

TOWN OF COTTESLOE



Works and Corporate Services  
Committee

**ATTACHMENT 10.1.1**

Meeting Date: 18 September 2012



## 11.2.2 CURTIN AGED PERSONS HOMES INC (CAPH) – CHANGES TO CONSTITUTION

**File No:** SUB/804  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Carl Askew  
Chief Executive Officer

**Proposed Meeting Date:** 19 July 2011  
**Author Disclosure of Interest** In accordance with the constitution the CEO is a member of CAPH

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### SUMMARY

The purpose of this report to is seek Council's 'in principle' agreement to proposed changes to the Constitution of the Curtin Aged Persons Homes Inc.

### BACKGROUND

Curtin Aged Persons Homes Inc. (CAPH) was essentially established to:

*"Promote or assist in the establishment and maintenance of a range of alternative housing for the accommodation and care of well and frail aged persons with particular regard but not exclusively for aged persons resident in the Local Governments of Claremont, Cottesloe Mosman Park and Peppermint Grove."*

*(CAPH Constitution 2007)*

The current constitution requires CAPH to have twelve (12) members including;

- the Chief Executive Officers of each of the four local governments (Claremont, Cottesloe, Mosman Park and Peppermint Grove);
- one nominee from each of the four Council's (elected members); and
- four members of the general community nominated by the Board and approved by at least three of the Chief Executive Officers.

In accordance with the current constitution the Board of Management of CAPH is comprised of eight (8) of these twelve (12) members including the four (4) nominees of each of the Councils (elected members) and up to four (4) of the community members.

CAPH operates aged care facilities from Wearne Hostel in Cottesloe and Riversea Hostel in Mosman Park. Wearne is sited on crown land vested jointly in the four local governments for the purpose of aged care and leased to CAPH. Riversea is on free hold land owned by CAPH. The four local governments have no legal or financial interest in the income or property of CAPH Inc. The only responsibilities of the four

local governments in relation to CAPH are related to the nomination and appointment of members of CAPH and members of the Board of Management.

All members of the Board of Management are in a comparable position to directors of a corporation and as such are considered independent Board Members. Members of the Board, including elected members of each local government, are not 'representatives' of their respective Council (or local government). Members of the Board of Management must therefore act in good faith and in the best interests of CAPH irrespective of the interests of any particular Council or local government.

Significant changes to the aged care industry and the rapid growth in demand for aged accommodation options is placing pressure on CAPH Inc. to review its current service model and future facility development. The Board of Management of CAPH Inc. has recognised that it needs to re-consider its structure and governance to ensure its Board is best positioned to meet this changing environment

A number of meetings have been held over the last six months, and most recently on 5<sup>th</sup> May 2011 attended by the Chief Executive Officers of the Towns of Cottesloe, Mosman Park, Cottesloe and the Shire of Peppermint Grove, the Chairman and Deputy Chairman of CAPH, a committee member of CAPH, CAPH's legal advisor, and Council delegates to the CAPH Board from Peppermint Grove and Cottesloe. The purpose of the meeting was to discuss the governance and structure of CAPH in light of the changing needs of aged care in the community.

Agreement in principle was reached on the need to update CAPH's structure to enable the organisation to respond to the current trends in aged care, to be in the best position to undertake the development of its facilities, and to continue to meet increasing national aged care standards.

The points of agreement were:

1. The Board of CAPH will draft amendments to the CAPH constitution to allow CAPH to operate as an independent non-profit entity.
2. The need to appoint Board members who have experience and expertise appropriate to CAPH's business and the aged care industry.
3. Board members would operate as independent Directors with clearly stated responsibilities operating under corporate governance principles and a charter of conduct.
4. A Finance and Audit Committee would be a key sub-committee of the Board with a specific charter to oversee CAPH's financial activities.
5. A Planning sub-committee would operate to focus on the planning and development of Wearne and Riversea which would comprise suitably qualified members of the CAPH Board and other appointees with specialist expertise.
6. Board members will be independent of any other statutory authority or interest.
7. The formal role of the four local governments would be removed from the management and membership of CAPH.

8. The four local governments will remain the custodian and Lessor of the land at Wearne until otherwise determined.

### **STRATEGIC IMPLICATIONS**

The provision of aged care accommodation in the region will continue to be a priority in the future. It is intended that changes to the Constitution of CAPH Inc. will ensure that the organisation has a Board of Management best qualified, skilled and experienced to plan and develop aged accommodation services that will need the needs and expectations of the community into the future.

Consistent with modern governance practice, CAPH's Board of Management is best placed to determine its own membership for the effective governance and management of the organisation.

### **POLICY IMPLICATIONS**

There are no significant policy implications evident at this time.

### **STATUTORY ENVIRONMENT**

There are no specific statutory requirements in respect to this matter.

### **FINANCIAL IMPLICATIONS**

There are no significant financial implications evident at this time. The four local governments have no legal or financial interest in the income or property of CAPH Inc. Operational costs to date and ongoing include officer time (CEO) and elected member representation at monthly Board and other meetings as required.

### **SUSTAINABILITY IMPLICATIONS**

There are no environmental implications at this time.

### **CONSULTATION**

The Chief Executive Officers of the Towns of Mosman Park, Cottesloe and Claremont and the Shire of Peppermint Grove have met with various members, primarily the chairman, of the Board of the Curtin Aged Persons Homes Inc. on a number of occasions and most recently on the 5<sup>th</sup> May 2011.

### **STAFF COMMENT**

While there may be some community perception that CAPH Inc. is an organisation managed by the four local governments for the direct benefit of their respective residents, in reality CAPH already functions as an independent organisation. Furthermore, while CAPH may wish to give preference to local residents, aged accommodation regulations do not allow for the allocation of accommodation only to the residents of this geographical area.

As a key stakeholder and primary provider of aged accommodation in the region, it is expected that CAPH will continue to work closely with the four local governments for the

integrated planning of aged services in the region. This will be irrespective of elected members sitting on the Board of Management, or Chief Executive Officers having power over the appointments to the Board of Management.

Curtin Aged Persons Homes Inc. (CAPH) was established to provide aged accommodation primarily for the residents of the Towns of Claremont, Cottesloe, Mosman Park and the Shire of Peppermint Grove. CAPH currently provides hostel accommodation at the Wearne Hostel (Cottesloe) and the Riversea Hostel (Mosman Park). The current constitution of CAPH provides for 12 members which includes the four Chief Executive Officers of the local governments, nominees from each of the local governments (elected members), and four community members approved by the Chief Executive Officers.

Significant changes to the aged accommodation sector and increasing community needs and expectations are placing demand on CAPH to review its structure and governance to best meet these needs into the future. This report recommends 'in principle' support for changes to CAPH's Constitution to allow CAPH to select and appoint its own independent Board Members best skilled and qualified for the management and governance of the organisation, subject to further consideration of proposed changes and transitional arrangements.

## **VOTING**

Simple Majority

## **OFFICER RECOMMENDATION**

### **Moved Mayor Morgan, seconded Cr Strzina**

That Council;

1. Agree 'in principle' to changes to the CAPH Constitution to allow for the establishment of an independent Board with the capability of providing the governance and structure necessary for responding to the changing needs of aged care in the region;
2. Request the Board of CAPH to provide a draft amended Constitution to the Town for its consideration;
3. Request that the Board of CAPH provide a transitional plan for the implementation of changes to the Constitution;
4. Encourage the Board of CAPH to continue to liaise with the Chief Executive Officers of the Towns of Claremont, Cottesloe, Mosman Park and the Shire of Peppermint Grove regarding proposed changes to the CAPH Constitution and procedural steps necessary for the effective implementation of same.

## **COMMITTEE DISCUSSION**

Committee discussed the report and issues at length, including Council's ongoing involvement with residential aged care and the recognition of the changing and complex

nature of the aged care sector. Committee identified the need to ensure that the future of aged care within the district was professionally delivered and commented that the business of aged care had changed significantly from when CAPH was first established. It was recognised that this is not an area of expertise for Council however there was a moral obligation upon it to ensure that the right models and options for future service delivery are explored and considered. Views within Committee recognised that the current arrangements were no longer satisfactory and that Council needed to remove itself from what is a highly specialised field which requires a suitably, qualified and experienced aged care Agency to provide the best value and quality services to our community. Committee requested that officers consider all potential models and options for Council's involvement with CAPH and the future responsibility for aged care within the district, hence the amended recommendation.

### **COMMITTEE RESOLUTION**

**Moved Mayor Morgan, seconded Cr Strzina**

That Council note the information provided and defer this matter for further consideration and report on options and models for Council's future involvement with CAPH and the provision of residential Aged Care services within the district.

Carried 5/0

### **AMENDMENT**

**Moved Cr Dawkins, seconded Cr Strzina**

- 1 That the Committee recommendation be re-numbered as point 1.
- 2 That the Officer recommendation number 4 be re-instated as a new point 2 and the word "Encourage" be deleted and replaced with the word "Request".
- 3 That point 2 and point 3 in the Officer Recommendation be reintroduced as a new points 3 and point 4 respectively.

Carried 7/0

### **COUNCIL RESOLUTION**

**That Council:**

- 1 Note the information provided and defer this matter for further consideration and report on options and models for Council's future involvement with CAPH and the provision of residential Aged Care services within the district.
- 2 Request the Board of CAPH to continue to liaise with the Chief Executive Officers of the Towns of Claremont, Cottesloe, Mosman Park and the Shire of Peppermint Grove regarding proposed changes to the CAPH Constitution and procedural steps necessary for the effective implementation of same.

- 3 Request the Board of CAPH to provide a draft amended Constitution to the Town for its consideration;**
- 4 Request that the Board of CAPH provide a transitional plan for the implementation of changes to the Constitution;**

**THE AMENDED SUBSTANTIVE MOTION WAS PUT**

**Carried 7/0**

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*DRAFT 31.7.12*

**CURTIN AGED PERSONS HOMES (INCORPORATED)**

CONSTITUTION

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## CONSTITUTION

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### 1 CITATION

- 1.1 This is the Constitution of the Association.
- 1.2 This Constitution comprises the rules of the Association, under section 16 of the Act, and the provisions of this Constitution are referred to as 'rules'.

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### 2 ALTERATION OF ORIGINAL CONSTITUTION

The Original Constitution is altered, on and from the Commencement Date, by being replaced with this Constitution.

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### 3 NAME

The name of the Association is *Curtin Aged Persons Homes (Incorporated)*.

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### 4 DEFINITIONS and INTERPRETATION

- 4.1 In this Constitution, unless the contrary intention appears:

**Act** means the Associations Incorporation Act 1987.

**Aged Care Act** means the *Aged Care Act 1997 (C'wth)*.

**Annual General Meeting** means a meeting of Members of the Association under rule 21.

**Association** means Curtin Aged Persons Homes (Incorporated).

**Auditor** means a person who is engaged by the Association, in the capacity of an auditor.

**Board** means the Board of Management established under this Constitution with the power to manage the affairs of the Association for the purposes of section 20 of the Act.

**Board Member** means a person who –

- (a) has been elected to the Board under rule 10;
- (b) is a Co-opted Board Member; or
- (c) has been appointed to fill a casual vacancy on the Board under rule 12.

**Chairperson** means the Board Member appointed by the Board as chairperson under rule 10.11.

**Co-opted Board Member** means a person who is co-opted as a Board Member under rule 11.

**Commencement Date** means the date that this Constitution takes effect under section 17(3) of the Act.

**Corporations Act** means the *Corporations Act 2001 (Cwlth)*.

**Deputy Chairperson** means the Board Member appointed by the Board as deputy chairperson under rule 10.11.

**District** means the combined districts of the Local Governments.

**Friends** means a group of persons whose application has been approved by the Board under rule 22.

**General Meeting** means an Annual General Meeting or a Special General Meeting.

**Local Governments** means the Town of Claremont, Town of Cottesloe, Town of Mosman Park and the Shire of Peppermint Grove.

**Maximum Term**, in relation to the term of a Board Member means:

- (a) a period of 9 years (whether successive or in aggregate) from the Commencement Date; and
- (b) where the period of 9 years under paragraph (a) expires other than on the date of, or on the date immediately preceding, an Annual General Meeting – a further period expiring on the date of the next Annual General Meeting.

**Member or Member of the Association** means a member of the Association under rule 8.

**Officeholder** means a Board Member appointed by the Board as an officeholder under rule 10.11.

**Original Constitution** means the Constitution of the Association adopted by the Association on or about 7 November 2007, as amended.

**Secretary** means the Board Member appointed by the Board as secretary under rule 10.11.

**Special General Meeting** means a meeting of Members of the Association under rule 21, other than an Annual General Meeting.

**Special Resolution** has the same meaning as in the Act.

*Note: section 24(1) of the Act states –*

*'For the purposes of this Act, a resolution is a special resolution if it is passed by a majority of not less than three fourths of the members of the association who are entitled under the rules of the association to vote and vote in person or, where proxies or postal votes are allowed by the rules of the association by proxy or postal vote, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules'.*

**Treasurer** means the Board Member appointed by the Board as treasurer under rule 10.11.

4.2 In this Constitution, unless the contrary intention appears:

- (a) a word defined in the Act has the same meaning in this Constitution;
- (b) a reference to a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (c) the headings do not affect the interpretation of this Constitution;

- (d) the word “law” includes common law, principles of equity, and laws made by the parliament of a State or the Commonwealth from time to time and statutory instruments made under those laws;
- (e) a reference to a particular Act of Parliament includes legislative instruments made under the Act and any amendment, substitution or re-enactment of the Act;
- (f) a reference to a time of day is a reference to Perth time;
- (g) the word “person” includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (h) the word “including” is used without limitation as to class, kind or nature; and
- (i) a reference to a “guiding principle” or an “objective” means that the matter referred to is a desirable aim or aspiration but is not a binding obligation on the Association, the Board or a Member and if not achieved does not constitute a breach of this Constitution.

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## 5 OBJECTS

The objects for which the Association is established are:

- (a) to promote and undertake or assist in promoting and/or undertaking benevolent assistance for aged persons of both sexes irrespective of creed, class or colour, including:
  - (1) to promote or assist in the establishment and maintenance of a range of accommodation and housing for the accommodation and care, including medical, surgical and hospital care, of well and frail aged persons with particular regard for aged persons resident or formerly resident in the Districts;
  - (2) to establish a resource and support service centre to provide benevolent relief primarily for aged persons resident in the Districts with the aim of maintaining those persons in their own homes; and
  - (3) to establish programmes and facilities to encourage interaction with the wider community of aged persons resident in accommodation provided by the Association; and
- (b) to promote and assist the general good of all aged persons, including by:
  - (1) providing accommodation and facilities for physical and mental recreation;
  - (2) developing physical improvement and general wellbeing;
  - (3) providing health services;
  - (4) relieving poverty, distress or sickness;
  - (5) pursuing any objects which are benevolent; and

- (6) assisting the work of statutory authorities and voluntary organisations engaged in similar pursuits in respect of the welfare of aged persons.

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## 6 POWERS

### 6.1 The Association has the powers set out in section 13 of the Act.

*Note: section 13 of the Act states:*

**‘13. Powers of incorporated associations**

(1) *Subject to this Act and to its rules, an incorporated association may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may —*

- (a) *acquire, hold, deal with, and dispose of any real or personal property; and*
- (b) *open and operate bank accounts; and*
- (c) *invest its money —*
  - (i) *as trust funds may be invested under Part III of the Trustees Act 1962; or*
  - (ii) *in any other manner authorised by the rules of the association;*

*and*

- (d) *borrow money upon such terms and conditions as the association thinks fit; and*
- (e) *give such security for the discharge of liabilities incurred by the association as the association thinks fit; and*
- (f) *appoint agents to transact any business of the association on its behalf; and*
- (g) *enter into any other contract it considers necessary or desirable.*

(2) *An incorporated association may, unless its rules otherwise provide, act as trustee and accept and hold real and personal property upon trust, but an incorporated association does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the association’.*

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## 7 INCOME AND PROPERTY

The income and property of the Association must be applied solely towards the promotion of its objects and no part of that income or property may be paid or otherwise distributed, directly or indirectly, to a Member or an employee of the Association except:

- (a) in good faith in the promotion of those objects;
- (b) by way of reasonable and proper remuneration for services rendered to the Association; or
- (c) by way of reimbursement for expenses incurred on behalf of the Association.

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## 8 MEMBERSHIP OF THE ASSOCIATION

- 8.1 The Association's principal membership objectives are to—
- (a) attract and maintain at least 20 Members; and
  - (b) attract and maintain Members who have a diversity of interests and experience and a demonstrated desire to actively support the Association in the interests of the general community.
- 8.2 Membership is open to any person who:
- (a) is normally resident in the District; and
  - (b) applies in writing to the Secretary of the Association to be a Member of the Association.
- 8.3 The Secretary must refer an application for membership to the Board at its next meeting.
- 8.4 The Secretary -
- (a) may request from the applicant in writing further information concerning the applicant; and
  - (b) if so requested, must forward to the Board a copy of the request and a copy of any further information provided by the applicant.
- 8.5 The Board must consider an application for membership and may -
- (a) if the applicant satisfies rule 8.2(a) – approve the application;
  - (b) reject the application; or
  - (c) defer a decision to a later meeting of the Board.
- 8.6 The Board is not required to give any reasons for a decision under rule 8.5
- 8.7 The Secretary must advise the applicant of the Board's decision as soon as practicable after it is made.
- 8.8 The Board must ensure that a register of Members is kept and maintained, and access is made available to Members, in accordance with the Act.

*Note: section 27 of the Act states –*

**'27. Register of members**

*An incorporated association must keep and maintain in an up to date condition a register of the members of the association and their postal or residential addresses and, upon the request of a member of the association, must make the register available for the inspection of the member and the member may make a copy of or take an extract from the register but must have no right to remove the register for that purpose'.*

- 8.9 If the Board is satisfied that a person who was a Member has ceased to be a Member, the Board must delete that Member's name from the register of Members.
- 8.10 A person ceases to be a Member if the person –
- (a) is no longer normally resident in the District;

- (b) gives to the Secretary, or to a Board Member, written notice of his or her resignation;
- (c) is expelled under rule 9; or
- (d) dies;

## **9 SUSPENSION OR EXPULSION OF MEMBERS OF ASSOCIATION**

- 9.1** If the Board is satisfied that a Member should be suspended or expelled from membership of the Association because his or her conduct is detrimental to the interests of the Association, the Board must give to the Member written notice of:
- (a) the proposed suspension or expulsion;
  - (b) the particulars of the alleged conduct; and
  - (c) the time, date and place of the Board meeting at which the question of that suspension or expulsion will be considered and, if the Board considers it appropriate, determined.
- 9.2** The written notice must be given to the Member at least 7 days before the date of the Board meeting.
- 9.3** The Member is entitled to make written representations to the Board concerning the particulars of the alleged conduct, and the proposed suspension or expulsion, not less than 2 days before the date of the Board meeting referred to in rule 9.1(c).
- 9.4** If representations are made by the Member under rule 9.3, the Board must consider the representations before making a decision to suspend or expel the Member.
- 9.5** If, before the Board meeting referred to in rule 9.1(c):
- (a) the proposed suspension or expulsion is referred to the Board under rule 30 as a matter for dispute resolution; and
  - (b) the Board determines that one or more of the procedures under rule 30.4 and rule 30.5 are to apply,
- the Board meeting is to be adjourned until the procedures in rule 30 have been completed or until the Board considers that the procedures are of no further substantial benefit to the parties or to the Association, at which time the adjourned meeting is to be reconvened.
- 9.6** At the Board meeting referred to in rule 9.1(c) or the reconvened meeting under rule 9.5 the Board may suspend or expel, or decline to suspend or expel, the Member.
- 9.7** The Secretary must give written notice to the Member of a decision of the Board made under rule 9.6 as soon as practicable after it has been made.
- 9.8** A decision to suspend or expel a Member takes effect on the date that notice of the decision is given to the Member.



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## **10 BOARD OF MANAGEMENT**

- 10.1** The management of the affairs of the Association is vested in a Board of Management, consisting of not less than 7 and not more than 10 persons (subject to rule 11.1) each of whom:
- (a) is a Members of the Association (subject to rule 11.2(b));
  - (b) has been endorsed by the Board as a suitable person for appointment to the Board;
  - (c) is not an Auditor, or a partner or employee of an Auditor;
  - (d) has been elected or co-opted to the Board under this Constitution; and
  - (e) accepts appointment or co-option to the Board by notification of their acceptance in writing to the Secretary or Chairperson.
- 10.2** The decision whether to endorse a person as suitable for appointment to the Board (under rule 10.1(b)) must be made by the Board having regard to the objective of attracting and retaining Board Members having a diversity of skills, experience, qualifications and availability suitable to advance the objects and undertake the activities of the Association.
- 10.3** If the Board declines to endorse a person as suitable for appointment under rule 10.1(b), it must give reasons for its refusal to the person.
- 10.4** A Board Member:
- (a) holds office until he or she ceases to be Board Member under this Constitution; and
  - (b) subject to rule 10.5, is to be eligible for re-election or re-appointment.
- 10.5** Despite any other rule:
- (a) a Board Member ceases to hold office when the Maximum Term expires; and
  - (b) a person who has held office as a Board Member for the Maximum Term cannot be elected, co-opted or appointed as a Board Member unless at least one year has elapsed since he or she ceased to be a Board Member after the expiry of the Maximum Term.
- 10.6** Unless co-opted under rule 11 or appointed to fill a casual vacancy under rule 12, Board Members must be elected at an Annual General Meeting by a simple majority of Members attending and entitled to vote as provided in this rule 10.
- 10.7** Except for a Member who is retiring under rotation, a person is not eligible for election as a Board Member at an Annual General Meeting unless:
- (a) another Member has nominated him or her for election by delivering notice in writing of that nomination, signed by the nominator and the nominee, to the Secretary not less than 7 days before the day on which the Annual General Meeting is to be held; or
  - (b) the person has been nominated from the floor of the meeting in the circumstances referred to in rule 10.9.

- 10.8** A person who is eligible for election under this rule 10 may, at the Annual General Meeting:
- (a) propose or second himself or herself for election; and
  - (b) vote for himself or herself.
- 10.9** If a vacancy remains on the Board after the election held under rule 10.6:
- (a) one or more additional nominations for election to the Board may be made from the floor of the Annual General Meeting;
  - (b) a motion for election of a person so nominated is to be put to the meeting for a vote; and
  - (c) if the person qualifies for membership under rule 10.1, the person may be elected as a Board Member but he or she does not become a Board Member unless and until he or she has been endorsed by the Board under rule 10.1(b).
- 10.10** If, after the elections referred to in rules 10.6 and 10.9 a vacancy remains on the Board, the vacancy is a casual vacancy and may be filled under rule 12.
- 10.11** The Board must appoint, from among its Members:
- (a) a Chairperson,
  - (b) a Deputy Chairperson;
  - (c) a Secretary;
  - (d) a Treasurer; and
  - (e) such other officeholders as it determines from time to time,
- and the Board must determine the term and functions of each officeholder.
- 10.12** The Board must appoint as public officer a Board Member as required by any applicable law and may remove from the office of public officer a person so appointed. If a vacancy occurs in the office of the public officer the Board must fill the vacancy within 28 days after it occurs.
- 10.13** The Board may authorise the payment of whatever compensation, remuneration, emoluments, attendance fees or reimbursement of expenses to a Board Member that the Board considers appropriate to reasonably compensate the Board Member for the performance of his or her functions or services, provided that:
- (a) payments must be disclosed to the Members at the next Annual General Meeting of the Association either in the accounts or as a separate item of business. At the Board's discretion and subject to any law, disclosure may be made in quantified bands showing payments to the number of Board Members within each band, with or without identifying the particular Board Member who received each payment; and
  - (b) the Board must ensure that provision is made for any withholding or other income tax liability, superannuation contribution or other impost or statutory liability in relation to the payment.

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## **11 CO-OPTION OF PERSONS TO THE BOARD**

- 11.1** The Board, by a resolution passed by a 75% vote of the Board Members attending and voting, may co-opt any person to membership of the Board whether or not the number of Board Members exceeds the maximum number specified in rule 10.1 as a result of the appointment provided the total number of Co-opted Board Members do not exceed 3 at any time.
- 11.2** A person who is co-opted under rule 11.1:
- (a) need not be a Member of the Association;
  - (b) holds office as a Co-opted Board Member until the next Annual General Meeting following his or her co-option; and
  - (c) continues to hold office as a Co-opted Board Member for so long as he or she is approved as a continuing Co-opted Board Member by ordinary resolution of Members at each successive Annual General Meeting.
- 11.3** A Co-opted Board Member is to be counted in the calculation of the maximum number of Co-opted Board Members who may be appointed to the Board under rule 11.1.
- 11.4** If a Co-opted Board Member:
- (a) qualifies for election as a Board Member under rule 10.1; and
  - (b) after his or her co-option, has been nominated for election and duly elected as a Board Member under rule 10,
- he or she is no longer to be treated as a Co-opted Board Member.
- 11.5** To avoid doubt, on and from the conclusion of the Annual General Meeting referred to in rule 11.4(b) a person who has been elected to the Board at that Annual General Meeting following his or her co-option :
- (a) is to be subject to retirement by rotation under rule 13 as an elected Board Member on the basis that his or her election commenced at that Annual General Meeting (and not the date of co-option); and
  - (b) is to be counted in the calculation of the maximum number of Board Members under clause 10.1.
- 11.6** A Co-opted Board Member is to be eligible to be co-opted again after expiry of his or her term of appointment or after his or her retirement from the Board.

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## **12 BOARD MEMBERS: CASUAL VACANCIES**

- 12.1** If a vacancy remains on the Board after an election of Board Members under rule 10 or when a casual vacancy for a Board Member occurs :
- (a) the Board may appoint a person who is qualified under rule 10.1 to fill that vacancy; and
  - (b) a person appointed under this rule 12.1:

- (1) holds office until the next Annual General Meeting following his or her appointment; and
  - (2) is eligible for election as a Board Member in accordance with rule 10.
- 12.2 A Board Member appointed to fill a casual vacancy under this rule is not a Co-opted Board Member.

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### **13 BOARD MEMBERS: RETIREMENT BY ROTATION**

- 13.1 This rule 13 does not apply to:
- (a) a Co-opted Board Member while he or she remains a Co-opted Board Member; or
  - (b) a Board Member who has been appointed to fill a casual vacancy and is subject to election under rule 12.1(b).
- 13.2 One-third of the Board Members, excluding those referred to in the preceding rule or those ceasing to hold office under rule 10.4 or 10.5 (or if their number is not a whole multiple of 3 then one-third of the number rounded down to the nearest whole number), are to retire from office at every Annual General Meeting after the Commencement Date.
- 13.3 An election of Board Members retiring under this rule 13 is to take place at each Annual General Meeting.
- 13.4 The Board Member or Board Members to retire under rule 13.2 are to be the one-third who have been longest in office as Board Members since their election (or if more than one, most recent election) to the Board. As between 2 or more Board Members who have been in office an equal length of time the Board Member or Board Members to retire, in default of agreement between them, are to be determined by lot.

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### **14 BOARD MEMBERS: TERMINATION**

- 14.1 A person ceases to be a Board Member if the person:
- (a) dies;
  - (b) has attained the age of 75 years, and his or her continuing appointment is not affirmed by resolution at the next Annual General Meeting and each successive Annual General Meeting;
  - (c) resigns by notice in writing delivered to the Chairperson, or if the person is the Chairperson to the Deputy Chairperson, and that resignation is accepted by resolution of the Board;
  - (d) not being a Co-opted Board Member, ceases to be a Member of the Association;
  - (e) is convicted of an offence under the Act or the *Aged Care Act*, or any other offence punishable by a term of imprisonment, in any Australian State or Territory or in any jurisdiction outside Australia unless the Board resolves that the conviction is of such a nature in relation to the

affairs of the Association as to not warrant the person ceasing to be a Board Member;

- (f) is a person who is a disqualified individual (as defined in the *Aged Care Act*) or is otherwise not qualified under the *Aged Care Act* to be key personnel (as defined in the *Aged Care Act*);
- (g) is the subject of a Board resolution that he or she is incapacitated by mental or physical ill-health so as to be unlikely to be able to discharge his or her functions as a member of the Board;
- (h) is absent from more than 3 consecutive Board meetings or 3 Board meetings in the same financial year where the Board has not recorded its consent to each absence; or
- (i) is an undischarged bankrupt under the law of Australia or another country, or the person has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* or a similar law and the terms of the agreement have not been fully complied with.

14.2 If the continuing appointment of a person referred to in rule 14.1(b) is not affirmed at an Annual General Meeting, his or her appointment is to be taken to have ceased at the commencement of that Annual General Meeting and the office is to be vacant for the purposes of election of another person at that Annual General Meeting.

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## 15 BOARD MEMBERS: SUSPENSION AND EXPULSION

- 15.1 If the Board is satisfied that a Board Member has acted in a manner prejudicial to the interests of the Association, the Board may:
- (a) expel the Board Member as a Board Member or as a Member of the Association or both; or
  - (b) suspend the Board Member, as a Board Member and/or as a Member of the Association, for a period determined by the Board .
- 15.2 The Chairperson, Deputy Chairperson or any other 2 Board Members may require the Chairperson or Secretary to convene a meeting of the Board for the purpose of considering the expulsion or suspension of a Board Member (the **Relevant Member**).
- 15.3 The Secretary must give at least 10 days written notice to all Board Members of a Board meeting at which the expulsion or suspension of the Relevant Member is to be considered. The notice must set out the alleged circumstances which have given rise to the meeting.
- 15.4 The Relevant Member may attend and speak at the Board meeting but cannot vote on the proposed resolution to expel or suspend him or her.
- 15.5 The Board must give reasonable consideration to any representation made by the Relevant Member at the Board meeting and having given such consideration may resolve, by a majority vote of 75% of the Board Members attending the Board meeting (excluding the Relevant Member and rounded down to the nearest whole number if a fraction):

- (a) to expel the Relevant Member as a Board Member or as a Member of the Association or both; or
- (b) to suspend the Relevant Member as a Board Member for such period as the Board considers appropriate.

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## **16 TRANSITIONAL PROVISIONS: MEMBERSHIP OF ASSOCIATION**

- 16.1 A person who was a Member of the Association immediately before the Commencement Date in the capacity of a Chief Executive Officer of a Council (as defined in the Original Constitution) ceases to be a Member of the Association on the Commencement Date.
- 16.2 A person, other than the Chief Executive Officer of a Local Government who:
  - (a) was a Member of the Association immediately before the Commencement Date in the capacity of a nominee of a Council (as defined in the Original Constitution); and
  - (b) qualifies for membership under rule 8,continues to be a Member of the Association on and from the Commencement Date but does not represent a Local Government.
- 16.3 If a person referred to in rule 16.2 does not qualify for membership under rule 8, he or she ceases to be a Member on the Commencement Date.
- 16.4 A person who, immediately before the Commencement Date, was a Member of the Association as a member of the community is taken to have been nominated and approved for membership under rule 8 and is to remain a Member subject to this Constitution.

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## **17 TRANSITIONAL PROVISIONS: MEMBERSHIP OF THE BOARD**

- 17.1 If a person:
  - (a) was, immediately before the Commencement Date, a Board Member as a nominee of a Council (as defined in the Original Constitution); and
  - (b) within 2 weeks after the Commencement Date advises the Board in writing that he or she wishes to continue to be a Board Member, but in an individual capacity, not as a representative or nominee of a Local Government,the person is to remain a member of the Board until the next Annual General Meeting.
- 17.2 If a person referred to in rule 17.1 does not advise the Board in the terms set out in rule 17.1, the person is taken to have ceased to be a Board Member 2 weeks after the Commencement Date.
- 17.3 A person who was a Board Member immediately before the Commencement Date, other than a person who was a Board Member as a nominee of a Council

(as defined in the Original Constitution), is to remain a Board Member as if he or she had been elected as a Board Member on the Commencement Date.

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## **18 PROCEEDINGS OF BOARD OF MANAGEMENT**

- 18.1** The Board may regulate its meetings and proceedings as it sees fit.
- 18.2** The Board must meet as often as is required, but at least 4 times each year, to properly carry out the functions of the Association.
- 18.3** Written notice of a Board meeting must be given to all Board Members (by letter, email or facsimile) at least 7 days before the meeting. A shorter notice period may be given if the Chairman or Deputy Chairman considers that the meeting is urgent. The Board may resolve at the meeting that the meeting should not be treated as urgent and may adjourn the meeting to a later date.
- 18.4** A quorum for a Board meeting must be one half in number (if a fraction rounded to the next higher whole number) of Board Members from time to time.
- 18.5** If a quorum is not present at any duly convened meeting of the Board, the Chairperson must adjourn the meeting to a place, time and date which he or she considers convenient and must give notice to all Board Members of the adjournment.
- 18.6** A Member of the Association who is not a Board Member may request the Board by notice in writing to the Chairperson or Secretary to attend as an observer at any meeting of the Board and:
- (a) the written request must state the matter or matters which that person wishes to discuss;
  - (b) the Board, or the Chairperson on behalf of the Board may permit or refuse the request; and
  - (c) if the request is granted the person may attend the Board meeting or that part of the meeting at which the relevant matter is discussed, and may address the Board and participate in any discussion as the Board determines but cannot vote.
- 18.7** The Board may invite an observer, adviser or other invitee to attend a Board meeting. A person so invited may address the Board and participate in any discussion as the Board determines but cannot vote.
- 18.8** The Board may engage any person to assist the Board to provide secretarial, treasury or other services or advice to the Board on such terms as the Board determines.
- 18.9** Unless otherwise provided in this Constitution, decisions of the Board are to be by majority vote of the Board Members who are present at the meeting and vote, each Member having one vote. In the event of a deadlock the Chairperson or other person chairing the meeting is to have a casting vote in addition to his or her deliberative vote.

**18.10** Minutes of Board meetings must be kept by the Chairperson, the Deputy Chairperson, the Secretary or a delegate of the Chairperson or Deputy Chairperson.

**18.11** Minutes of a committee meeting:

- (a) must be taken and forwarded to the Chairperson or Deputy Chairperson as soon as practicable after the meeting; and
- (b) must be kept by the Chairperson, the Deputy Chairperson, the Secretary or a delegate of the Chairperson or Deputy Chairperson.

**18.12** Conflicts of interest, as they apply to Board Members, are dealt with in sections 21 and 22 of the Act.

*Note: sections 21 and 22 of the Act state:*

**‘21. Pecuniary interests of committee members, disclosure of**

(1) *A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the committee must, as soon as he becomes aware of his interest, disclose the nature and extent of his interest to the committee.*

*Penalty: \$500.*

(2) *Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact —*

(a) *that the member of the committee is an employee of the incorporated association; or*

(b) *that the member of the committee is a member of a class of persons for whose benefit the association is established.*

(3) *Where a member of the committee of an incorporated association discloses a pecuniary interest in a contract or proposed contract in accordance with this section, or his interest is not such as need be disclosed under this section —*

(a) *the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the incorporated association; and*

(b) *the member is not liable to account for profits derived from the contract.*

(4) *An association must cause every disclosure made under this section by a member of the committee to be recorded in the minutes of the meeting of the committee at which it is made.*

**22. Committee member with pecuniary interest in contract not to vote etc. on it**

(1) *A member of the committee of an incorporated association who has any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation of, the committee, must not take part in any deliberations or decision of the committee with respect to that contract.*

*Penalty: \$500.*

(2) *Subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the member of the committee is a member of a class of persons for whose benefit the association is established’.*



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## **19 COMMITTEES**

- 19.1** The Board may appoint committees of the Board from time to time for any period and for any purpose or activity of the Association.
- 19.2** A committee is to comprise not less than one Board Member and such other Members of the Association or other persons who can render particular service to the committee as necessary.
- 19.3** The Board may delegate to a committee such powers as it thinks fit and, in the exercise of the powers so delegated, the committee must comply with any terms and conditions applying to the delegation that have been imposed by the Board.
- 19.4** A member of a committee may be appointed for the duration of the task assigned or for other specified period, subject to the power of the Board, at any time, to terminate the appointment.
- 19.5** Sections 21 and 22 of the Act apply to a member of a committee in respect of a matter considered or to be considered by a committee, in the same way that those sections apply to a Board Member in respect of a matter considered or to be considered by the Board.

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## **20 GOOD GOVERNANCE**

- 20.1** The Board must use all reasonable endeavours to encourage persons for nomination or appointment to the Board who have qualifications and experience appropriate to the activities of the Association and, subject to the needs of the Association from time to time, who have experience or qualifications in relation to:
- (a) the development, operation and promotion of aged care and retirement facilities;
  - (b) finance and accounting;
  - (c) commercial and corporate business; and
  - (d) other relevant or useful areas.
- 20.2** The Board, as soon as practicable after the Commencement Date, must develop and adopt a charter of good governance principles that are consistent with:
- (a) best practice principles of good governance for organisations carrying on charitable and aged care activities; and
  - (b) legislative requirements and guidelines published by any government entity applicable to not for profit institutions .
- 20.3** The Board must appoint a Finance and Audit Committee as a committee of the Board.
- 20.4** The Board must include in the charter of good governance adopted under rule 20.2 a statement of the functions of the Finance and Audit Committee.
- 20.5** The Finance and Audit Committee:
- (a) is responsible for the oversight of the financial affairs of the Association;

- (b) must monitor, on an ongoing basis, the governance procedures of the Association and the Board;
- (c) may commission an external audit of governance procedures from time to time as it considers appropriate, but must do so at least once in every 3-year period from the Commencement Date;
- (d) must conduct, each year, a review of the governance procedures of the Association and the Board;
- (e) must ensure that a report of the review under rule 20.5(d) is included in the report of the Board to each Annual General Meeting; and
- (f) must meet on a regular basis, as and when it determines, and is to meet with the external auditor as it determines in order to discuss issues of concern to the committee or to the external auditor.

**20.6** The Board must:

- (a) cause to be prepared:
  - (1) a short-term, medium-term and long-term strategic plan for the Association as a provider of aged care and retirement facilities; and
  - (2) a financial plan for the Association for at least 3 financial years forward (including the financial year in which the plan is prepared);
- (b) provide a report to each Annual General Meeting on the present position of the Association with reference to each plan; and
- (c) ensure that there is a major review of each strategic plan and long term financial plan not less frequently than every 3 financial years of operation of the plans.

**20.7** The Board may arrange or facilitate orientation and induction programmes for new Board Members and training courses and other skills enhancement programmes for Board Members which it considers will benefit the Association and its good governance.

**20.8** The Board may engage consultants and advisers to assist the Board in any aspect of management of the Association and its activities, including to assist in recruitment of new Board Members.

**20.9** The Board may invite persons of suitable seniority and experience to review the performance of the Board from time to time, either in association with a committee of the Board or independently and who may make recommendations to the Board including with respect to the performance of the Board and its committees, the present and future composition of the Board, and improvements to governance processes and procedures.

**20.10** The Board must use all reasonable endeavours to meet the objective in rule 8.1, that the Association comprises at least 20 Members at all times.

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## 21 MEETINGS OF MEMBERS OF THE ASSOCIATION

21.1 A General Meeting is to be held whenever considered desirable by the Board except that –

- (a) the Annual General Meeting must be held no later than 30 October in each year or by such later date as is permitted by the Act; and
- (b) a Special General Meeting:
  - (1) may be called at any time by the Board; and
  - (2) must be called by the Board on receipt of a requisition stating the purpose for a meeting signed by at least 4 Members of the Association or by the number of Members equal to 1/3 (disregarding fractions) of the total number of Members of the Association, whichever is less.

*Note: section 23 of the Act states:*

**23. Annual general meeting, when to be held**

- (1) *Subject to subsection (2), an incorporated association shall hold an annual general meeting in every calendar year within 4 months after the end of the association's financial year or such longer period as may in a particular case be allowed by the Commissioner.*
- (2) *An incorporated association may hold its first annual general meeting at any time within 18 months after incorporation.*

21.2 A General Meeting :

- (a) is to be convened by the Board giving 14 days notice in writing by posting or emailing the notices to all Members at their addresses appearing in the records of the Association; and
- (b) is to be presided over by the Chairperson or, in his or her absence, the Deputy Chairperson, or otherwise by a Member elected by the General Meeting.

21.3 A notice of a General Meeting:

- (a) must state the purpose of the meeting; and
- (b) unless otherwise requested, may be posted jointly to 2 or more Members who are resident at the same address.

21.4 An accidental omission to give proper notice to, or non-receipt of notice by, a Member is not to affect the validity of the meeting or its proceedings.

21.5 A notice of motion proposed to be put at a General Meeting may be included in the notice of the General Meeting or may be given at any time before or at the meeting as the Chairperson determines.

21.6 A quorum for a General Meeting is to be 6 Members or 1/3 of the total number of Members at the date of the meeting (rounded to the nearest whole number), whichever is greater.

- 21.7 If a quorum is not present at a duly convened General Meeting, the Chairperson must adjourn the meeting to a place, day and time that he or she considers convenient and must give notice of the adjournment to all Members.
- 21.8 At a General Meeting:
- (a) voting on any matter is to be by a show of hands unless the meeting resolves that the vote is to be by secret ballot; and
  - (b) each Member is to have one vote.
- 21.9 Minutes of a General Meeting:
- (a) must be taken and forwarded to the Chairperson or Deputy Chairperson as soon as practicable after the meeting; and
  - (b) must be kept by the Chairperson, Deputy Chairperson, the Secretary or a delegate of the Chairperson or Deputy Chairperson.

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## 22 FRIENDS

- 22.1 The Board may establish one or more groups of persons to provide support and assistance to the residents of the aged care and other residential facilities maintained by the Association, which may be called “Friends of [name or acronym referring to the facility]” or other suitable name.
- 22.2 A group of persons who wish to be Friends must apply in writing to the Board which may accept or reject the application.
- 22.3 The Board:
- (a) must maintain a register of Friends;
  - (b) may determine conditions and privileges applicable from time to time to membership of Friends; and
  - (c) may convene a general meeting of Friends as the Board considers desirable.
- 22.4 If a resolution is passed by a majority of Friends present at a general meeting of Friends in terms which include a request to the Board to consider the resolution, the Board must consider the resolution at its next meeting but is not to be bound by the resolution.

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## 23 INSURANCE

- 23.1 The Board must insure all persons employed or engaged by it as required by law.
- 23.2 All property vested in the Association must be kept insured at its full insurable value and on such terms as the Board thinks fit.
- 23.3 The Board must effect and maintain, or cause to be effected and maintained, such other insurances in respect of its property and activities as the Board considers appropriate.
- 23.4 Where the Board considers it appropriate and to the extent that the Association is not precluded by law from doing so, the Association may pay an amount by

way of the premium for any contract of insurance on behalf, or in respect of, a Board Member against liability incurred by the Member in or arising out of:

- (a) the conduct of the business or other activities of the Association; or
- (b) the discharge of the functions of the Member as a Board Member.

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## **24 BOOKS OF ACCOUNT, FINANCIAL MATTERS**

- 24.1 Proper financial records must be kept by the Board.
- 24.2 Without limiting the powers of the Association in respect of the investment of funds, and subject to the *Aged Care Act* and any other applicable law, all moneys received by the Association must be banked when first received by the Association, or by any manager, trustee or agent appointed by the Association for that purpose, in an authorised account to be opened with a bank or authorised trustee investment company or other financial institution.
- 24.3 A cheque, authorisation for payment or other document relating to the accounts must be authorised:
  - (a) by the Board; or
  - (b) in writing under the signature of the Chairperson or the Deputy Chairperson or any other Board Members who has been authorised for that purpose.
- 24.4 All accounts must be presented to, and all payments ratified at, the next Board meeting and a proper record of the Board's ratification of payments must be included in the minutes of that meeting.
- 24.5 The Board must ensure that:
  - (a) financial statements and any relevant explanations are prepared and tabled at each meeting of the Board; and
  - (b) an audited financial statement is tabled at each Annual General Meeting.
- 24.6 The financial year of the Association commences on 1 July each year and ends on the following 30 June.
- 24.7 The accounts and other records of the Association must be kept in the custody of the Chairperson or Deputy Chairperson or other person or entity determined by the Board.
- 24.8 Subject to rules 24.9 and 24.10, the accounts and other records of the Association may be inspected by any Member on reasonable notice to the Chairperson or Deputy Chairperson.
- 24.9 The Board or the Chairperson or Deputy Chairperson may refuse access, or may allow access on specified conditions of confidentiality or otherwise, to an account or other record of the association on the ground that it should remain confidential having regard to:
  - (a) the interests of the Association; or

- (b) obligations of confidentiality to, or rights to privacy of, any other person.

24.10 A determination of the Chairperson or Deputy Chairperson under this rule must be referred to the next meeting of the Board for approval, revocation or amendment.

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## 25 AUDIT

25.1 The Board must ensure that, at least once each financial year, the Association's accounts are audited, in accordance with the Act and other applicable laws, by a qualified auditor.

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## 26 COMMON SEAL AND EXECUTION OF DOCUMENTS

26.1 The common seal of the Association:

- (a) must be kept in the custody of the Chairperson or Deputy Chairperson or other person or entity authorised by the Board; and
- (b) must not be affixed to any document except pursuant to a resolution of the Board; and
- (c) must be witnessed by any 2 Officeholders.

26.2 The Board may authorise the execution of instruments and documents by or on behalf of the Association in any manner permitted by the Act or other law, including, if so permitted, by an agent or attorney under power or by one or more Board Members.

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## 27 INDEMNITY

27.1 A Board Member, a member of a committee of the Board or an employee is to be indemnified, out of the funds of the Association, from and against all charges, costs, losses, damages and expenses which they may incur in the performance of their functions, except as a result of their own wilful default.

27.2 The right to indemnity under rule 27.1 for charges, costs or expenses does not apply unless the Board has approved the charges, costs or expenses in advance.

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## 28 DISSOLUTION OF THE ASSOCIATION

28.1 Provisions relating to the winding up and dissolution of an incorporated association, including the distribution of surplus property, are contained in Part VI of the Act.

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## 29 ALTERATIONS TO THE CONSTITUTION

29.1 This Constitution may be altered only by a Special Resolution at a General Meeting in accordance with the Act.

*Note: sections 17-19 of the Act deal with the alteration of the rules of an incorporated association.*

- 29.2 Written particulars of a proposed alteration to this Constitution must be sent to all Members with the notice of the General Meeting required by this Constitution.

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### **30 DISPUTE RESOLUTION**

- 30.1 In this rule, a **Dispute**:
- (a) may be either:
    - (1) between a Member (in his or her capacity as a Member) and another Member (in his or her capacity as a Member); or
    - (2) between a Member (in his or her capacity as a Member) and the Association; and
  - (b) cannot be based on:
    - (1) a vote by Board Member contrary to any resolution lawfully made by the Board; or
    - (2) a disagreement by a Board Member (acting in his her capacity as a Board Member) with any decision or other action of the Board.
- 30.2 A Dispute may be referred to the Board by a Member or by any Board Member through the Chairperson of the Board.
- 30.3 The reference of a Dispute to the Board must be in writing and must state in reasonable detail particulars of the Dispute.
- 30.4 On receipt of a reference of a Dispute, the Board may propose to the parties to the Dispute all or any of the following procedures:
- (a) a person to be appointed to mediate the Dispute and the procedure to be adopted for the mediation;
  - (b) a person to be appointed to arbitrate the Dispute and the procedure to be adopted for the mediation;
  - (c) a person to be appointed as an expert to determine any issue or question in the Dispute and the terms of appointment of the expert;
  - (d) any other procedure or terms for resolution of the Dispute.
- 30.5 If a proposal to the parties made is accepted by the parties the Board must give all reasonable assistance to the parties to formulate and document the procedure and to resolve the Dispute.
- 30.6 Nothing in this rule restricts a party from instituting proceedings in relation to the Dispute at any time in any competent court or tribunal.

