

Constitution of Yass Valley Aged Care Limited

A Public Company Limited by Guarantee

Prepared by:

Chamberlains Law Firm Pty Limited
ACN 120 287 443

19-23 Moore Street
Turner ACT
GPO Box 746
Canberra City ACT 2601

T: 02 6215 9100
F: 02 6215 9199
E: chamberlains@chamberlains.com.au
www.chamberlains.com.au

© Chamberlains Law Firm Pty Limited

CONTENTS

PART A – COMPANY NAME AND TYPE	1
1. DEFINITIONS AND INTERPRETATION	1
2. COMPANY NAME	3
3. COMPANY TYPE	3
4. REPLACEABLE RULES	3
5. OBJECTS	3
6. COMPANY POWERS	3
PART B - MEMBERSHIP	4
7. ADMISSION	4
8. ORDINARY MEMBERS	4
9. MEMBERS OBLIGATIONS	5
10. MEMBERSHIP FEE	5
11. NON-PAYMENT OF MEMBERSHIP FEES	5
12. CESSATION OF MEMBERSHIP	5
13. APPEAL TO CESSATION OF MEMBERSHIP	6
PART C - GENERAL MEETINGS	7
14. ANNUAL GENERAL MEETING	7
15. SPECIAL GENERAL MEETINGS	7
16. GENERAL MEETINGS	7
PART D - PROCEEDINGS AT GENERAL MEETINGS	9
17. QUORUM	9
18. PRESIDING AT MEETINGS	9
19. ADJOURNING MEETING	9
20. PROCEEDINGS AND VOTING	10
21. RESOLUTION OUTSIDE GENERAL MEETING	11
PART E – BOARD OF DIRECTORS	11
22. NUMBER OF DIRECTORS	11
23. ELECTION OF DIRECTORS	12
24. TERM OF DIRECTORS	13
25. DIRECTORS’ DUTIES AND INTEREST	13
26. REMUNERATION OF DIRECTORS	13
27. REMOVAL OF DIRECTOR	13
28. CASUAL VACANCY	14
29. POWERS OF BOARD	14
PART G – BOARD MEETINGS	15
30. BOARD MEETINGS	15
31. QUORUM	16
32. BOARD VOTING	16
33. RESOLUTION OUTSIDE BOARD MEETING	16
34. DELEGATION OF POWERS – GENERAL COMMITTEE	16
35. ADVISORY COMMITTEES	17
PART H - OFFICE BEARERS	17
36. APPOINTMENT OF OFFICER BEARERS	17
37. PRESIDENT	18
38. VICE PRESIDENT	18
39. SECRETARY	18

40.	CHIEF EXECUTIVE OFFICER	19
	PART I - RECORDS	20
41.	FINANCIAL RECORDS	20
42.	AUDIT	20
43.	INSPECTION	20
44.	REGISTERS	20
	PART J - OTHER	20
45.	EXECUTION OF DOCUMENTS	20
46.	FUNDS	21
47.	NOTICES TO MEMBERS	21
48.	NOTICES TO MEMBERS OF THE BOARD	21
49.	TIME OF SERVICE OF NOTICE	22
50.	APPLICATION OF INCOME	22
51.	MEMBERS LIABILITY	22
52.	MEMBERS CONTRIBUTION	22
53.	WINDING UP AND REVOCATION	23
54.	INDEMNITY	23
55.	ALTERATIONS TO CONSTITUTION	24
56.	BY-LAWS	24

Constitution of Yass Valley Aged Care Limited

PART A – COMPANY NAME AND TYPE

1. Definitions and Interpretation

Definitions

1.1 The following words have these meanings in this Constitution unless a contrary intention appears:

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

Aged Care Act means the *Aged Care Act 1997* (Cth).

Annual General Meeting means the annual general meeting of the Company.

Board means the Board of Directors elected or appointed in accordance with this Constitution.

By-Laws means the by-laws of the Company as created and amended from time to time in accordance with clause 56.

Chairperson means:

(a) in relation to a General Meeting – the chairperson appointed under clause 18; or

(b) in relation to a Board meeting – the chairperson appointed under sub-clause 30.8 or 30.9.

Chief Executive Officer means the person appointed as the chief executive officer of the Company in accordance with this Constitution and includes any assistant or acting chief executive officer.

Constitution means this Constitution as amended or supplemented from time to time.

Company means the Company referred to in sub-clause 2.1.

Director means any person holding the position of a Director of the Company and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Financial Member means a Member who has paid all annual membership fees due and payable under clause 10.

General Meeting means the Annual General Meeting or any Special General Meeting of the Company.

Horton House and Warmington Lodge means the residential and respite aged care and community care services provided by both Horton House and Warmington Lodge, including any extension or addition to them, situated at Castor Street, Yass in New South Wales.

Majority means over fifty percent (50%).

Member means a member of the Company pursuant to clause 7.

Non-Financial Member means a Member who has not paid all the annual membership fees due and payable under clause 10.

Objects means the Objects of the Company as set out in clause 5.

Ordinary Member means a Member who the Board determines, in its sole direction, meets the criteria in sub-clause 8.1.

President means the president appointed in accordance with clause 36.

Secretary means the secretary of the Company as appointed under this Constitution from time to time.

Special General Meeting means a special general meeting of the Company.

Special Resolution has the meaning given to special resolution in the Act.

Vice President means the vice president appointed under clause 36.

Voting Member means a Financial Member entitled to vote at a General Meeting under this Constitution.

Yass Valley means the geographical area defined by the boundaries of the Yass Valley Council (Local Government Area) or its successor.

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other genders;
- (c) the reference to a person includes a natural person and any partnership, association, body, instruction, authority or entity whether incorporated or not;
- (d) references to a person includes the legal personal representatives, employees, agents, contractors, successors, and permitted assigns of that person;
- (e) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (g) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it; and
- (i) headings do not affect the interpretation of this Constitution; and
- (j) a word or phrase defined in the Act has the meaning given by the Act, unless a contrary intention appears in this Constitution.

2. Company Name

2.1 The name of the Company is **Yass Valley Aged Care Limited** (“the Company”).

3. Company Type

3.1 The Company is a public company limited by guarantee under the Act.

4. Replaceable Rules

4.1 Subject to Part 2B.4 of the Act, the replaceable rules do not apply to the Company.

5. Objects

5.1 The Objects of the Company are:

- (a) to provide residential accommodation and community care for all persons pursuant to the Aged Care Act or its replacement;
- (b) to do all such things the Board, in its sole discretion, determines is for the aid, comfort, benefit and welfare of residents in Horton House and Warrmington Lodge and all others receiving care from the Company;
- (c) to manage and administer Horton House and Warrmington Lodge;
- (d) to ensure that the provisions of the Aged Care Act and any amendments to it are complied with;
- (e) to ensure that Horton House and Warrmington Lodge are at all times used for accommodation and care of persons in accordance with the Aged Care Act or its replacement;
- (f) to raise and accept funds from:
 - (i) donations of gifts, money or kind;
 - (ii) bequests, legacies and other forms of deferred gifts; and
 - (iii) such other means as may be arranged by the Board from time to time;
- (g) to promote and co-operate in the achievement of the above objects, including liaising with representatives of authorities and other organisations with similar objects and purposes;
- (h) to provide such further care as may be considered appropriate by the Company from time to time; and
- (i) to do all other things which are incidental or conducive to these objects.

6. Company Powers

6.1 Subject to sub-clause 6.2, the Company has the legal capacity and powers of a company set out under section 124 of the Act.

- 6.2 The Company may only exercise the powers in section 124 of the Act to:
- (a) carry out the Objects of the Company set out in sub-clause 5.1; and
 - (b) do all things incidental or convenient in relation to the exercise of power under sub-clause 6.2(a).

PART B - MEMBERSHIP

7. Admission

- 7.1 The Members of the Company are:
- (a) the persons who are registered in the register of members of the Company as Members; and
 - (b) any other person admitted to membership by the Board in accordance with this Constitution.

8. Ordinary Members

Eligibility

- 8.1 Subject to sub-clause 8.2, to be eligible to be an Ordinary Member of the Company, a person must, in the Board's sole determination, be an individual and:
- (a) a resident in Yass Valley;
 - (b) a person who has significantly contributed to the Yass Valley community; or
 - (c) a relative or representative of a person receiving care from the Company.
- 8.2 A person who, in the Board's sole determination, is an employee of the Company is not eligible to be an Ordinary Member of the Company.
- 8.3 The Board may only admit a person who meets the criteria in sub-clause 8.1 to be an ordinary member of the Company.

Application for Membership

- 8.4 Every applicant for ordinary membership in the Company must submit an application to the Board (in a form approved by the Board from time to time) which must:
- (a) be in writing;
 - (b) be signed by the applicant;
 - (c) be accompanied by relevant documents or evidence to demonstrate the person meets one of the criteria specified in sub-clause 8.1; and
 - (d) be accompanied by the appropriate membership fee.

Consideration of Ordinary Membership Application

- 8.5 The Board must consider any application for membership which meets the requirements in sub-clause 8.4, as soon as practicable after it receives the application at a Board meeting.

- 8.6 If the Board accepts a person's application for membership the Secretary must notify the applicant in writing that they are accepted as an ordinary member of the Company.
- 8.7 If the Board refuses a person's application for membership, the Secretary must:
- (a) notify the applicant in writing; and
 - (b) return the applicant's membership fee (if any).
- 8.8 The Board is not required to give any reason for the rejection of an application.

Rights of Ordinary Members

- 8.9 An Ordinary Member has:
- (a) the right to attend, speak and vote at all General Meetings; and
 - (b) such further and other rights as the Board determines from time to time.

9. Members Obligations

- 9.1 This Constitution constitutes a contract between each Member and the Company and each Member agrees to be bound by the Constitution and By-Laws.
- 9.2 All Members must comply with and observe the Constitution and By-Laws and any determination or resolution which may be made or passed by the Company or the Board.
- 9.3 All Members submit to the jurisdiction of the courts of New South Wales in respect of any disputes between a Member and the Company or a Member and another Member.

10. Membership Fee

- 10.1 Each Member must pay any annual membership fee to the Company as determined by the Board from time to time.

11. Non-payment of Membership Fees

- 11.1 A Member whose membership fees are in arrears:
- (a) by less than two (2) months – is a Non-Financial Member; or
 - (b) by two (2) months or more – immediately ceases to be a Member.
- 11.2 The Board may, at its sole discretion and on such terms as it thinks fit, reinstate a Member if the Member pays all their outstanding membership fees.

12. Cessation of Membership

- 12.1 In addition to sub-clause 11.1(b), a Member immediately ceases to be a Member if they:
- (a) give the Secretary written notice of their resignation as a Member;
 - (b) die;
 - (c) becomes of unsound mind or whose estate becomes liable to be dealt with in any way under a law relating to mental health;

- (d) commit an act of bankruptcy;
- (e) in the Board's sole discretion, cease to satisfy the eligibility criteria to be a Member as specified in sub-clause 8.1;
- (f) refuses or neglects to comply with the provision of this Constitution or By-Laws; or
- (g) are guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interest of the Company.

12.2 The Secretary must notify a Member in writing if a Member's membership is terminated as a result of sub-clause 12.1(e), 12.1(f) or 12.1(g) and provide the reason for the termination.

13. Appeal to Cessation of Membership

Right to Appeal

13.1 If any Member ceases to be a Member as a result of sub-clause 12.1(e), 12.1(f) or 12.1(g) ("**Terminated Member**"), the Terminated Member may lodge a written appeal ("**Appeal**") to the Secretary to be reinstated.

Board Review of Appeal

13.2 The Board must review the Appeal at the next Board meeting after the Secretary receives the Appeal.

13.3 If the Board decides to reinstate the Terminated Member, the Secretary must notify the Member in writing, of their reinstatement within 7 days of the Board making its decision.

Members Review of Appeal

13.4 If the Board affirms the decision to cancel a Member's membership, the Board must call and hold a Special General Meeting within 3 months of their decision to determine whether the Terminated Member's membership in the Company should be reinstated.

13.5 The only business at the Special General Meeting under sub-clause 13.4 will be to determine whether the Terminated Member should be reinstated as a member of the Company.

13.6 The Board must, at least two (2) weeks prior to the Special General Meeting, provide the Terminated Member with a written notice of the intended resolution to affirm the Board's decision to terminate the member's membership.

13.7 The Special General Meeting must be held in accordance with this Constitution.

13.8 Notwithstanding sub-clause 13.7, the Chairperson of the Special General Meeting must allow the Terminated Member to present their case for reinstatement, orally or in writing at the Special General Meeting.

13.9 If the Voting Members at the Special General Meeting affirms the Board's decision to terminate the Terminated Member, the Terminated Member continues to be a non-member.

13.10 If the Voting Members at the Special General Meeting overturns the Board's decision, the Terminated Member is immediately reinstated as a member of the Company.

PART C - GENERAL MEETINGS

14. Annual General Meeting

14.1 The Company must hold an Annual General Meeting in accordance with the Act and Aged Care Act.

15. Special General Meetings

15.1 Each general meeting, other than the Annual General Meeting is a Special General Meeting.

15.2 The Board may convene a Special General Meeting:

- (a) as required under this Constitution;
 - (b) as required under the Act; and
 - (c) at anytime it thinks fit.
-

16. General Meetings

Notice of General Meeting

16.1 The Board must give at least twenty one (21) days notice of every General Meeting to:

- (a) every Voting Member, except those Voting Members who (having no registered address within Australia) have not supplied to the Company an address within Australia;
- (b) every Director; and
- (c) the auditor or auditors of the Company,

except:

- (d) for Special Resolutions which requires notice in accordance with the Act; or
- (e) where there is an agreement for shorter notice between the Voting Members.

16.2 A notice of a General Meeting must include:

- (a) the place of the meeting;
- (b) the date of the meeting;
- (c) the time of the meeting; and
- (d) the business to be transacted at the General Meeting.

Postponement of Meeting

16.3 Subject to the Act, the Board may postpone, cancel or change the venue of a General Meeting by giving at least seven (7) days written notice before the time the General Meeting was to be held to:

- (a) every Voting Member, except those Voting Members who (having no registered address within Australia) have not supplied to the Company an address within Australia;
- (b) every Director; and

(c) the auditor or auditors of the Company.

16.4 A notice postponing, cancelling or changing the venue for a General Meeting must specify the date, time and place of the General Meeting.

Failure to Receive Notice

16.5 The failure or non-receipt of a notice of a General Meeting by any person entitled to receive a notice does not invalidate any act, matter or thing done or resolution passed at the General Meeting if the failure or non-receipt occurred by accident or error.

16.6 A Member who attends the General Meeting waives any objection that Member may have in relation to receiving a notice of the General Meeting.

Use of Technology

16.7 A General Meeting may, at the sole discretion of the Board, be held in two or more places linked together by any technology that:

- (a) gives the Voting Members present at those places a reasonable opportunity to participate in proceedings;
- (b) enables the Chairperson to be aware of proceedings in each place; and
- (c) enables the Voting Members in each place to vote on a show of hands and on a poll.

16.8 If a General Meeting is held in two or more places in accordance with sub-clause 16.7:

- (a) a Voting Member present at one of the places is taken to be present at the General Meeting; and
- (b) the Chairperson of that General Meeting may determine at its sole discretion which place the meeting is taken to have been held.

Attendance at General Meeting

16.9 The Board may, at the sole discretion of the Board, invite a person to attend and speak at the General Meeting.

Exclusion from a General Meeting

16.10 The Chairperson of a General Meeting may, at its sole discretion, refuse a person admission to the General Meeting or require a person to leave the General Meeting if that person:

- (a) has a camera, tape recorder or video camera, or another audio or visual recording device;
- (b) has a placard or banner;
- (c) has an article which the Chairperson considers to be dangerous, offensive or liable to cause disruption;
- (d) refuses to produce to the Chairperson or to permit the Chairperson to examine any article or the contents of any article, in the person's possession; or
- (e) behaves or threatens to behave in a dangerous, offensive or disruptive manner.

PART D - PROCEEDINGS AT GENERAL MEETINGS

17. Quorum

- 17.1 No business can be transacted at a General Meeting unless a quorum of Voting Members is present.
- 17.2 The quorum for any General Meeting is 10 Voting Members present in person..
- 17.3 If a quorum is not met within 30 minutes of the start of the meeting, the meeting:
- (a) if convened by the requisition of Voting Members – is dissolved; and
 - (b) in any other case - stands adjourned to:
 - (i) the same day in the following week at the same time and place; or
 - (ii) to such other day, time and place as the Chairperson may determine.
- 17.4 If a quorum is not met within 30 minutes of the start of an adjourned meeting the meeting is dissolved.
- 17.5 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.
-

18. Presiding at Meetings

- 18.1 The President presides at every General Meeting as the Chairperson.
- 18.2 If:
- (a) there is no President;
 - (b) the President is not present within fifteen (15) minutes after the time appointed for the General Meeting; or
 - (c) the President is unwilling to act,
- then the Vice-President is the Chairperson for that meeting and if the Vice-President is not present or unwilling to preside, then the Voting Members will choose one of the Board members present to be the Chairperson for that meeting.
-

19. Adjourning meeting

- 19.1 The Voting Members present at a General Meeting may by Majority resolution adjourn the meeting from time to time and place to place.
- 19.2 If a General Meeting is adjourned for thirty (30) days or more, the Secretary must give all Members notice of the time and place of the adjourned General Meeting twenty one (21) days prior to the adjourned General Meeting.
- 19.3 A notice of an adjourned meeting does not need to state the business to be transacted.
- 19.4 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.
-

20. Proceedings and Voting

Proceeding

20.1 The Chairperson may conduct the General Meeting as he or she fits, including, but not limited to:

- (a) adopting any procedure necessary for the proper and orderly debate or discussion of matters;
- (b) limiting the time that a person may speak on a matter; and
- (c) the procedure for counting of votes.

20.2 The Chairperson decision on conducting a General Meeting under sub-clause 20.1 is final and binding.

Voting

20.3 At any General Meeting a resolution put to the vote will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chairperson; or
- (b) by at least five (5) Voting Members present in person.

Minutes of Meeting

20.4 Conclusive evidence of the result of the resolution, except where a poll is demanded, is:

- (a) a declaration by the Chairperson that a resolution has on a show of hands been carried (unanimously or by a particular majority) or lost; and
- (b) an entry in the minutes of the Company showing the result of the resolution.

20.5 A resolution is carried if supported by a Majority of Voting Members present at a General Meeting in person.

Poll

20.6 Any poll must be taken in such a manner as the Chairperson directs.

20.7 The result of any poll is the resolution of the General Meeting at which the poll was demanded.

20.8 Notwithstanding clause 20.6, a poll demanded on the election of the Chairperson or on a question of adjournment must be taken immediately.

Votes

20.9 On a show of hands and poll every person present who is a Voting Member has one vote.

20.10 A Non-Financial Member may not vote at any General Meeting.

Casting Vote

20.11 The Chairperson of that General Meeting has a second or casting vote if the vote on any resolution is tied.

Objection to Qualification to Vote

- 20.12 A person may only raise an objection to the qualification of a person to vote before or immediately after the result of a resolution.
- 20.13 Any objection to the qualification of a person to vote must be referred to the Chairperson of the meeting.
- 20.14 The Chairperson must make a decision as to whether a person is entitled to vote.
- 20.15 The Chairperson's decision on whether a person is entitled to vote is final and binding.

21. Resolution outside General Meeting

- 21.1 A written resolution signed by all Voting Members is valid and effectual as if it had been passed at a General Meeting duly convened and held.
- 21.2 Any such resolution may consist of several documents in similar form, each signed by one or more Voting Members.

PART E – BOARD OF DIRECTORS

22. Number of Directors

- 22.1 Subject to sub-clauses 22.3 - 22.6, the Board of Director must have at least seven (7) Directors and a maximum of twelve (12) Directors.
- 22.2 The Board may, at its sole discretion, determine the number of Directors of the Board from time to time.

Restriction on residents or their representatives being a Director

- 22.3 Notwithstanding anything in this Constitution, at any time, only one Director of the Board may be:
- (a) a representative of a resident or residents receiving care from the Company; or
 - (b) a relative of a resident receiving care from the Company.
- 22.4 Notwithstanding anything in this Constitution, no resident receiving care from the Company may be elected as a Director.

Skills Based Board Definition

- 22.5 For the purpose of this clause 22, "**Skills**" means demonstrable experience or expertise in corporate governance and:
- (a) accommodation for the aged;
 - (b) aged care;
 - (c) property management and development;
 - (d) asset management;
 - (e) management;
 - (f) social policy;

- (g) law;
- (h) accountancy;
- (i) corporate finance; or
- (j) any other area the Board determines from time to time.

Skills Based Board

22.6 The Board may, at its sole discretion, determine the number of Directors of the Board which must:

- (a) have one or more of the Skills; or
- (b) be required to attend training to acquire one or more of the Skills, before being appointed as a Director.

23. Election of Directors

Initial Directors

23.1 The initial Directors of the Company are the directors in office of the previous Yass District Aged Care Services at the date this Constitution is adopted by the Company.

23.2 The initial Directors of the Company are directors of the Company until the first Annual General Meeting of the Company.

23.3 The initial Directors are eligible for election as a Director at the first Annual General Meeting of the Company.

Election of Directors

23.4 Subject to sub-clauses 22.3, 22.6 and 23.6, at every Annual General Meeting from the date of incorporation of the Company, the Voting Members will elect the Directors of the Company to satisfy sub-clause 22.1.

23.5 The election of the Directors will be conducted in the manner the Board determines from time to time.

Restrictions on being a Director

23.6 A person may only be considered or nominated for election as a Director if:

- (a) he or she has been nominated and seconded for election as a Director by 2 Voting Members in writing;
- (b) the nomination has been signed by 2 Voting Members; and
- (c) the nomination has been provided to Secretary at least 14 days before the Annual General Meeting.

23.7 A person may only be nominated or elected as a Director if the person is a Financial Member.

24. Term of Directors

Term

- 24.1 Except for the initial Directors at incorporation of the Company, a Directors term of office commences from the end of the Annual General Meeting in which they were elected.
- 24.2 Except for the initial Directors at incorporation of the Company and subject to sub-clause 24.3, a Director's term of office ceases at the end of the 2nd Annual General Meeting from the date in which they were elected.

Term of Directors elected at first annual general meeting

- 24.3 Notwithstanding sub-clause 24.2, one half plus one of the total number of Directors elected at the 1st Annual General Meeting must retire at the end of the 2nd Annual General Meeting of the Company (i.e. in 2012).
- 24.4 The Directors which must retire at the end of the 2nd Annual General Meeting will be decided as follows:
- (a) firstly – any Director who wishes to retire at the 2nd Annual General Meeting; and
 - (b) secondly – by a random ballot draw conducted by the Secretary.

25. Directors' Duties and Interest

Duties under the Act

- 25.1 Each Director must comply with sections 180 to 183 of the Act.

Disclosure of Interest

- 25.2 Each Director must comply with section 191 of the Act.

Director's Interest in a matter

- 25.3 Each Director must comply with section 195 of the Act.

Obligation of confidentiality

- 25.4 Each Director and officer of the Company must keep the transactions and affairs of the Company confidential unless they are required to disclose them:
- (a) in the course of their duties as an officer of the Company;
 - (b) by the Board or the Company in General Meeting; or
 - (c) by law.

26. Remuneration of Directors

- 26.1 Subject to sub-clause 50.3 , Directors are not entitled to remuneration from the Company.

27. Removal of Director

- 27.1 Subject to the Act, the Voting Members may by Majority resolution remove any Director before the expiration of his period of office.

27.2 A person automatically and immediately ceases to be a Director if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (b) becomes prohibited from being a Director of a Company by reason of any order made under the Act;
- (c) becomes of unsound mind;
- (d) their estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns his office by notice in writing to the Company;
- (f) for more than six (6) months is absent without permission of the Board from meetings of the Board held during that period;
- (g) holds any office of profit under the Company without the Board's consent;
- (h) is removed from office under sub-clause 27.1;
- (i) ceases to qualify as a Director under sub-clauses 23.6 or 23.7; or
- (j) is directly or indirectly interested in any contract or proposed contract with the Company, except as permitted under this Constitution.

28. Casual Vacancy

28.1 The Board may appoint any Voting Member as a Director to fill a casual vacancy.

28.2 Any Director appointed under clause 28.1 will hold office until the next Annual General Meeting

28.3 Notwithstanding sub-clause 28.2, a Director under sub-clause 28.1 may continue to hold office if the Voting Members confirm their appointment at the next Annual General Meeting.

29. Powers of Board

Exercise of Powers

29.1 Except for anything which this Constitution or the Act requires to be done by the Company in a General Meeting, the Board has the power to:

- (a) control and manage the business and affairs of the Company;
- (b) exercise all such power and do all such things as may be exercised or done by the Company; and
- (c) make, amend and repeal By-Laws in relation to the affairs of the Company.

29.2 The Board must exercise its powers to promote the Objects.

Liability of Board

- 29.3 No action must be taken against the Board for any act or decision it makes in accordance with this Constitution, if there is a subsequent resolution by the Company in General Meeting invalidating the act or decision.

PART G – BOARD MEETINGS

30. Board Meetings

Board Meetings

- 30.1 The Board must meet at least four (4) times each calendar year to carry out its duties and responsibilities.
- 30.2 The Board may adjourn and otherwise regulate its meetings and proceedings as it thinks fit.
- 30.3 A member of the Board may at any time, and the Secretary will on the request of a member of the Board, summon a meeting of the Board.

Notice of Board Meetings

- 30.4 All members of the Board must be given at least seven (7) days notice of a Board meeting, unless agreed otherwise by all the members of the Board.
- 30.5 The Secretary must give each member of the Board a written notice of a Board meeting in accordance with sub-clause 30.4 and the notice must:
- (a) specify the day, time and place of the meeting; and
 - (b) state the business to be transacted.

Use of Technology

- 30.6 A Board meeting may be held using any technology consented to by all the members of the Board.
- 30.7 The consent to use of technology may be a standing one and a member of the Board may only withdraw consent within a reasonable period before the meeting.

Chairperson

- 30.8 The President presides at every Board meeting as Chairperson.
- 30.9 If:
- (a) there is no President; or
 - (b) at any Board meeting the President is not present within ten minutes after the time appointed for holding the meeting; or
 - (c) being present, the President is unwilling to preside,

then the Vice-President is to be Chairperson for that meeting and if the Vice-President is not present or unwilling to preside, then the members of the Board will choose one of the members of the Board present to be the Chairperson for that meeting.

31. Quorum

- 31.1 No business can be transacted at a Board meeting unless a quorum is present.
- 31.2 The quorum for any Board meeting is five (5) Directors.
- 31.3 If there are not enough members of the Board in office to form a quorum, the remaining members of the Board may act only:
- (a) to increase the number of members of the Board to a quorum; or
 - (b) to call a General Meeting of the Company.

32. Board Voting

Voting

- 32.1 Subject to sub-clauses 32.4 and 32.5, each member of the Board has one vote on any resolution of the Board.
- 32.2 All decisions of the Board are determined by Majority vote of members of the Board present at the Board meeting.
- 32.3 The Chairperson of the Board meeting has a second or casting vote if the vote on a resolution is tied.

Restrictions on Voting

- 32.4 A member of the Board may not vote in respect of any contract or proposed contract which he or she has an interest in.
- 32.5 A member of the Board may not vote in respect of any matter which he or she has an actual or potential conflict of interest.
- 32.6 If a member of the Board votes in breach of sub-clause 32.4 or 32.5, their vote does not count.

33. Resolution outside Board Meeting

- 33.1 A written resolution signed by all members of the Board entitled to vote is valid and effectual as if it had been passed at a Board meeting duly convened and held.
- 33.2 Any such resolution may consist of several documents in similar form, each signed by one or more of the members of the Board.

34. Delegation of Powers – General Committee

Establishment of General Committee

- 34.1 The Board may establish any general committees it sees fit.
- 34.2 At least fifty percent (50%) of the people on the general committee must be members of the Board.

Power of General Committee

- 34.3 The Board may delegate to one or more general committees, any of its powers and/or functions as it thinks fit, except:
- (a) duties imposed on the Board as the Directors of the Company by the Act or the general law;
 - (b) the power to delegate under this clause 34; and
 - (c) those functions that cannot be delegated under the Act, Aged Care Act or any other law.

Operation of General Committee

- 34.4 Any general committee must comply with any directions given by the Board.
- 34.5 The general committee must operate in accordance with the directions of the Board.

Revocation of delegation

- 34.6 The Board may at any time revoke wholly or in part any delegation to a general committee.

35. Advisory Committees

Establishment of Advisory Committees

- 35.1 The Board may appoint one or more advisory committees consisting of such persons as the Board thinks fit.

Power of Advisory Committees

- 35.2 An advisory committee must only act in an advisory capacity and cannot bind the Company or the Board.

Operation of Advisory Committee

- 35.3 Any advisory committee must comply with any directions given by the Board.
- 35.4 The advisory committee must operate in accordance with the directions of the Board.

PART H - OFFICE BEARERS

36. Appointment of Officer Bearers

- 36.1 At the first Board meeting following each election or appointment of the Directors by the Company, the Board must, by Majority elect a Director to each of the following positions:
- (a) President; and
 - (b) Vice President and
 - (c) Secretary
- on such terms as they think fit.
- 36.2 If there is no Chief Executive Officer, at the first Board meeting following each election or appointment of the Directors by the Company, the Board must, by Majority elect a Director as Secretary, on such terms as they think fit.

37. President

Power of President

37.1 The Board may vest in the President such powers and authority as it may from time to time determine.

37.2 The President will exercise all such powers and authority in accordance with the Board's direction.

Appointment of President

37.3 If the position of President is vacant, the Board may appoint a Director to be the President.

Ceasing to be President

37.4 The Board may suspend or remove the President at its sole discretion.

37.5 If the President ceases to be a Director they will also immediately cease to be the President.

37.6 If the President becomes incapable of performing his or her duties, the Board may appoint another Director to act as President on a temporary basis.

38. Vice President

Power of Vice President

38.1 The Board may vest in the Vice President such powers and authority as it may from time to time determine.

38.2 The Vice President will exercise all such powers and authority in accordance with the Board's direction.

Appointment of Vice President

38.3 If the position of Vice President is vacant, the Board may appoint a Director to be the Vice President.

Ceasing to be the Vice President

38.4 The Board may suspend or remove the Vice President at its sole discretion.

38.5 If the Vice President ceases to be the Director they will also immediately cease to be the Vice President.

38.6 If the Vice President becomes incapable of performing his or her duties, the Board may appoint another Director to act as Vice President on a temporary basis.

39. Secretary

Power of Secretary

39.1 The Board may vest in the Secretary such powers and authority as it may from time to time determine.

39.2 The Secretary will exercise all such powers and authority in accordance with the Board's direction and the Act.

Appointment of Secretary

39.3 If the position of Secretary is vacant, the Board may appoint a Director or the Chief Executive Officer to be the Secretary.

Ceasing to be Secretary

39.4 The Board may suspend or remove the Secretary at its sole discretion.

39.5 If the Secretary is a Director and then ceases to be a Director, they will also immediately cease to be the Secretary.

39.6 If the Secretary becomes incapable of performing his or her duties, the Board may appoint the Chief Executive Officer or another Director to act as Secretary on a temporary basis.

40. Chief Executive Officer

Appointment and Removal of Chief Executive Officer

40.1 The Board may, at its sole discretion, appoint, suspend or remove a Chief Executive Officer on such terms and conditions as the Board thinks fit.

Termination of Chief Executive Officer

40.2 A person automatically and immediately ceases to be the Chief Executive Officer if the Chief Executive Officer:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (b) becomes of unsound mind;
- (c) their estate is liable to be dealt with in any way under the law relating to mental health;
- (d) resigns his office by notice in writing to the Company; or
- (d) is removed from office under sub-clause 40.1.

Acting as Secretary and Public Officer

40.3 The Chief Executive Officer is also the:

- (a) Secretary of the Company;
- (b) Secretary for all Board meetings; and
- (c) public officer of the Company,

unless the Board determines otherwise.

Powers of Chief Executive Officer

40.4 The Board may vest in the Chief Executive Officer such powers and authority as it may from time to time determine.

40.5 The Chief Executive Officer will exercise all such powers and authority in accordance with the Board's direction.

40.6 The Chief Executive Officer must act in accordance with the Act.

40.7 The Chief Executive Officer must discharge all functions conferred on the Chief Executive Officer under this Constitution or the Act.

PART I - RECORDS

41. Financial Records

- 41.1 The Company must keep the financial records required by the Act.
 - 41.2 The financial records must be audited as required by the Act.
 - 41.3 The audited financial records must be provided to Members as required by the Act.
-

42. Audit

- 42.1 A properly qualified auditor(s) must be appointed and his or their duties regulated in accordance with the Act.
-

43. Inspection

- 43.1 A Member is not entitled to inspect the Company's books, unless authorised by:
 - (a) the Board;
 - (b) the Voting Members by Majority resolution; or
 - (c) the Act.
-

44. Registers

- 44.1 The Company must keep the registers required by the Act and the Aged Care Act.
 - 44.2 The Company must keep the records for the minimum period as specified in the Act and the Aged Care Act.
 - 44.3 The Company must make the registers available to Members as required by the Act.
 - 44.4 The Secretary must ensure the registers of the Company are accurate and up to date.
-

PART J - OTHER

45. Execution of Documents

Execution of Documents

- 45.1 The Company may execute any agreement, deed or other document in accordance with section 127 of the Act.

Common Seal

- 45.2 The Board:
 - (a) may decide whether or not the Company has a common seal; and
 - (b) is responsible for the safe custody of that seal (if any).

Use of Common Seal

45.3 The common seal may only be used with the authority of the Board.

46. Funds

Funds Management

46.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be, by:

- (a) any two Directors; or
- (b) in such other manner as the Board from time to time determines.

46.2 All payments made by electronic transfer must be authorised by:

- (a) two (2) signatories nominated by the Board; or
- (b) in such other manner as the Board from time to time determines.

Source of Funds

46.3 The funds of the Company will be derived from government subsidies, resident's contributions, donations, bequests and such other sources as the Board determines from time to time.

47. Notices to Members

47.1 The Company may give notice to a Member:

- (a) personally;
 - (b) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member;
 - (c) by sending it by post to the registered office of the Member if the Member is a company or association; or
 - (d) by sending it to the fax number or electronic address (if any) nominated by the Member.
-

48. Notices to members of the Board

48.1 The Company may give notice to a member of the Board:

- (a) personally;
 - (b) by sending it by post to the member of the Board's usual residential or business address or any other address nominated by them;
 - (c) if a notice calling a meeting – by sending it to the fax or electronic address (if any) nominated by the member of the Board, only if all of the members of the Board have consented to the use of that technology; or
 - (d) if any other notice – by sending it to the fax or electronic address (if any) nominated by the members of the Board.
-

49. Time of Service of Notice

- 49.1 A notice sent by post is taken to be given 2 business days after posting.
- 49.2 A notice sent by fax or other electronic means, is taken to be given on the business day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address).

50. Application of Income**Application of Income**

- 50.1 The income and property of the Company must be applied solely towards the promotion of the Objects.

Restrictions on Application of Income

- 50.2 The Company must not pay or transfer (directly or indirectly) by way of dividend, bonus or otherwise any portion of the income or property to any Member.

Payments to Members

- 50.3 Notwithstanding sub-clause 51.2, the Company may pay in good faith to any Director:
- (a) for out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; or
 - (b) for any service rendered to the Company by the Director in a professional or technical capacity as approved by the Board, other than in their capacity as Director.
- 50.4 Any payment under this clause 51 must be commercially reasonable for the service.

51. Members Liability

- 51.1 The liability of the Members is limited.

52. Members contribution

- 52.1 Every Ordinary Member of the Company agrees to contribute to the assets of the Company in the event of the Company being wound up:
- (a) while they are an Ordinary Member; or
 - (b) within one year after ceasing to be an Ordinary Member,
.....for:
 - (c) payment of the debts and liabilities of the Company (contracted before the time at which the Ordinary Member ceases to be an Ordinary Member);
 - (d) the costs, charges and expenses of winding up; and
 - (e) the adjustment of the rights of the contributories among themselves.
- 52.2 The maximum an Ordinary Member is required to contribute under clause 52.1 is two dollars (\$2).

53. Winding Up and Revocation

- 53.1 Subject to sub-clause 53.2, if the Company is wound up or dissolved, any assets remaining after satisfaction of all the Company's debts and liabilities, must be distributed or transferred to an organisation that:
- (a) Is preferably located within Yass Valley and has objectives in its constituent documents that include "to provide or fund aged care" or similar objectives;
 - (b) is an incorporated association, a company limited by guarantee, or is otherwise a not-for-profit organisation prohibited from distributing dividends or surplus capital to its members; and
 - (c) is approved by the Yass Valley Council or its successor, in its role as representative of the whole Yass Valley community, as the appropriate body to receive the assets for the benefit of the Yass community.
- 53.2 If the Company is a deductible gift recipient when the Company is wound up or dissolved, any distribution or transfer under sub-clause 53.1 must be to an organisation that is a deductible gift recipient for the purposes of any Commonwealth taxation act.
- 53.3 If the endorsement of the organisation as a deductible gift recipient is revoked, the following shall be transferred to another organisation to which income tax deductible gifts can be made – any surplus: (a) gifts of money or property for the principal purpose of the organisation (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation, and (c) money received by the organisation because of such gifts and contributions.
- 53.4 If no organisation is determined by the Yass Valley Council in accordance with sub-clause 53.1, a Director must apply to the Supreme Court for a determination on the organisation to which the property of the Company will be transferred.

54. Indemnity

Indemnity

- 54.1 Every person who is or has been a:
- (a) Director;
 - (b) Chief Executive Officer (including as a secretary); or
 - (c) other officer of the Company,
- is indemnified, to the maximum extent permitted by the Act and law, out of the property of the Company.
- 54.2 Subject to sub-clauses, 55.3 and 55.4, the Company indemnifies the persons referred to in sub-clause 54.1 against any liability for costs and expenses incurred by that person:
- (a) in defending any proceedings (whether civil or criminal) relating to that person's position with the Company;
 - (b) in connection with any administrative proceedings (whether civil or criminal) relating to that person's position with the Company; and
 - (c) in connection with any application in relation to any proceedings (whether civil or criminal) relating to that person's position with the Company.

Limitation of Indemnity

54.3 The indemnity in sub-clause 55.2 only applies if:

- (a) judgment is given in that person's favour;
- (b) the person is acquitted;
- (c) the proceedings is withdrawn before judgment; or
- (d) relief is granted to that person under the Act by a court.

54.4 The indemnity in this clause does not apply to a liability arising out of conduct involving a lack of good faith or dishonesty.

Insurance

54.5 Subject to the Act, the Company must enter into and pay premiums on contracts of insurance over a:

- (a) Director;
- (b) Chief Executive Officer (including as a secretary); or
- (c) other officer of the Company,

in relation to any indemnity provide by the Company to them under this clause 54.

55. Alterations to Constitution

55.1 The Constitution may be altered, repealed and expanded by the Voting Members in a General Meeting in accordance with the Act.

56. By-Laws

56.1 The Board may formulate, approve, issue, adopt, interpret and amend such by-laws for:

- (a) the proper advancement, management and administration of the Company;
- (b) qualifications of Members and applicants for membership;
- (c) procedure for nomination and election of Directors;
- (d) delegation of its powers to committees;
- (e) the power, role and function of any committee; and
- (f) the advancement of the Objects,

as it thinks necessary or desirable.

56.2 All by-laws must be consistent with this Constitution and the Act.

56.3 All by-laws made under this clause 56 are binding on the Company and its Members.