Evidence of the abuse noted in the phone-in was provided to the Senate Enquiry on Nursing Homes and Private Hospitals and taken up in national policy debates, over time leading to a range of user rights measures being incorporated into State and later national laws.

This activity clearly demonstrated the need for a permanent resource that would fight for the rights of older residents of aged care. The Coalition went on to undertake further research which was auspiced by the Australian Consumers Association and published in the report 'If Only I'd Known'. Funding from the NSW and Commonwealth governments was finally negotiated for an independent advocacy service to offer legal advice and education to the aged care industry and the community. This struggle constituted the birth of TARS, launched in March 1986 by Frank Walker, then NSW Minister for Community Services.

This preamble has been included for the purpose of recording the history of the association. This preamble is not intended to grant any legal right, create any liability or be used as an aid to statutory interpretation of the constitution or any other law.

Part 1 – The association

1. Nature, Purpose, Powers

- (1) The name of the association is The Aged-care Rights Service Incorporated.
- (2) The association is an incorporated association.
- (3) The principal purpose for which the association is established is to provide relief and services to the needs of older people in New South Wales who are vulnerable, socially or economically disadvantaged, exploited or abused.
- (4) Solely for the purpose of furthering the principal purpose, the activities the association may undertake are:
 - (a) to provide pro bono legal advice, assistance, referral and education to older people who are vulnerable, socially or economically disadvantaged, exploited or abused;
 - (b) to provide pro bono and confidential support and education to older people who are recipients of care and to promote the rights of older people to aged care service providers;
 - (c) to promote, advocate for and defend the rights of older people in general and to promote, foster and pursue a community where older people are treated with dignity and respect and do not experience discrimination;
 - (d) to raise money to further the principal purpose and to secure sufficient funds for the principal purpose;
 - (e) to receive any funds and to distribute these funds in a manner that best attains the principal purpose; and
 - (f) such other incidental or ancillary activities it considers supportive of the principal purpose.
- (5) The principal purpose is charitable.
- (6) The association is to be established, operated and have a physical presence in New South Wales and, to that extent, incur its expenditure and pursue its principal purpose in New South Wales.
- (7) Subject to rules 1(8) and 1(9):
 - (a) the income and property of the association must be applied solely towards the principal purpose; and
 - (b) no portion of the profits, income or property of the association may be paid or transferred directly or indirectly to members by way of dividend, bonus or otherwise.
- (8) Payment may be made in good faith to any firm of which a member is a partner, or to a company of which a member is a director:
 - (a) in return for any services actually rendered to the association; or
 - (b) for goods supplied in the ordinary and usual way of business.
- (9) A Board member may not be paid fees for serving as a Director but payments may be made to Board members for the payment of out of-pocket expenses incurred in carrying out the duties of a Board member and the amount payable is approved by a resolution of the Board.

- (10) No Board member can be appointed to any salaried office of the association and no holder of such an office can be appointed to the Board.
- (11) (a) If the association is endorsed as a deductible gift recipient and the endorsement is revoked, the following assets remaining after satisfying the association's liabilities and expenses must be transferred to such other institution or institutions in Australia to which income tax deductible gifts may be made:
- (i) Gifts of money or property for the principal purpose (**Gifts**);
 - (ii) Contributions made to an eligible fundraising event for the principal purpose (**Contributions**); and
 - (iii) Money received by the association as a consequence of those Gifts or Contributions.
- (b) The identity of the institution or institutions will be decided by the members by ordinary resolution as near as practicable following receipt of a notice of revocation from the Commissioner of Taxation. If the members fail to decide, the institution will be determined by application to the Supreme Court in the State of New South Wales.
- (12) (a) Where on the winding up or dissolution of the association, there is a surplus of assets after satisfying all the association's liabilities and expenses, the surplus:
- (i) must not be paid or distributed to members; and
 - (ii) will be given or transferred to such other institution in Australia to which income tax deductible gifts may be made which:
 - (A) has a similar principal purpose to that of the association as described in this constitution, and
 - (B) prohibits the distribution of income, profit or assets to its members.
- (b) Such other institution will be determined by members by ordinary resolution on or before the time of such winding up or dissolution or in default of determination and consent such institution as determined by application to the Supreme Court in the State of New South Wales.
- (13) A member has no liability as a member except as set out in this rule 1(13) and rule 9.
- (14) Funds raised by means of a fundraising appeal or by any other means must be raised and maintained in accordance with the law of the Commonwealth and NSW.

Part 2 - Membership

2. Membership generally

- (1) The members in office at the time of adoption of this constitution continue in office subject to this constitution.
- (2) A person is eligible to be a member of the association if:
 - (a) the person is a natural person, and
 - (b) the person has been nominated and approved for membership of the association in accordance with rule 3.

3. Nomination for membership

- (1) A nomination of a person for membership of the association:
 - (a) must be made by a member of the association in writing in the form set out in Appendix 1 to this constitution, and
 - (b) must be lodged with the secretary of the association.
- (2) As soon as practicable after receiving a nomination for membership, the secretary must refer the nomination to the Board which is to determine whether to approve or to reject the nomination. The Board may decline any nomination for membership and is not bound to give reasons why the nomination was not accepted.
- (3) As soon as practicable after the Board makes that determination, the secretary must:
 - (a) notify the nominee, in writing, that the Board approved or rejected the nomination (whichever is applicable), and
 - (b) if the Board approved the nomination, request the nominee to pay (within the period of 28 days after receipt by the nominee of the notification) the sum payable under this constitution by a member as entrance fee and annual subscription.
- (4) The secretary must, on payment by the nominee of the amounts referred to in rule (3)(b) within the period referred to in that provision, enter or cause to be entered the nominee's name in the register of members and, on the name being so entered, the nominee becomes a member of the association.

4. Cessation of membership

A person ceases to be a member of the association if the person:

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the association, or
- (d) fails to pay the annual membership fee under rule 8(2) within 3 months after the fee is due, or
- (e) is absent from the annual general meeting without prior notification to the president.

5. Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

6. Resignation of membership

- (1) A member of the association may resign from membership of the association by first giving to the secretary written notice of at least one month (or such other period as the Board may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the association ceases to be a member under rule 6(1), and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

7. Register of members

- (1) The public officer of the association must establish and maintain a register of members of the association specifying the name, postal or residential address, facsimile address, if any, and electronic address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
 - (a) at the main premises of the association, or
 - (b) if the association has no premises, at the association's official address.
- (3) The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.
- (4) A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
 - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

8. Fees and subscriptions

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, if some other amount is determined by the Board, that other amount.
- (2) In addition to any amount payable by the member under rule 8(1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the Board, that other amount:
 - (a) except as provided by rule 8(2)(b), before 1 July in each calendar year, or
 - (b) if the member becomes a member on or after 1 July in any calendar year - on becoming a member and before 1 July in each succeeding calendar year.

9. Members' liabilities

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by rule 8.

10. Resolution of disputes

- (1) In the event of a dispute arising between members (in their capacity as members), or between a member or members and the association, or between a member or members and the association, the following procedure will apply.
- (2) Each party to the dispute must nominate a representative who is not directly involved in the dispute. Those representatives must then attempt to settle the dispute by negotiation.
- (3) Should the nominated representatives be unable to resolve the dispute within 14 days (or such other period as they may agree upon) the dispute must be referred to a person, firm or company mutually agreed upon for mediation or, in the event that no person, firm or company can be agreed upon to mediate the dispute, a community justice centre for mediation in accordance with the *Community Justice Centres Act 1983*.
- (4) If a dispute is not resolved by mediation within 3 months of the referral, the dispute is to be referred to arbitration.
- (5) The *Commercial Arbitration Act 1984* applies to any such dispute referred to arbitration.

11. Disciplining of members

- (1) A complaint may be made to the Board by any person that a member of the association:
 - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
 - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Board decides to deal with the complaint, the Board:
 - (a) must cause notice of the complaint to be served on the member concerned, and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint, and
 - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The Board may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved on the balance of probabilities and the expulsion or suspension is warranted in the circumstances.

- (5) If the Board expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the Board for having taken that action and of the member's right of appeal under rule 12.
- (6) The expulsion or suspension does not take effect:
 - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
 - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under rule 12, whichever is the later.

12. Right of appeal of disciplined member

- (1) A member may appeal to the association in general meeting against a resolution of the Board under rule 11, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under rule 12(1), the secretary must notify the Board which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the association convened under rule 12(3):
 - (a) no business other than the question of the appeal is to be transacted, and
 - (b) the Board and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
 - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the association.

Part 3 - The Board

13. Powers of the Board

Subject to the Act, the Regulation and this constitution and to any resolution passed by the association in general meeting, the Board:

- (a) is to control and manage the affairs of the association, and
- (b) may exercise all such functions as may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association, and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the association.

14. Composition and membership of Board

- (1) The Board members in office at the time of adoption of this constitution continue in office subject to this constitution.
- (2) The Board is to consist of:
 - (a) the office-bearers of the association, and
 - (b) at least 3 ordinary Board members, each of whom is to be elected at the annual general meeting of the association under rule 15.
- (3) The minimum number of Board members is to be 4 and the maximum number of Board members is to be 7.
- (4) The office-bearers of the association are as follows:
 - (a) the president,
 - (b) the vice-president,
 - (c) the treasurer,
 - (d) the secretary.
- (5) A Board member may hold up to 2 offices (other than both the president and vice-president offices).
- (6) Each member of the Board is, subject to this constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.

15. Election of Board members

- (1) Nominations of candidates for election as ordinary Board members:
 - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
 - (b) must be delivered to the secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.

- (3) If insufficient further nominations are received, any vacant positions remaining on the Board are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of Directors of the Board is to be conducted at the annual general meeting in such usual and proper manner as the Board may direct.
- (7) A person nominated as a candidate for election as an office-bearer or as an ordinary Board member of the association must:
 - (a) be a member of the association; and
 - (b) not have held a salaried position with the association in the preceding 2 years.

16. Secretary

- (1) The secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes of:
 - (a) all appointments of office-bearers and members of the Board, and
 - (b) the names of members of the Board present at a Board meeting or a general meeting, and
 - (c) all proceedings at Board meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

17. Treasurer

It is the duty of the treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and
- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

18. Casual vacancies and cessation of Board membership

- (1) In the event of a casual vacancy occurring in the membership of the Board, the Board may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the next annual general meeting following the date of the appointment.
- (2) A person ceases to be a Board member and a casual vacancy in that office of the member of the Board occurs if that Board member:
 - (a) dies, or
 - (b) ceases to be a member of the association, or
 - (c) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or

- (d) subject to rule 18(3), resigns office by notice in writing given to the secretary, or
 - (e) is removed from office under rule 19, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is absent without the consent of the Board from 3 consecutive meetings of the Board, or
 - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for at least 3 months, or
 - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.
- (3) A Board member may resign from office by first giving to the secretary written notice of at least one month (or such other period as the Board may determine) of the Board member's intention to resign and, on the expiration of the period of notice, the Board member ceases to be a Director.
- (4) Each Director shall, subject to this Constitution, hold office for a period of three (3) years until the conclusion of the third Annual General Meeting following the date of the director's election and shall be eligible for re-election.
- (a) At each Annual General Meeting one third (or if that is not a whole number, the whole number nearest to one third) of the Directors; must retire from office and are eligible for re-election.
 - (b) The Directors who must retire under rule 18 (4) (a) are those who (in the following order):
 - (i) would, if that director remained in office until the next Annual General Meeting, have held that office for more than 3 years since last being elected or appointed; or otherwise
 - (ii) have held office the longest since last being elected or appointed. If 2 or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.
 - (c) A director's retirement under rule 18 (4) (a) takes effect at the end of the relevant Annual General Meeting unless the director is re-elected at that meeting.
- (5) The office bearers of the Board shall be elected annually (from among the members of the Board) by the Board in such manner as the Board may determine. Such elections shall be held immediately following each Annual General Meeting
- (a) A Director may be re-elected as an office bearer following an Annual General Meeting and may be re-elected to the same position as previously held.
 - (b) A person may not be an office bearer for a period exceeding the tenure of their directorship as per rule 18 (4)

19. Removal of Directors

- (1) The association in general meeting may by resolution remove any member of the Board from the office of member before the expiration of the member's term of

office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.

- (2) If a member of the Board to whom a proposed resolution referred to in rule 19(1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the secretary or the president may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

20. Board meetings and quorum

- (1) The Board must meet at least 3 times in each period of 12 months at such place and time as the Board may determine.
- (2) Additional meetings of the Board may be convened by the president or by any member of the Board.
- (3) Oral or written notice of a meeting of the Board must be given by the secretary to each member of the Board at least 48 hours (or such other period as may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under rule 20(3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Board members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 members of the Board constitute a quorum for the transaction of the business of a meeting of the Board.
- (6) No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the Board:
 - (a) the president or, in the president's absence, the vice-president is to preside, or
 - (b) if the president and the vice-president are absent or unwilling to act, such one of the remaining members of the Board as may be chosen by the members present at the meeting is to preside.
- (9)
 - (a) Subject to the consent of all Board members, the Board may employ any suitable technology to assist the efficient operation and conduct of a meeting. This technology may include linking of Board via telephone or other electronic means such as video streaming. Consent of a Board member under this rule may be standing consent and consent may only be withdrawn within a reasonable time before the Board meeting.
 - (b) All the rules of this constitution relating to Board meetings apply, as far as they can and with any necessary changes, to Board meetings by telephone or other electronic means. If there is a sufficient number of Board members simultaneously linked together by telephone or other electronic means to meet a quorum a Board meeting will be constituted.

- (c) Any Board meeting held by telephone or other electronic means must ensure that:
 - (i) each Board member present has a reasonable opportunity to participate in the meeting, including any vote taken by Board members; and
 - (ii) the president is aware of the proceedings in each place where Board members are present.
 - (d) Any Board member participating in a meeting by telephone or other electronic means will be taken as having been present in person at that meeting.
 - (e) Any meeting conducted by telephone or other electronic means will be taken as having being held at the place specified by the president. At least one Board member must have been present at that place for the entirety of the meeting.
 - (f) If a technical problem occurs:
 - (i) preventing one or more Board members from joining the meeting; and/or
 - (ii) causing one of more Board members to cease from participating in the meeting,
 the Chairperson may adjourn the meeting until the problem is fixed or continue with the meeting if a quorum is present.
 - (g) A Board member is deemed to be present and form part of the quorum throughout the entirety of the meeting. If a Board member wishes to cease participating in a meeting held by telephone or other electronic means, he/she must seek the president's prior consent.
 - (h) If certified as correct minutes by the president, minutes of a meeting held by telephone or other electronic means which comply with this rule 9 is sufficient evidence of such proceedings and that all necessary formalities have been complied with.
 - (i) This rule 9 also applies to the conduct of meetings of a sub-committee of the Board constituted in rule 21.
- (10)(a) Subject to rule 10(c), the Board may pass a resolution without holding a Board meeting, if all Board members entitled to vote on the resolution, sign a document stating they favour the resolution on the terms set out in the document.
- (b) For the purposes of rule 10(a):
 - (i) the resolution is considered passed on the date the last Board member signs;
 - (ii) separate copies of the document containing identical wording may be used for signing by the Board members;
 - (iii) a signature of a Board member transmitted by electronic means is sufficient evidence of signatures
 - (c) Rule 10(a) does not apply to a resolution to remove an auditor or Board member.
 - (d) A document signed in accordance with this rule 10 is to be taken as a minute of the passing of the resolution.
- (11)(a) If:
- (i) a Board member has a direct or indirect interest in a matter being considered or about to be considered at a Board meeting, and

- (ii) the interest appears to raise a conflict with the proper performance of the Board member's duties in relation to the consideration of the matter, the Board member must, as soon as possible after the relevant facts have come to the Board member's knowledge, disclose the nature of the interest at a Board meeting.
- (b) A disclosure by a Board member at a Board meeting that the Board member:
 - (i) is a member, or is in the employment, of a specified company or other body, or
 - (ii) is a partner, or is in the employment, of a specified person, or
 - (iii) has some other specified interest relating to a specified company or other body or to a specified person,
 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under rule 11(a).
- (c) Particulars of any disclosure made under this rule must be recorded by the Board in a book kept for that purpose and that book must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the Board (but not exceeding the maximum fee prescribed by the Regulation).
- (d) The book must be kept at the same address as the register of Board members.
- (e) After a Board member has disclosed the nature of an interest in any matter, the Board member must not, unless the Board otherwise determines:
 - (i) be present during any deliberation of the Board with respect to the matter, or
 - (ii) take part in any decision of the Board with respect to the matter.
- (f) For the purposes of the making of a determination by the Board under rule 11(e), a Board member who has a direct or indirect interest in a matter to which the disclosure relates must not:
 - (i) be present during any deliberation of the Board for the purpose of making the determination, or
 - (ii) take part in the making by the Board of the determination.
- (g) A contravention of this rule does not invalidate any decision of the Board.

21. Delegation by Board to sub-committee

- (1) The Board may, by instrument in writing, delegate to one or more sub-committees (consisting of such member or members of the association as the Board thinks fit) the exercise of such of the functions of the Board as are specified in the instrument, other than:
 - (a) this power of delegation, and
 - (b) a function which is a duty imposed on the Board by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this rule 21 may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.

- (3) A delegation under this rule 21 may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- (4) Despite any delegation under this rule 21, the Board may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this rule 21 has the same force and effect as it would have if it had been done or suffered by the Board.
- (6) The Board may, by instrument in writing, revoke wholly or in part any delegation under this rule 21.
- (7) A sub-committee may meet and adjourn as it thinks proper.

22. Voting and decisions

- (1) Questions arising at a meeting of the Board or of any sub-committee appointed by the Board are to be determined by a majority of the votes of members of the Board or sub-committee present and entitled to vote at the meeting.
- (2) Each member present at a meeting of the Board or of any sub-committee appointed by the Board (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to rule 20(5), the Board may act despite any vacancy on the Board.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a sub-committee appointed by the Board, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or sub-committee.

Part 4 - General meetings

23. Annual general meetings - holding of

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its annual general meetings:
 - (a) within 6 months after the close of the association's financial year, or
 - (b) within such later time as may be allowed by the Director-General or prescribed by the Regulation.

24. Annual general meetings - calling of and business at

- (1) The annual general meeting of the association is, subject to the Act and to rule 23, to be convened on such date and at such place and time as the Board thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
 - (b) to receive from the Board reports on the activities of the association during the last preceding financial year,
 - (c) to elect office-bearers of the association and ordinary Board members,
 - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as such in the notice convening it.

25. Special general meetings - calling of

- (1) The Board may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The Board must, on the requisition in writing of at least 5 per cent of the total number of members, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
 - (a) must state the purpose or purposes of the meeting, and
 - (b) must be signed by the members making the requisition, and
 - (c) must be lodged with the secretary, and
 - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the Board fails to convene a special general meeting to be held within 1 month after that date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in rule 25(4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Board.

26. Notice

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under rule 26(1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under rule 24(2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

27. Quorum for general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Five members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting. For the purpose of determining whether a quorum is present,
 - (a) a person attending as a proxy is to be counted;
 - (b) if a member has appointed more than one proxy, only one of them is to be counted;
 - (c) if a person is attending as a member and as proxy, they are to be counted twice, once as a Member and once as a proxy.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of members, is to be dissolved, and
 - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

28. Presiding member

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the association.

- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

29. Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in rules 29(1) and 29(2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

30. Making of decisions

- (1) A question arising at a general meeting of the association is to be determined by either:
 - (a) a show of hands, or
 - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

31. Special resolutions

A special resolution may only be passed by the association in accordance with section 39 of the Act.

32. Voting

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.
- (4) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age or if the member has been suspended.

33. Proxy votes permitted

- (1) For those members not in attendance, a proxy form will be honoured as allowed for in rules 33(2) and 33(3).
- (2) A member may appoint another person (whether a member or not) as proxy to attend in the member's place at the meeting. A proxy has the same right as the member to speak and vote at the meeting and may be appointed in respect of more than one meeting and for more than one member.
- (3) To be effective, an instrument appointing a proxy under this rule 33, together with any evidence of non-revocation the Board members require, must be received by the association at least 48 hours before the meeting.
- (4) The instrument appointing a proxy may be in any form that makes it clear that a proxy has been appointed provided that it shall be signed by the member making the appointment and contain at least the following information:
 - (a) the member's name and address;
 - (b) the Association's name;
 - (c) the proxy's name or the name and address;
 - (d) the meetings at which the appointment may be used; and
 - (e) if the member wishes to make a specific direction to the proxy as to how the proxy must vote on a particular matter then the manner in which the vote must be exercised

34. Postal ballots

- (1) The association may hold a postal ballot to determine any issue or proposal (other than an appeal under rule 12).
- (2) A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation.

Part 5 - Miscellaneous

35. Insurance

The association may effect and maintain insurance.

36. Funds - source

- (1) The funds, revenue and income of the association shall be derived from membership, other fees, subscriptions, special levies, grants, donations and such other revenue raising and financing activities or sources as the Board determines.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

37. Funds - management

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used in pursuance of the objects of the association in such manner as the Board determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 members of the Board or employees of the association, being members or employees authorised to do so by the Board.

38. Change of name, objects and constitution

An application to the Director-General for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a Board member.

39. Custody of books etc

Except as otherwise provided by this constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

40. Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
 - (a) register of members,
 - (b) records, books and other financial documents of the association,
 - (c) this constitution,
 - (d) minutes of all Board meetings and general meetings of the association.
- (2) A member of the association may obtain a copy of any of the documents referred to in rule 40(1) on payment of a fee of not more than \$1 for each page copied.

41. Service of notices

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
 - (a) by delivering it to the person personally, or

- (b) by sending it by pre-paid post to the address of the person, or
 - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
- (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
 - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
 - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

42. Financial year

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 July and ending on the following 30 June.

Part 6 – Dictionary and Interpretation

43. Definitions

(1) In this constitution:

Board means the governing body of directors of the Association in office for the time being however described or any number of directors assembled at a meeting of the board transacting business in accordance with this Constitution, being not less than a quorum, and as set out in Part III and who may, for the internal purposes of the Association, be cited (collectively) as the “Directors” who shall be construed as referencing the Board unless the context requires otherwise. The board shall have the same meaning as “committee” and be subject to s.28 of the NSW Associations Incorporation Act 2009

Director means an eligible natural person pursuant to rule 16.2 duly appointed or elected to the board pursuant to rules 19 and 16.6; and may for the purposes of this document and the internal purposes of the Association be referred to (individually) as a “member of the board” or a “Board member”. A director shall have the same meaning as “committee member” pursuant to s.28.2 of the NSW Associations Incorporation Act 2009. For the avoidance of doubt a reference to a Director includes an Office Bearer, unless otherwise expressly stated.[Note: An office bearer is first and foremost a director, who also holds an additional delegated board position (with corresponding delegated authority) as well as their director role. A reference to an office bearer is to that position and that position ONLY. A reference to a director is to ALL directors (office bearers included).]

Director-General means the Director-General of the Department of Services, Technology and Administration.

ordinary Board member means a member of the Board who is not an office-bearer of the association.

principal purpose has the same meaning of that term as defined in rule 1(3).

secretary means:

- (a) the person holding office under this constitution as secretary of the association, or
- (b) if no such person holds that office - the public officer of the association.

special general meeting means a general meeting of the association other than an annual general meeting.

the Act means the *Associations Incorporation Act 2009*.

the Regulation means the *Associations Incorporation Regulation 2010*.

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

(4) If there is any inconstancy between a rule of this constitution and the Act, the Act prevails to the extent of such inconsistency.

- (5) A reference to notification in writing includes a reference to notification using any electronic means.
- (6) A reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

Appendix 1

APPLICATION for MEMBERSHIP

I
(full name of applicant)

of
(address)

.....
(occupation)

apply to become a member of THE AGED-CARE RIGHTS SERVICE INCORPORATED (the association).

CONTACT DETAILS

NAME	
ORGANISATION <i>(if applicable)</i>	
Preferred mailing address	
Phone	
Fax	
Email	

OPTIONAL

Skills/time I have that I can contribute to the organisation: _____ _____ _____ _____
Other memberships I have: _____ _____
I am available for consideration for appointment to the Board: NO / YES / FUTURE

In the event of my admission as a member, I agree to:

- pay the entrance fee of \$1 and the annual membership fee of \$2; and
- be bound by the constitution of the association for the time being in force.

Signature: DATE:

I,

[full name]

a member of the association, nominate the applicant for membership of the association.

.....

Signature of proposer

Date

I,

[full name]

a member of the association, second the nomination of the applicant for membership of the association.

.....

Signature of seconder

Date