



**Seniors Rights
Service**

Constitution

As passed by special resolution of the members of the association at the Annual General Meeting on 30th November 2016

Constitution

Seniors Rights Service Limited

A public company limited by guarantee

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Part A –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.

In late 2015 the organisation re-branded and changed its name to reflect the full suite of services the organisations currently delivers. After consulting with 70 different stakeholders the name Seniors Rights Service became the new brand of the organisation.

In 2017, following careful consideration of future needs and the organisation's national influence and impact, the organisation resolved to undergo a legal restructure from an incorporated association in NSW to a company limited by guarantee.

Today the organisation not only continues to deliver aged-care advocacy services but also legal services to older people across NSW, legal services to residents of retirement villages in NSW, legal services to older people in strata arrangements where the collective sale of their property is being considered as well as rights-based education to community groups right across the state.

Seniors Rights Service is a growing rights-based organisation for older people across the state. The organisation continues to look for new ways to uphold and support of the rights of older Australians. Seniors Rights Service contributes to almost 60 inter agencies across the state and ensure that our knowledge and expertise is shared with other service agencies that support Seniors Rights Service in its work. The organisation look forward to continuing our important work and providing best practice rights-based services to older Australians.

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 B – Preliminary Matters

1 Defined terms and interpretation

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) sets out the rules of interpretation which apply to this constitution; and
- (c) clarifies the effect of the *Corporations Act 2001* (Cth) on this constitution.

2 Nature of company and liability

- (a) The company is a public company limited by guarantee which is established to be, and to continue as, a charity.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$1 to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

Part C – Purpose

3 Purpose and activities of the company

3.1 Purpose

The purpose of the company is to provide relief and services to the needs of older people, with a priority focus on those who are vulnerable, socially or economically disadvantaged, exploited or abused (**Charitable Purpose**)

3.2 Activities

The activities of the company must be conducted in the furtherance of its Charitable Purpose and may include:

- (a) providing legal advice, assistance, referral and education to older people with a priority focus on those who are vulnerable, socially or economically disadvantaged, exploited or abused;
- (b) providing 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) promoting, advocating for and defending the rights of older people in general and promoting, fostering and pursuing a community where older people are treated with dignity and respect and do not experience discrimination; and
- (d) any other activities ancillary to or necessary for the fulfilment of the Charitable Purpose.

Part D – Members and membership

4 Membership

4.1 Members of the company

- (a) The members of the company are:
 - (i) all properly registered voting members of the Seniors Rights Service Incorporated (with incorporation number NSW Y0967545) (**Association**) as at the date it converted from an incorporated association under the *Associations Incorporation Act 2009* (NSW) to a company limited by guarantee under the Corporations Act – each of which will automatically become Ordinary Members and be recorded as such in the register of members; and
 - (ii) any applicant that has been admitted as a member of the company by the directors in accordance with rule 4.2.
- (b) If an applicant is admitted as a member of the company, the secretary must ensure that:
 - (i) the applicant is given notice of admission (including the class of membership); and

- (ii) the name and details of the applicant are entered in the members' register in accordance with rule 4.5.
- (c) The secretary must ensure that each applicant not admitted as a member of the company is informed of this decision. The directors may, but are not required to, provide reasons for the decision not to admit an applicant into membership.

4.2 Becoming a member

To become a member of the company an applicant must:

- (a) in the case of an individual, be 18 years of age or older and have a genuine commitment to and an understanding of the Charitable Purpose;
- (b) in the case of a body corporate, have similar purposes to the Charitable Purpose;
- (c) be nominated for membership by an existing Ordinary Member;
- (d) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (e) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
- (f) pay any joining and annual fee that may be required under rule 4.6;
- (g) meet any specific eligibility criteria associated with the class of membership for which the applicant is applying as described at Schedule 2;
- (h) be admitted into membership by the directors; and
- (i) satisfy such other membership criteria as the directors may determine from time to time, acting reasonably.

4.3 Members' rights (including voting rights)

Each member has the rights associated with the class of membership to which that member belongs as set out in the table at Schedule 2.

4.4 Membership not transferable

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

4.5 Register of members

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.5(a), the following must be entered in the register in respect of each member:
 - (i) the name and address of the member;
 - (ii) the date of admission to and cessation of membership;

- (iii) in the case of a body corporate member, the full name and contact details of its Representative;
- (iv) the class of membership to which that member belongs; and
- (v) any other information required by the directors or the law from time to time.

4.6 Membership fees

- (a) Unless a different amount applies as determined under rule 4.6(d), the joining fee for membership of the company is \$1. The joining fee, if any, is payable at the same time as the application for membership is made. The joining fee will be reimbursed to the applicant if the application for membership is declined.
- (b) Unless a different amount applies as determined under rule 4.6(d), the annual membership fee for membership of the company is \$2. The first year's membership fee, if any, is payable at the same time as the application for membership is made and is required in addition to any joining fee. The first year's membership fee will be reimbursed to the applicant if the application for membership is declined.
- (c) Other than any membership fee that may be payable at the same time as the joining fee under rule 4.6(b), annual membership fees are to be paid at such times and in such manner as the directors determine from time to time.
- (d) The directors may at their complete discretion determine, or waive all or some of, the fees payable by one or more members at any time and may set different fees for different classes of members.
- (e) The joining fee and annual membership fee that may be required under this rule 4.6 are exclusive of any GST that may be payable.

4.7 Membership renewal

The directors may, at their discretion, send a notice to one or more members requiring that member to confirm or to renew membership of the company and/or to confirm or update that member's details (**Membership Renewal Notice**).

5 Ceasing to be a member

5.1 General overview

- (a) There are a number of reasons why a member's membership will stop. For instance, if a member:
 - (i) resigns from membership. See rule 5.2;
 - (ii) automatically stops being a member. See rule 5.3; or
 - (iii) is expelled from membership. See rule 5.4.
- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.
- (c) Where a person ceases to be a member under rule 5.2, 5.3 or 5.4 their name must be removed from the register of members.

- (d) Upon the removal of a person's name from the register of members:
 - (i) the person will forfeit all rights and privileges attached to membership and all rights which the person may have against the company arising out of the membership; and
 - (ii) the company will have no liability to such person in respect of their removal from the register of members.
- (e) Any person who ceases to be a member remains liable for:
 - (i) any moneys which may be owing by that member to the company; and
 - (ii) in the case of the company being wound up, within one year of the date of cessation of membership, the relevant contribution under rule 2(b).

5.2 Resignation from membership

A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

5.3 Automatic stopping of membership

A member's membership will automatically stop if the member:

- (a) dies, or in the case of a member that is a body corporate is dissolved or wound up;
- (b) fails to pay any required membership fee in accordance with rule 4.6 within one month after the date on which that membership fee becomes due or such later time as the directors may determine;
- (c) fails to return a Membership Renewal Notice in accordance with rule 4.7 within one month after the return due date specified in that notice or such later time as determined by the directors; or
- (d) no longer complies with the membership eligibility requirements described at rule 4.2 and Schedule 2 as determined by a special resolution of at least 75% of directors.

5.4 Disciplining, suspension and expulsion of member

- (a) This rule 5.4 describes what needs to happen when considering whether or not to discipline a member. In summary, the process involves:
 - (i) putting the member in question on notice and giving the opportunity to provide information; and
 - (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member.
- (b) So long as the steps set out in rule 5.4 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:
 - (i) has refused or neglected to comply with the provisions of this constitution; or

- (ii) has acted in a way that, in the opinion of the directors, is, or could be, prejudicial to the interests or reputation of the company.

(Member Disciplinary Resolution)

- (c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and let the member know:
 - (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
 - (ii) the reasons why the directors are considering taking the determined action;
 - (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action;
 - (iv) the date, place and time of the meeting at which the resolution is to be considered; and
 - (v) of the right for the member to attend the meeting at which the resolution is to be considered but not to be present during any director deliberations or the putting of or voting on the resolution unless the directors resolve otherwise.
- (d) A director that is also a member subject to a Member Disciplinary Resolution is not entitled to vote on that resolution.
- (e) Directors must notify the relevant member in writing about the directors' decision within 10 days after the date a Member Disciplinary Resolution is passed. The directors decision is final.

6 General meetings

6.1 Introduction

- (a) For so long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for so long as the law permits or requires, the directors:
 - (i) may determine whether or not to hold meetings of members including annual general meetings unless the Corporations Act otherwise requires a meeting of members for a particular resolution to be passed;
 - (ii) must ensure that the Australian Charities and Not-for-profits Commission Governance Standards, in particular Governance Standard 2 relating to accountability to members, are complied with; and
 - (iii) must ensure that if the company does hold a meeting of members, it does so in accordance with this constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with members' meetings may not be directly binding upon the company.
- (b) If there is any inconsistency between the Corporations Act and this constitution with respect to the calling and holding of members' meetings then, to the extent permitted by law, the provisions of this constitution will prevail.

6.2 Calling of general meetings

- (a) A general meeting of members may be initiated by:
 - (i) a resolution of the directors;
 - (ii) the Ordinary Members in accordance with the Corporations Act; or
 - (iii) the court in accordance with the Corporations Act.
- (b) A meeting of members may be held in two or more places linked together by any technology so long as it:
 - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chair of the meeting to be aware of proceedings in each place; and
 - (iii) enables the Ordinary Members in each place to vote on a Show of Preference and on a poll.

6.3 Notice of general meetings

- (a) Subject to the provisions of the Corporations Act dealing with consent to short notice, at least 21 days' notice of a general meeting of members (including an annual general meeting) must be given to each person who is at the date of the notice:
 - (i) a member of the company eligible to receive notices of meetings or its Representative;
 - (ii) a person who is at the date of the notice a director of the company; or
 - (iii) the auditor of the company.
- (b) A notice of a general meeting must specify:
 - (i) the date, time and place of the meeting;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted at the meeting;
 - (iv) the text of any special resolutions to be proposed at the meeting; and
 - (v) any other matters required under the law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member.

6.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is five Ordinary Members.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting and that meeting is called or initiated by members, then the meeting is to be dissolved. Otherwise:
 - (i) the meeting stands adjourned to the following week at a time and venue communicated by the chair of the meeting;
 - (ii) at the adjourned meeting the quorum is three Ordinary Members present in person and entitled under these rules to vote at a general meeting; and
 - (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.5 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting.
- (b) If the chair of directors is absent or is unwilling to act, then the deputy chair, if one has been appointed, must preside as chair at the meeting.
- (c) If both the chair of directors and deputy chair are absent or are both unwilling to act, then the Ordinary Members present at that meeting may elect a person present to chair the meeting.

6.6 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
 - (i) proper and orderly debate or discussion; and
 - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may adjourn the meeting from time to time and place to place. However, 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.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- (d) In addition to the rights provided for in rule 6.3(a)(iii) and 6.3(c), the auditor of the company (if any) is entitled to be heard at any general meeting the auditor attends.

6.7 Decisions at general meetings

- (a) Except in the case of any resolution which under this constitution or as a matter of law requires a special resolution, questions arising at a general meeting are to be

decided by a majority of votes cast by the Ordinary Members present at the meeting (including being present by technological means), and that decision is for all purposes a decision of the members.

- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members the chair may exercise a second or casting vote in addition to any vote the chair may have as an Ordinary Member of the company.
- (c) Unless a poll is demanded, a resolution put to the vote of a general meeting must be decided on a Show of Preference of members, with each Ordinary Member present indicating a preference by a means appropriate to that member and that is readily interpreted and understood by the chair (**Show of Preference**).
- (d) An Ordinary Member may only exercise one vote on a Show of Preference regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a Show of Preference is taken or before or immediately after the declaration of the result of the Show of Preference:
 - (i) by the chair of the meeting;
 - (ii) by at least 5 Ordinary Members present and entitled to vote on the relevant resolution; or
 - (iii) by an Ordinary Member or Ordinary Members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair on the result of a vote on a Show of Preference is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

6.8 Representation at general meetings

- (a) Subject to this constitution, each Ordinary Member entitled to vote at a meeting of members may vote:
 - (i) in person or, if the Ordinary Member is a body corporate through its Representative;
 - (ii) by proxy in a form as the directors may prescribe or accept; or
 - (iii) by attorney in a form as the directors may prescribe or accept.

- (b) A proxy, Representative or attorney may be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or a Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
 - (i) the person specified by the company in the proxy form; or
 - (ii) if no person is specified by the company in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:
 - (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting.
- (f) Unless otherwise permitted by the chair, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.

6.9 Meetings conducted using electronic means

- (a) A member who participates in a general meeting by telephone or other electronic means which allows mutual communication and for that member to indicate a Show of Preference (if permissible for their class of membership) is taken to be present in person at the meeting.
- (b) A general meeting conducted using telephone or other electronic means is taken as held at the place as determined by the chair of the meeting, so long as one of the Ordinary Members involved was at the place for the duration of the meeting.

6.10 Decisions without meetings

Ordinary Members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of member resolutions as determined by the directors from time to time.

6.11 Resolutions of single member company

If the company has only one Ordinary Member, the company may pass a resolution by that member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

Part E – Not-for-profit

7 No profits for members

- (a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of the Charitable Purpose and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.
- (b) The company may, with the approval of the directors, make payment in good faith to a member of the company:
 - (i) by way of reasonable and proper payment for any goods supplied or services rendered to the company (including payment as a consultant);
 - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
 - (iii) by way of reasonable and proper rent for premises let by that member to the company;
 - (iv) as a result of the members participation in a social bond, or similar, program of the company; and
 - (v) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (c) For the avoidance of doubt, nothing in this rule 7:
 - (i) prevents a member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
 - (ii) prohibits a member from receiving a benefit that is directly related to membership of the company.

Part F – Directors and secretary

8 Directors

8.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is nine.
- (b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act.
- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
 - (i) in an emergency;
 - (ii) for the purpose of convening a general meeting of the company; or

- (iii) for the purpose of increasing the number of directors to three.

8.2 Becoming a director

Subject to rule 8.3 and 8.20, a person may become a director in three ways:

- (a) election by Ordinary Members, such election to be for a term of three years (**Member Elected Directors**);
- (b) appointment by the directors, such appointment to be for a term of up to three years with the precise period determined by the directors at the time of appointment (**Board Appointed Directors**); and
- (c) appointment by the directors to fill any vacancy in the number of Member Elected Directors however arising (**Casual Vacancy**). Such Casual Vacancy is to be filled until the end of the next annual general meeting or, if the company does not hold an annual general meeting, until the next time an election of directors is held or 12 months (whichever is the shortest period of time).

8.3 Rules about the composition of directors

Subject to rule 8.2(c):

- (a) six director positions are reserved for, and may only be filled by, Member Elected Directors; and
- (b) three director positions are reserved for, and may only be filled by Board Appointed Directors.

8.4 Qualifications and requirements of directors

- (a) To be eligible for election as a Member Elected Director under rule 8.2(a) a person must:
 - (i) be 18 years of age or older;
 - (ii) be an Ordinary Member or in the case of a body corporate Ordinary Member be a Representative of that member;
 - (iii) be nominated and seconded in writing for election by Ordinary Members in the way determined by the directors from time to time;
 - (iv) not be ineligible to be a director under the Corporations Act or the ACNC Act;
 - (v) have knowledge about and be committed to the Charitable Purpose;
 - (vi) not be an employee of the company; and
 - (vii) meet any other criteria relating to the composition of the board and skills and qualifications of directors as may be determined by the directors from time to time.
- (b) To be eligible to fill a Board Appointed Director position under rule 8.2(b) or to be appointed by the directors to fill a Casual Vacancy under rule 8.2(c), the person must comply with all the requirements of rule 8.4(a) other than the requirement to:

- (i) be an Ordinary Member of the company; and
- (ii) be nominated and seconded by an Ordinary Member.

8.5 Director's time in office

- (a) Each director is to remain as a director until that person's term expires or until that person resigns or is otherwise removed as a director of the company in accordance with the law and this constitution.
- (b) A person who holds, or has held, the position of Member Elected Director or Board Appointed Director is restricted to 3 terms of office that person may serve, and is eligible for re-election or reappointment (as the case may be).
- (c) No director may serve for more than 9 continuous years.

8.6 Ceasing to be a director

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:
 - (i) becomes bankrupt;
 - (ii) is convicted of an indictable offence;
 - (iii) ceases to be eligible in accordance with rule 8.4; or
 - (iv) fails to attend three or more consecutive directors' meetings in any 12 month period without leave of absence approved by the directors.
- (b) Nothing in rule 8.6(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

8.7 Payments to directors

- (a) Directors must not receive any payment for acting as a director but, subject to rule 8.7(b), are entitled to:
 - (i) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees; and
 - (ii) receive payment for any goods supplied or services rendered to the company (other than as a director), as long as the amount is proper and reasonable in the circumstances.
- (b) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by:
 - (i) the directors; or
 - (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with rule 8.17 or rule 8.18.

8.8 Interested directors

- (a) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Each director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the directors.
- (c) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (d) Subject to rule 8.8(e), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest, be counted in determining whether a quorum is present at any meeting of directors considering that arrangement.
- (e) Rule 8.8(d) does not apply to the extent that it would be contrary to law.

8.9 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the members.
- (b) The directors must comply with their duties as directors under legislation and common law and, for so long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission, with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
 - (i) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
 - (ii) to act in good faith in the best interests of the company and to further the Charitable Purposes of the company as set out in rule 3;
 - (iii) not to misuse their position as a director;
 - (iv) not to misuse information that they gain in their role as a director;
 - (v) to disclose any perceived or material conflicts of interest;
 - (vi) to ensure that the financial affairs of the company are managed responsibly;
and
 - (vii) not to allow the company to operate while insolvent.

8.10 Directors' meetings

- (a) The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

- (b) The directors should meet as often as required for the proper discharge of their directors' duties and in any event no less than four times per year.

8.11 Convening of meetings of directors

A meeting of directors may be convened by the chair or any two of the directors.

8.12 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
 - (i) be given in a way permitted by rule 14;
 - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
 - (iii) state the nature of the business to be transacted at the meeting; and
 - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a directors' meeting is not invalid just because a director did not receive notice of the meeting provided that:
 - (i) the notice was not received because of accident or error;
 - (ii) before or after the meeting, the director notifies the company of his or her agreement to the resolution; or
 - (iii) the director attended the meeting.

8.13 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of a majority of directors.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

8.14 Chair and deputy chair

- (a) The directors must appoint a director to the office of chair and may appoint a different director to the office of deputy chair.
- (b) The directors may remove a director from the office of chair and deputy chair at any time but doing so does not remove that person as a director.

- (c) A person may only fill the office of chair or deputy chair for so long as that person is a director of the company.
- (d) The chair must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.
- (e) If the chair is unable to attend a directors' meeting or unwilling to act, then the deputy chair, if one has been appointed, must preside as chair of that meeting.
- (f) If both the chair and deputy chair are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from those directors present to preside as the chair for that meeting.

8.15 Decisions of directors

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting and any other matter to be determined by the directors under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may exercise a second or casting vote in addition to any vote the chair may have as a director of the company.

8.16 Decisions without meetings

Directors may pass resolutions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

8.17 Committees

- (a) The directors may resolve to:
 - (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, terms of reference, guidelines or protocols.

- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

8.18 Delegation to individuals

- (a) The directors may resolve to delegate any of their powers:
 - (i) to one or more directors;
 - (ii) to one or more Ordinary Members; or
 - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

8.19 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

8.20 Transition provisions for directors

- (a) Each person filling a position on the Association's governing board prior to its conversion to a company limited by guarantee will continue in office as a director of the company for the remainder of the person's then current term of office, after which the person must retire. For the avoidance of doubt, a person retiring under this rule is eligible for re-election or appointment under rule 8.2.
- (b) When assessing a person's term in office for the purpose of rule 8.5, any time served as a member of the Association's governing board prior to its conversion to a company limited by guarantee must be counted.

9 Secretaries

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.

- (b) The appointment of a secretary may be for the period, on the conditions and at the remuneration as the directors determine.
- (c) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (d) The duties of the secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by the law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (e) An act done by a person acting as a secretary is not invalidated just because:
 - (i) of a defect in the person's appointment as a secretary; or
 - (ii) the person is disqualified from being a secretary,if that circumstance was not known by the person when the act was done.

Part G – Winding up and loss of endorsement

10 Winding up

- (a) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be given or distributed to members and must instead be given or distributed to one or more Eligible Recipients, each of which must, if the company is endorsed as a deductible gift recipient, be similarly endorsed at the time the distribution is made.
- (b) The decision as to which Eligible Recipient is (or which Eligible Recipients are) to be given the Surplus Assets under rule 10(a) is to be determined:
 - (i) by a resolution of the Ordinary Members at or before the winding up or dissolution of the company; or
 - (ii) if no such resolution is passed, by the Supreme Court.
- (c) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

11 Loss of deductible gift recipient endorsement

- (a) If the company is endorsed as a deductible gift recipient as a whole and this endorsement is revoked, then the company must ensure that the following assets remaining after the payment of all liabilities are distributed to one or more charitable organisations having the same deductible gift recipient endorsement as the company (as determined by a resolution of the Ordinary Members):
 - (i) deductible gifts of money or property received for the Charitable Purpose;
 - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and
 - (iii) money received by the company because of such deductible gifts and contributions.

Part H – Administrative matters

12 Minutes and records

12.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

12.2 Inspection of records

- (a) Subject to the law and rule 12.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.
- (b) A director has a right of access to the financial records of the company at all reasonable times. If the directors agree, the company must give a director or former director access to:
 - (i) certain documents, including documents provided for or available to the directors; and
 - (ii) any other documents referred to in those documents.
- (c) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.

- (d) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
 - (e) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
 - (f) The company must keep all financial and other records required by law.
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13 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
 - (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule);
 - (ii) does not cover any loss or liability of an officer seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
 - (iii) operates only to the extent that the loss or liability is not paid by insurance.
 - (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs.
 - (d) To the extent permitted by law, the company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the company on any terms and conditions that the directors think fit to give effect to the rights of that person under this rule 13. Any such agreement may also give the person rights to inspect and obtain copies of the books of the company for the purposes, and on such other terms and conditions, as the directors decide.
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14 Notices

- (a) Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:
 - (i) the law; and
 - (ii) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.
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- (b) Without limitation to the above, the company may give a document to a member by sending it to a member by an electronic address nominated by the member.
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15 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 Dictionary

1 Dictionary

In this constitution:

ACNC Act means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth).

Associate Member means a member admitted into this class of membership in accordance with rule 4.2 and having the rights and responsibilities associated with this class as described in the table at Schedule 2.

Association has the meaning given at rule 4.1(a)(i).

Board Appointed Director has the meaning at rule 8.2(b).

Casual Vacancy has the meaning given at rule 8.2(c).

Charitable Purpose has the meaning given at rule 3.1.

Corporations Act means *Corporations Act 2001* (Cth).

Eligible Recipient means an organisation that:

- (a) has charitable objects or purposes similar to the Charitable Purpose;
- (b) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the company to further such objects or purposes;
- (c) is registered as a charity with the Australian Charities and Not-for-profits Commission; and
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the company.

Member Disciplinary Resolution has the meaning at rule 5.4(b).

Member Elected Directors has the meaning given at rule 8.2(a).

Membership Renewal Notice has the meaning given at rule 4.7.

Ordinary Member means a member admitted into this class of membership in accordance with rule 4.2 and having the rights and responsibilities associated with this class as described in the table at Schedule 2.

Representative means a representative of a member appointed in the way permitted by section 250D of the Corporations Act regardless of whether that member is in fact bound by the Corporations Act.

Show of Preference has the meaning given in rule 6.7(c).

Surplus Assets has the meaning given at rule 10(a).

2 Interpretation

2.1 General

- (a) Unless the context otherwise requires, then the term 'member' is used in this constitution it should be taken as a reference to both Ordinary Members and Associate Members.
- (b) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (c) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) except in the context of membership of the company where reference to the individual is to an individual only, words used to denote persons generally include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
 - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.
- (e) In this constitution, where communication from a member to the company must be 'signed' by a member, in addition to any other methods permitted by law, the member may sign in any manner that allows the directors to be satisfied, acting reasonably, that the communication is from the relevant member, including by using an electronic signature.
- (f) 'Writing' or 'written' includes modes of representing or reproducing words, figures, drawings or symbols in a visible or tactile form which renders the message retrievable by people who know the language in question.

2.2 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.

Schedule 2 Classes of Membership

Membership class	Eligibility criteria	On-going requirements	Membership rights
Ordinary Member	<p>Must:</p> <ul style="list-style-type: none"> • indicate the intention to join as an 'Ordinary Member' when applying for membership of the company; • comply with the requirements set out at rule 4.2; and • not be an employee of the company. 	<p>Compliance with the membership eligibility criteria set out at rule 4.2.</p> <p>Payment of any membership fee determined under rule 4.6.</p>	<p>To nominate a person as a candidate for election as a Director.</p> <p>To receive notices of and attend any general meeting of the company.</p> <p>If a body corporate, to appoint a Representative to act as its representative at any general meeting of the company.</p> <p>To exercise one vote on a Show of Preference, on a poll and in the way permitted under rule 6.10.</p>
Associate Member	<p>Must:</p> <ul style="list-style-type: none"> • indicate the intention to join as an 'Associate Member' when applying for membership of the company; and • comply with the requirements set out at rule 4.2. 	<p>Compliance with the membership eligibility criteria set out at rule 4.2.</p> <p>Payment of any membership fee determined under rule 4.6.</p>	<p>To receive notices of and attend any general meeting of the company.</p> <p>For the avoidance of doubt, an Associate Member has no right to exercise a vote in any circumstance.</p>