



Constitution

Leading Age Services Australia Limited

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Leading Age Services Australia Ltd
ABN 71 156 349 594

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Constitution

Preliminary

1. Definitions

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

2. Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference of a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (f) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
 - (g) the meaning of general words is not limited by specific examples introduced by including, for example of similar expressions.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

Objects

4. Objects

- 4.1 The objects for which the Company is established are to be a not for profit, benevolent institution, whose purposes are:
- (a) to encourage, promote and assist in the delivery of services related to the health, community, accommodation and retirement living and support service needs of older persons in Australia, irrespective of their financial or other means, geographical or remote location, cultural orientation, mental state or degree of disability;
 - (b) to promote the provision of equitable and high quality Age Services, for the benefit and betterment of older persons in Australia;
 - (c) to nationally represent and support the interests of and provide guidance and encouragement to all Age Services providers in Australia, for the benefit of older persons in Australia through improved, enhanced or new standards of care or development of improved, enhanced or new means of care;
 - (d) to influence, shape and develop the immediate and long term strategic direction and vision for the betterment, care and well-being of older persons in Australia;
 - (e) to coordinate the development and delivery of educational programmes, aimed at improving standards of service and quality of care for older persons in Australia related to the provision of Age Services;
 - (f) to coordinate the development, provision and delivery of educational programs, references to research material and information relevant to Age Services with the aim to improve understanding of the issues facing older Australians in the Australian community;
 - (g) to work collaboratively with and provide support to other stakeholders engaged in Age Services or Ancillary Age Services, whose objects are substantially similar to those of the Company;
 - (h) to facilitate effective representation for and on behalf of its Members before governments and to advocate to governments in relation to Age Services on policy development with the aim of improving, broadening or enhancing the services being provided to older, disabled and other persons in need; and
 - (i) to the extent necessary to fulfil the objects under paragraphs (a) to (h), undertaking other activities within Australia and / or internationally.
- 4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects in this clause; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.1.

5. Income and property of the Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

Membership

6. Admission

- 6.1 The number of Members of the Company is unlimited.
- 6.2 The Directors may, in their absolute discretion, admit as a Member of the Company an applicant which:
- (a) provides Age Services, which are not Ancillary Age Services, and meets any other eligibility criteria for membership as determined by the Directors from time to time;
 - (b) applies for membership to the Company in writing and in a prescribed form; and
 - (c) agrees to be bound by this Constitution and any by-laws, rules and conventions adopted by the Board from time to time.
- 6.3 The Directors may appoint a Delegate to consider applications for membership. The Delegate will be authorised and responsible for determining whether an application should be accepted or rejected.
- 6.4 The Delegate may, for any reason, refer an application to the Board to determine whether an application should be accepted or rejected.
- 6.5 The Delegate or the Directors do not have to give any reason for rejecting an application for membership.
- 6.6 The Delegate may request from the applicant any additional information or material necessary to determine whether to accept or reject the application.
- 6.7 The Board may from time-to-time adopt, amend and / or replace by-laws, rules and conventions establishing and regulating membership, including without limitation as to classes of membership, voting rights, eligibility criteria and Membership Fees.

7. Register of Members

- 7.1 Upon acceptance of the application for membership and receipt of payment by the Company of the prescribed Membership Fee from the applicant, the applicant will be admitted as a Member and will be entered into the Register.
- 7.2 The Secretary must maintain the Register which must include:

- (a) the name and address of each Member;
 - (b) the date on which the Member was admitted as a Member of the Company; and
 - (c) the date (where applicable) when each Member resigns or ceases to be a Member.
- 7.3 The Register must be kept at the Company's registered office. The Register will be made available for inspection by any Member for perusal at a time and date convenient to the Secretary and the Member concerned and provided the Member has provided at least seven days written notice to the Company to inspect the Register.
- 7.4 If a Member changes address, it must notify the Secretary in writing of its new address as soon as reasonably practicable.

8. Rights of Members

- 8.1 A Member may:
- (a) vote at general meetings of the Company;
 - (b) be permitted to nominate a representative to serve on committees established from time to time by the Directors, where Directors call for such nominations from Members;
 - (c) enjoy such other privileges as may be determined by the Directors; and
 - (d) where the Directors have determined that the level of Membership Fee payable by each Member may differ on the basis of criteria determined by the Directors, the Directors may resolve that the number of votes cast by a Member will be determined according to the amount of Membership Fee paid as a result of the operation of the criteria or the Membership class held by the Member.
- 8.2 Membership is not transferrable by a Member and a Member may not assign or novate any of its associated rights or obligations without the written consent of the Directors, which may be withheld by the Directors within their absolute discretion.

9. Membership Fee

- 9.1 The Directors may from time to time determine the Membership Fee payable by each Member.
- 9.2 The Directors will determine the Membership Fee period, and the Membership Fee will be due and payable by a Member:
- (a) for the initial Membership Fee, at the time of applying for Membership; and
 - (b) for all subsequent years, within 90 days from the commencement of the relevant Membership Fee period.

10. Ceasing to be a Member

- 10.1 A Member will cease to hold membership with the Company if:
- (a) the Member resigns from membership by giving notice in writing to the Secretary;

- (b) the Member ceases to meet the eligibility criteria for membership set out in 6.2;
 - (c) the Member fails to pay the Membership Fee in accordance with clause 9.2, unless the Directors determine otherwise;
 - (d) a liquidator is appointed in connection with the winding-up of the Member;
 - (e) an order is made by a Court for the winding-up or the deregistration of the Member; or
 - (f) Directors voting at a duly constituted meeting of Directors pursuant to clause 37.3 terminate, by resolution, the membership of a Member which, in their opinion, renders it undesirable that they continue to be a Member of the Company.
- 10.2 The Directors must not vote on a resolution to terminate the membership of a Member, as permitted under clause 10.1(f), unless the Member:
- (a) has been given at least 21 days' notice of the resolution; and
 - (b) has had the opportunity to be heard at the meeting at which the resolution is proposed.
- 10.3 Any Member ceasing to be a Member:
- (a) will not be entitled to any refund (or part refund) of the Membership Fee; and
 - (b) will remain liable for and will pay to the Company all Membership Fees and moneys which were due at the date it ceased to be a Member.

Affiliation

11. Affiliates

- 11.1 The Directors may, in their absolute discretion, admit as an Affiliate of the Company an applicant which:
- (a) provides Ancillary Age Services and who, in the opinion of the Directors, is not eligible to be a Member; and
 - (b) meets any other eligibility criteria determined by the Directors from time to time.
- 11.2 An Affiliate shall pay such fees and enjoy such privileges as may be determined by the Directors from time to time.
- 11.3 An Affiliate will cease to be an Affiliate of the Company, if:
- (a) the Affiliate fails to pay any fees on the terms determined by the Directors from time to time;
 - (b) in the opinion of the Directors, the Affiliate no longer meets the eligibility criteria established pursuant to clause 11.1;
 - (c) a liquidator is appointed in connection with the winding-up of the Affiliate;
 - (d) an order is made by a Court for the winding-up or the deregistration of the Affiliate; or

- (e) Directors voting at a duly constituted meeting of Directors held pursuant to clause 37.3, terminate, by resolution, the affiliation of an Affiliate which, in their opinion, renders it undesirable that they continue to be an Affiliate of the Company.
- 11.4 Affiliates agree to be bound by this Constitution and any by-laws, rules and conventions adopted by the Board from time to time to the extent applicable to the Affiliate.
- 11.5 An Affiliate's affiliation is not transferrable by an Affiliate and an Affiliate may not assign or novate any of its associated rights or obligations without the written consent of the Directors, which may be withheld by the Directors within their absolute discretion.

General meetings

12. Calling general meetings

- 12.1 The Company must hold an Annual General Meeting at least once every 12 months and, in any event, within 5 months of the end of the Financial Year.
- 12.2 A general meeting may be called, at any time, by a minimum of two Directors.
- 12.3 A Member may only:
 - (a) request the Directors to call a general meeting; or
 - (b) call and arrange to hold a general meeting,in accordance with the requirements of the Corporations Act.

13. Notice of general meeting

- 13.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 13.2 A notice calling a general meeting:
 - (a) must specify the place, date and time of the meeting. If the meeting is to be held in two or more places, the notice must specify the technology that will be used to facilitate the meeting;
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 13.3 The business of the Annual General Meeting may include the following, even if not referred to in the notice of meeting:
 - (a) the appointment of Directors; or
 - (b) the appointment and fixing of the remuneration of the Auditor.

- 13.4 The Directors may postpone or cancel any general meeting prior to the meeting taking place, whenever they think fit (other than a meeting called as the result of a request under clause 12.3). For the avoidance of doubt, the Directors may not cancel the Annual General Meeting.
- 13.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause **Error! Reference source not found.** entitled to receive notices from the Company (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

14. Attending a general meeting

- 14.1 The Directors may invite third parties, including the Auditor, to attend a general meeting of the Members. The third party may be invited to give an address or presentation at the general meeting and answer questions of the Members and the Directors but is not entitled to vote on matters considered at the general meeting.

15. Persons entitled to notice

- 15.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director;
 - (c) the Secretary;
 - (d) the Auditor; and
 - (e) a third party invited to attend in accordance with clause 14.
- 15.2 No other person is entitled to receive notice of a general meeting, unless otherwise determined by the Directors.

Proceedings at general meetings

16. Quorum

- 16.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 16.2 A quorum of Members is ten Members, at least seven of which must be present, through their Member Representative or by proxy, at one of the places specified in the notice made under clause 13.2.
- 16.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:

- (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
- (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the Members present will constitute a quorum.

17. Chair of general meeting

- 17.1 The Chairperson, or in the Chairperson's absence the Deputy Chairperson, of Directors' meetings will be the Chair of a general meeting.
- 17.2 The Directors present may elect an alternative Chair of a general meeting if:
- (a) there is no Chairperson or Deputy Chairperson;
 - (b) the Chairperson or Deputy Chairperson is not present within 15 minutes after the time appointed for the start of the general meeting; or
 - (c) the Chairperson or Deputy Chairperson is unwilling to act as Chair of the general meeting.
- 17.3 If no election is made under clause 17.2, then:
- (a) the Members may elect one of the Directors present as Chair; or
 - (b) if no Director is present or is willing to take the Chair, the Members may elect one of the Member Representatives present as Chair for that general meeting.
- 17.4 If there is a dispute at a general meeting about a question of procedure, the Chair of the general meeting may determine the question.
- 17.5 The Chair of a general meeting does not have a casting vote in addition to his or her deliberative vote.

18. Adjournment

- 18.1 The Chair of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the Members' consent; and
 - (b) must adjourn the general meeting if the Members direct him or her to do so.
- 18.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 18.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 18.4 Notice of an adjourned general meeting must only be given in accordance with clause 13.1 if a general meeting has been adjourned for more than 21 days.

19. Decision on questions at general meetings

- 19.1 Matters at a general meeting are resolved by Members as either a general resolution or a Special Resolution.
- 19.2 Matters that require a Special Resolution are set out in Schedule 2.
- 19.3 All other matters are determined by a general resolution in accordance with the procedures set out in this clause 19.
- 19.4 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 19.5 Unless a poll is demanded:
- (a) a declaration by the Chair that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 19.6 The demand for a poll may be withdrawn.
- 19.7 A decision of Members at a general meeting may not be impeached or invalidated on the grounds that a person voting at the general meeting was not entitled to do so.

20. Taking a poll

- 20.1 A poll will be taken when and in the manner that the Chair directs.
- 20.2 The result of the poll will form the resolution of the meeting at which the poll was demanded.
- 20.3 The Chair of a general meeting may determine any dispute about the admission or rejection of a vote.
- 20.4 The Chair's determination under clause 20.3, if made in good faith, will be final and conclusive.
- 20.5 A poll demanded on the election of the Chair or the adjournment of a general meeting must be taken immediately.
- 20.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

Votes of Members

21. Entitlement to vote

- 21.1 A Member must, by written notice to the Secretary, appoint a person to act as its Member Representative in all matters connected with the company as permitted by the Corporations Act.
- 21.2 The Member Representative must be at least 18 years of age.
- 21.3 A Member may replace its Member Representative at any time by written notice to the Secretary.
- 21.4 The Directors may determine that at any general meeting, a Member who is entitled to attend that meeting is entitled to a direct vote. A direct vote includes a vote delivered to the Company by post, fax or other electronic means approved by the Directors. The Directors may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

22. Objections

- 22.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 22.2 An objection must be referred to the Chair of the general meeting, whose decision is final.
- 22.3 A vote which the Chairperson allows despite an objection is valid for all purposes.

23. Votes by proxy

- 23.1 If a Member appoints a proxy or proxies, the proxy or proxies may vote on a poll or a show of hands.
- 23.2 A proxy need not be a Member.
- 23.3 A proxy may demand or join in demanding a poll.
- 23.4 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

24. Document appointing proxy

- 24.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act.
- 24.2 For the purposes of clause 24.1, an appointment received at an electronic address will be taken to be signed by the Member if:
 - (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or

- (b) the appointment has been verified in another manner approved by the Directors.
- 24.3 A proxy's appointment is valid at an adjourned general meeting.
- 24.4 A proxy may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 24.5 Unless otherwise provided for in the proxy's appointment, the appointment of the proxy will be taken to confer an authority for the proxy to vote in a manner as the proxy sees fit.
- 24.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the Chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

25. Lodgement of proxy

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

26. Validity

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

27. Postal or electronic ballot

- 27.1 Subject to the provisions of the Corporations Act, the Directors may, in their absolute discretion, submit any question or resolution to the vote of all Members entitled to a vote at a general meeting of the Company by means of a postal or electronic ballot in such form and returnable in such manner as the Directors decide, provided that notice of any postal or electronic ballot shall be given to each Member in the manner provided in clause 13.
- 27.2 A resolution or Special Resolution approved by the Members voting by such ballot shall have the same force and effect as such a resolution would have if carried by a majority (or in the case of a Special Resolution, 75%) of the Members at a duly constituted general meeting of the Company competent to pass such a resolution.

Appointment and removal of Directors

28. Number of Directors

- 28.1 The Board shall comprise the following persons:
- (a) up to four persons appointed by the Directors who, in the opinion of the Directors, possess such qualifications or experience in any discipline, profession or field of knowledge which may be beneficial to the Company and who are not an Officer of a Member (**Independent Directors**);
 - (b) up to two persons appointed by the Directors who are Officers of Members which have Operations located in at least three States and Territories of Australia (**Multi State Directors**); and
 - (c) up to five persons elected by the Members having regard to the eligibility criteria set out in clause 28.2 (**Elected Directors**).
- 28.2 The following persons are eligible for election pursuant to clause 28.1(c):
- (a) one person who is an Officer of a Member which has at least 50 percent of Operations located in Queensland;
 - (b) one person who is an Officer of a Member which has at least 50 percent of Operations located in New South Wales and/or the Australian Capital Territory;
 - (c) one person who is an Officer of a Member which has at least 50 percent of Operations located in Victoria and/or Tasmania;
 - (d) one person who is an Officer of a Member which has at least 50 percent of Operations located in South Australia and/or the Northern Territory; and
 - (e) one person who is an Officer of a Member which has at least 50 percent of Operations located in Western Australia.

29. Term

- 29.1 An Independent Director will hold office for a term of up to 3 years from the date of their appointment, as determined by the Directors at the time of the appointment, after which he or she must retire from office. A retiring Independent Director is eligible for reappointment pursuant to clauses 28.1(a) and 29.4.
- 29.2 A Multi State Director will hold office for a term of up to 3 years from the date of their appointment, as determined by the Directors at the time of the appointment, after which he or she must retire from office. A retiring Multi State Director is eligible for reappointment pursuant to clauses 28.1(b) and 29.4.
- 29.3 An Elected Director will hold office for a term of 3 years (or a shorter or longer period to align with the third Annual General Meeting after their election), after which he or she must retire from office. A retiring Elected Director is eligible for re-election pursuant to clauses 28.1(c) and 29.4.
- 29.4 Subject to meeting eligibility in accordance with clause 28, an Independent or Multi State Director who has retired from office in accordance with clauses 29.1 or 29.2 may be re-appointed by the Board for a further term of up to 3 years. An Elected Director who has retired from office in accordance with clause 29.3 may be re-elected by the Members for a

further term of up to 3 years. A Director may only hold a position on the Board for a maximum of 12 continuous years.

30. Elected Directors

- 30.1 The Directors must call for nominations for an Elected Director's position that is scheduled for election at a particular Annual General Meeting prior to the time notice of that Annual General Meeting must be circulated to Members.
- 30.2 Where an election is necessary for an Elected Director, an election will be held at the Annual General Meeting or in accordance with clause 27. If there is only one nominee eligible to fill a position of an Elected Director, that nominee is deemed to have been elected into the position of the Elected Director.
- 30.3 The Directors may specify the format and protocols to apply for any election necessary under this clause 30 where two or more nominees receive equal votes.
- 30.4 For the avoidance of doubt, all Members may vote in any election of an Elected Director that is required under clause 28.1(c), irrespective of whether or not the Member operates a facility or offers a service in the jurisdiction for which the election is being conducted.

31. Casual vacancies

- 31.1 Where the office of an Independent Director or Multi State Director becomes vacant, the Directors may appoint their successor in accordance with clause 28.1(a) or 28.1(b) (as relevant).
- 31.2 Where the office of an Elected Director becomes vacant, the Directors may appoint a person who is an Officer of a Member which has at least 50 percent of Operations located in the jurisdiction of the departing Elected Director, to serve the remainder of the term of the departed Elected Director.

32. Less than minimum number of Directors

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

33. Suspension or Removal of Directors

- 33.1 If the conduct or position of any Elected Director is such that continuance in office appears to the majority of the Directors to render it undesirable that they continue to be a Director of the Company, the Directors at a Directors' meeting called specifically for that purpose may suspend and recommend to Members the removal of that Elected Director.
- 33.2 Within 30 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the removal of the Elected Director from office in accordance with clause 35 or annul the suspension and reinstate the Elected Director.
- 33.3 The Elected Director must be informed that he or she may:

- (a) submit a written statement to the Company for circulation to the Members before the general meeting at which the resolution is to be put to a vote; and
 - (b) speak to the motion to remove the Elected Director at the general meeting at which the resolution is to be put to a vote.
- 33.4 At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of an Elected Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.
- 33.5 If the conduct or position of any Independent or Multi State Director is such that continuance in office appears to the majority of the Directors to render it undesirable that they continue to be a Director of the Company, the Directors at a Directors' meeting called specifically for that purpose may remove that Director.

34. Chairperson and Deputy Chairperson

- 34.1 The Directors must appoint an Independent Director to be Chairperson.
- 34.2 The Chairperson shall hold office for a period as determined by the Directors (provided the term does not exceed 3 years) and may be reappointed for further terms, subject to clause 29.4.
- 34.3 The Directors must appoint one of the Directors to be Deputy Chairperson. The Deputy Chairperson shall hold office for a period as determined by the Directors (provided the term does not exceed 3 years) and may be reappointed for further terms, subject to clause 29.4.
- 34.4 The Chairperson will be the Chair of any meeting of the Directors.
- 34.5 If no Chairperson or Deputy Chairperson is appointed or if the Chairperson or Deputy Chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must appoint one of their number to be Chair of the meeting.
- 34.6 If there is a dispute at a meeting of the Directors about a question of procedure, the Chair of the meeting may determine the question.

35. Vacation of office

- 35.1 The office of a Director immediately becomes vacant if the Director:
- (a) is prohibited by the Corporations Act, the ACNC Act or any other applicable law from holding office or continuing as a Director;
 - (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
 - (c) resigns by notice in writing to the Company;
 - (d) is removed by a resolution of the Company in accordance with the Corporations Act;
 - (e) is absent from Directors' meetings for six consecutive months without leave of absence from the Directors;

- (f) in the case of a Multi-State Director :
 - (i) the Member of which the Director is an Officer ceases to be a Member;
 - (ii) the Member of which the Director is an Officer ceases to have Operations in at least 3 States or Territories;
 - (iii) the Director ceases to be an Officer of that Member; or
 - (iv) the Director is removed pursuant to clause 33;
- (g) in the case of an Elected Director:
 - (i) the Member of which the Director is an Officer ceases to have at least 50 per cent of Operations located in the jurisdiction or jurisdictions represented by the Director;
 - (ii) the Member of which the Director is an Officer ceases to be a Member;
 - (iii) the Director ceases to be an Officer of that Member; or
 - (iv) the Director is removed pursuant to clause 33;
- (h) in the case of an Independent Director:
 - (i) is considered by the Directors to be no longer independent for the purposes of clause 28.1(a); or
 - (ii) the Director is removed pursuant to clause 33; or
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

Powers and duties

36. Powers and duties of Directors

- 36.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution, the Corporations Act and the ACNC Act and ACNC Regulations do not require to be exercised by the Company in general meeting.
- 36.2 Without limiting the generality of clause 36.1 and in addition to the duties described in the ACNC Regulations, the Directors may exercise all the powers of the Company to:
 - (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
 - (d) guarantee or become liable for the payment of money or the performance of any obligations by of or any other person; and

- (e) adopt any by-laws, rules and conventions that give effect to this Constitution or necessary for the operation of the Company.

36.3 Directors are not entitled to appoint an alternate director in their absence.

Proceedings of Directors

37. Directors' meetings

- 37.1 The Directors must hold a minimum of four Directors' meetings each Financial Year.
- 37.2 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting, save that a Directors' meeting may be called on less than 48 hours written notice where the Director calling the meeting considers, acting reasonably and in good faith, there are matters requiring deliberation by the Directors on less than 48 hours' notice.
- 37.3 A Directors' meeting must be called on at least 48 hours written notice of the meeting to each Director.
- 37.4 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 37.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 37.6 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 37.7 A Director who is unable to participate in a meeting called in accordance with clause 37 must submit their apologies before the meeting.
- 37.8 A Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 37.9 Clauses 37.5 to 37.7 apply to meetings of Directors' committees as if all committee members were Directors.
- 37.10 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 37.11 A quorum is a majority of Directors. For the purpose of determining a quorum, any Directors that are not permitted to vote on a matter but are present at the meeting or have been granted leave of absence will not form part of the quorum.
- 37.12 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the Chair of the meeting may call a meeting of the Directors to deal with the matter.
- 37.13 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

38. Decisions on questions

- 38.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 43.1, each Director has one vote.
- 38.2 The Chair of a meeting of the Directors does not have a casting vote in addition to his or her deliberative vote.

Payments to Directors

39. Payments to Directors

- 39.1 No payment will be made to any Director of the Company without Members' approval except for a payment:
- (a) for services rendered to the Company by a Director in his or her capacity as Director, Chairperson or Deputy Chairperson, where the amount payable is reasonable given the circumstances of the Company;
 - (b) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable is reasonable;
 - (c) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is reasonable; and
 - (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.
- 39.2 Subject to the application of the Corporations Act, the Board may from time-to-time adopt, amend and / or replace by-laws, rules and conventions establishing and regulating remuneration of Directors.

40. Directors' interests

- 40.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.
- 40.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.
- 40.3 A Director is not disqualified from contracting with the Company in any respect, merely because of his or her role as a Director.
- 40.4 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as Auditor in the Company; and

(c) act in a professional capacity other than as Auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

40.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

(a) be present while the matter is being considered at the meeting; or

(b) vote on the matter,

unless permitted by the Corporations Act, ACNC Act or by unanimous vote of the non-conflicted Directors to do so, in which case the Director may:

(c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;

(d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

(e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

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

41. Committees and Chief Executive Officer

41.1 The Directors may establish and terminate committees from time to time, as necessary for the good governance and operation of the Company.

41.2 A CEO of the Company will be appointed by the Board on such terms and conditions as the Directors see fit. These terms and conditions are subject to review.

41.3 The CEO will be responsible to the Board.

42. Delegation

42.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a person, committee or committees (**Delegate**).

42.2 The Directors may at any time revoke any delegation of power to a Delegate.

42.3 A Delegate must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

42.4 A Delegate may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

43. Written resolutions

- 43.1 The Directors may pass a resolution without a Directors' meeting being held if the majority of the Directors entitled to vote on the resolution (excluding any Directors that have been granted leave of absence or are not permitted to vote on the matter) provide a document containing a statement that they are in favour of the resolution set out in the document.
- 43.2 For the purposes of clause 43.1:
- (a) separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy; or
 - (b) a Director is taken to have signed and agreed to the resolution if that Director replies via electronic communication that he or she agrees to the passing of the resolution (whether or not the Director has physically signed the document) and the Company may rely on the reply as evidence of that Director's agreement with the resolution.
- 43.3 Any document referred to in this clause 43 may be in the form of a facsimile or electronic transmission.
- 43.4 The minutes of Directors' meetings must record that a resolution was passed in accordance with this clause 43.
- 43.5 This clause 43 applies to meetings of Directors' committees as if all members of the committee were Directors.

44. Validity of acts of Directors

- 44.1 If it is discovered that:
- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
 - (b) a person appointed to one of those positions was disqualified,
- all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

45. Minutes and registers

- 45.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 38;
 - (d) all appointments of Officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 40.

- 45.2 Minutes must be signed by the Chair of the meeting or by the Chair of the next meeting of the relevant body.
- 45.3 The Company must keep all registers required by this Constitution and the Corporations Act and the ACNC Act.

46. Appointment of attorneys and agents

- 46.1 The Directors may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
- determined by the Directors.
- 46.2 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 46.3 The Directors may appoint attorneys or agents by facsimile or electronic transmission to act for and on behalf of the Company.

Secretary

47. Secretary

- 47.1 There must be at least one Secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 47.2 Subject to clause 47.3, the Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 47.3 The Chair of a meeting, as directed and in consultation with the Directors, may request the Secretary to remove themselves from any part of a meeting of the Directors.
- 47.4 The Directors may, subject to the terms of the Secretary's contract of engagement, suspend, remove or dismiss the Secretary.
- 47.5 The Secretary must keep the minutes of meetings and records:
- (a) of all appointments of the Directors; and
 - (b) required under this Constitution and the Corporations Act.
- 47.6 The Secretary must keep ASIC and the ACNC informed of all notifiable information within the required timeframes.

Inspection of records

48. Inspection of records

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

Notices

49. Service of notices

- 49.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution either personally, by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 49.2 A notice is deemed to be served:
- (a) if sent by post, on three days following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be deemed to have been served on the fifth day following the day on which it is posted; and
 - (b) if sent by facsimile or other electronic means, on the same day that it is sent.
- 49.3 A Member whose address recorded in the Register is not in Australia may specify in writing an address that is either within or outside of Australia to be taken to be the Member's address for the purposes of this clause 49.
- 49.4 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 49.5 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 49.6 All notices sent by post outside Australia must be sent by prepaid airmail post.

Audit and accounts

50. Audit and accounts

- 50.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company as required by law.
- 50.2 The Directors must cause the financial records of the Company to be audited as required by law.

Winding up

51. Winding up and revocation of deductible gift recipient status

- 51.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who ceased to be a Member in the preceding year,
- undertakes to contribute to the property of the Company for the:
- (c) payment of debts and liabilities of the Company (in relation to clause 51.1(b), contracted before the person ceased to be a Member);
 - (d) payment of costs, charges and expenses of winding up; and
 - (e) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required, not exceeding \$10.
- 51.2 Subject to clause 51.3, if any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but will be given or transferred to another charitable institution, body, entity or organisation which, by its constitution or governing rules:
- (a) having similar objects to the Company; and
 - (b) whose governing documents prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution,
- such charitable institution, body, entity or organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of the Australian Capital Territory for determination.
- 51.3 Upon the winding up of the Company or the revocation of the endorsement of the Company as a deductible gift recipient, any surplus comprising of DGR Contributions shall be transferred to a charitable institution, body, entity or organisation:
- (a) having similar objects to the Company;
 - (b) whose governing documents prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution; and
 - (c) to which income tax deductible gifts can be made,
- such institution, body, entity or organisation to be determined by the Member at or before the winding up of the Company or the revocation of the endorsement of the Company as a

deductible gift recipient, and in default, by application to the Supreme Court of the Australian Capital Territory for determination.

Indemnity

52. Indemnity

- 52.1 To the extent permitted by law, the Company indemnifies every person who is or has been an Officer of the Company against any liability (other than for legal costs) incurred by that person as an Officer of the Company (including liabilities incurred by the Officer as an officer of a subsidiary of the Company where the Company requested the Officer to accept that appointment).
- 52.2 To the extent permitted by law, the Company indemnifies every person who is or has been an Officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as an Officer of the Company (including legal costs incurred by the Officer as an Officer of a subsidiary of the Company where the Company requested the Officer to accept that appointment).
- 52.3 The amount of any indemnity payable under clauses 52.1 or 52.2:
- (a) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity that includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount; and
 - (b) will not include an amount that the Indemnified Officer is otherwise entitled to be indemnified and is actually indemnified by another person that is not the Company (including an insurer under an insurance policy).

Amendments to Constitution

53. Amendments to Constitution

- 53.1 This Constitution must not be amended other than in accordance with the Corporations Act and ACNC Act.

Schedule 1 - Definitions

ACNC means the Australian Charities and Not-for-Profit Commission;

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

ACNC Regulations means the *Australian Charities and Not-for-Profit Commission Regulation 2013*(Cth);

Affiliate means any entity approved to be an affiliate of the Company pursuant to clause 11.1;

Age Services means the provision of care or accommodation services, retirement living and disability support services for older, disabled and other persons in need within Australia and / or internationally and extends to include professional organisations representing the providers of those services;

Ancillary Age Services mean the provision of services that support, or are ancillary to, the provision of Age Services (but are not in of themselves the provision of Age Services);

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

ASIC means the Australian Securities and Investment Commission;

Auditor means the Company's auditor;

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

CEO means the Chief Executive Officer of the Company;

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

Chairperson means the person elected in accordance with clause 34;

Company means Leading Age Services Australia Limited;

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

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

Delegate has the meaning given to that term in clause 42.1;

Deputy Chairperson means the person elected in accordance with clause 34;

DGR Contributions means any:

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

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

Directors means all or some of the Directors acting as a board;

Elected Director means a Director elected pursuant to clause 28.1(c);

Financial Year means from 1 July to 30 June;

Independent Director means a Director appointed pursuant to clause 28.1(a);

Member means any entity approved to be a member of the Company pursuant to clause 6.2;

Member Representative means the person appointed under clause 21.1;

Membership Fee means the membership fee to be paid by a Member in accordance with clause 9;

Multi State Director means a Director appointed pursuant to clause 28.1(b);

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

Operations means revenue from the provision of Age Services;

Register means the register of Members of the Company;

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

Special Resolution means a resolution passed by at least 75% of the votes cast by Members present in person or by proxy and entitled to vote on a special resolution.

Schedule 2 Matters requiring a Special Resolution

The following matters require a Special Resolution of the Company:

- modification of this Constitution or a provision of this constitution;
- changes to the name of the Company;
- changes to the type of company;
- varying or cancelling the rights of members in a class of members;
- the Company resolves to be wound up by the Court;
- the Company resolves to be wound up voluntarily;
- matters relating to the powers and duties of a liquidator;
- confirming that an arrangement entered into between the creditors and the Company is binding on the Company if the Company is about to be wound up or is in the course of being wound up, and
- any other matter that the Corporations Act specifies from time to time.