

# CLAYTON CHURCH HOMES INC.

## CONSTITUTION

### 1. NAME

The name of the Association is Clayton Church Homes Incorporated (**Association**).

### 2. OBJECTS OF THE ASSOCIATION

The objects of the Association are:

- (a) To establish operate and maintain facilities of the highest possible standard for the care or benefit of the aged;
- (b) To provide residents with levels of care as close as possible to those which may be found in a private home;
- (c) To identify and to respond to emerging needs and trends in the care of the aged;
- (d) To provide sound financial management as provided for in Rule 4; and
- (e) To operate as a not-for-profit entity.

### 3. POWERS OF THE ASSOCIATION

The powers of the Association are as provided for by section 25 of the *Associations Incorporation Act, 1985* and include:

- (a) To liaise with government departments, funding agencies and other authorities in order to further the best interests of the organisation and its residents;
- (b) To register and use registered business name/(s) as considered necessary;
- (c) To open and operate bank accounts;
- (d) To borrow money for the purposes of the Association upon such terms and conditions as the Association thinks fit;
- (e) To give such security for the discharge of liabilities incurred by the Association as the Board thinks fit;
- (f) To purchase lease take on hire or in exchange or otherwise acquire any real or personal property rights and privileges which the Association or its Board may think necessary or convenient for the purpose of the Association and to sell lease mortgage exchange and dispose of any property rights or privileges not required;
- (g) To receive bequests legacies gifts and donations;
- (h) To invite and accept deposits of money from any person on such terms and conditions as may be determined by the Board from time to time and to give security for any money received and for interest thereon;
- (i) To maintain repair build upon alter add to improve extend develop or otherwise deal with the property and assets of the Association;
- (j) To invest and deal with any moneys of the Association not immediately required upon such securities or investments and in such manner as may from time to time be determined; and

- (k) To do all such acts and things as may seem to be incidental or conducive to the attainment of the foregoing objects and powers or any of them.

#### **4. PROPERTY OF THE ASSOCIATION**

The income and property of the Association shall be applied solely towards the promotion of the objects of the Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever to the profit of the members or relatives of members of the Association, providing that nothing herein shall prevent the payment in good faith of remuneration to any officer or servant of the Association in return for any services actually rendered to the Association or reasonable and proper rental for premises let by any member to the Association.

#### **5. MEMBERSHIP**

The members of the Association shall be:

- (a) The members of Clayton Wesley Uniting Church;
- (b) The residents of the independent living units and residential care facilities of the Association (“**Homes**”); and
- (c) The members of such other organisations as may be affiliated with the Association from time to time.

#### **6. AFFILIATE MEMBERSHIP**

Affiliation of any organisation with the Association shall first be considered by the Board, which may in its absolute discretion recommend affiliation to an Annual General Meeting or an Extraordinary General Meeting called for the purpose. Approval of the affiliation shall require a two-thirds ( $\frac{2}{3}$ ) majority of those members present and voting at the General Meeting.

#### **7. BOARD OF DIRECTORS**

- 7.1 A Board of Directors to be known as Clayton Church Homes Incorporated Board (**Board**) appointed as hereinafter provided shall have the control and management of the Homes and the affairs of the Association subject however to any direction given from time to time by an Annual General Meeting or an Extraordinary General Meeting.
- 7.2 The Board shall be comprised of seven (7) persons whose appointment is approved by the Board after a recommendation to their appointment has been given by the Nominations Committee and whose appointment is then ratified by the members of the Association at a General Meeting.
- 7.3 Board members shall serve for a period of three (3) years commencing from the ratification by the members of their appointment and will be eligible for re-appointment subject to prior recommendation of the Nominations Committee and ratification by the members of the Association at a General Meeting.

- 7.4 A motion for ratification of the appointment of a Board member may only be opposed at a General Meeting if:
- (a) Material circumstances adverse to such appointment are identified of which the Nominations Committee confirms in writing to the Board it was not aware at the time of giving its approval; and
  - (b) Evidence of such material circumstances is provided to the Association for distribution to members (in such manner and at such time as the Board determines having regard to the nature and content thereof) prior to the relevant General Meeting.
- 7.5 In the event that any evidentiary material is provided in relation to a motion for ratification the candidate for appointment to the Board to whom it relates will be entitled to respond (and provide any relevant material in support thereof) in accordance with such procedures as the Chair deems will provide procedural fairness to the candidate.
- 7.6 In the event that a motion for ratification in respect of a candidate approved by the Board is defeated the Board will then proceed as soon as practicable to approve a further candidate after recommendation by the Nominations Committee and seek ratification of that further candidate by the members in a General Meeting.
- 7.7 Any vacancy in the office of a Board member (including as provided for in Rule 7.18) may be filled by the Board after prior recommendation by the Nominations Committee and the member so appointed by the Board shall hold office for the unexpired portion of the term of the position vacated.
- 7.8 At its first meeting after each Annual General Meeting, the Board shall elect from amongst its members a Chair and such other office bearers as the Board may determine. Persons so elected by the Board shall hold office until the first meeting of the Board after the next Annual General Meeting, provided that a vacancy in any such office whether caused by death resignation or otherwise, may be filled by the Board for the unexpired portion of the term of office.
- 7.9 The Board shall have the power to appoint such officers and employees as are required to carry out the objects of the Association, including a Public Officer as required by the *Associations Incorporation Act 1985*, and may delegate any of its powers to such officers and employees.
- 7.10 The Chief Executive Officer of the Association shall be the Secretary of the Association and of the Board and shall be responsible for maintaining all records as required by law.
- 7.11 The Board shall meet together for the dispatch of business at least bi-monthly (ie every other month) and shall be otherwise at liberty to determine its own procedures.

- 7.12 A Board meeting may be held by the Board members communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Board members do not need to be physically present for a meeting to be held. A Board member who participates in a meeting in this manner is taken to be present and entitled to vote at the meeting.
- 7.13 At all meetings of the Board, each Board member present will have one (1) vote on all motions submitted.
- 7.14 If each of the Board members who are eligible to vote on a resolution has signed a document and indicated on such document that he or she is in favour of, or opposed to, or abstain from, a resolution in terms set out in the document, and a majority of those Board members (as required by these Rules) indicate he or she is in favour of that resolution, then the resolution will be taken to have been passed at a Board meeting held on the day that the document was last signed by a Board member. For the purposes of this Rule 7.14, two (2) or more identical documents, each of which is signed by one (1) or more Board members, together constitute one (1) document signed by those Board members on the days on which they signed the separate documents. Any document referred to in this Rule 7.14 may be in the form of a facsimile transmission or in any other electronic format.
- 7.15 A quorum for meetings of the Board shall be four (4).
- 7.16 The Board shall have power to appoint any Committee considered necessary to ensure the efficient operation of the Association.
- 7.17 A member of the Board having a direct or indirect pecuniary interest in a contract or proposed contract, with the Association must disclose the nature and extent of that interest to the Board as required by the Act, and shall not vote with respect to that contract or proposed contract. The member of the Board must disclose the nature and extent of his or her interest in the contract at the next Annual General Meeting of the Association.
- 7.18 The office of a Board member becomes vacant if he or she:
- (a) Resigns from office as a Board member by written notice given to the Chair;
  - (b) Is removed from office by a special resolution of members; or
  - (c) Becomes a Disqualified Individual.

For the purposes of this Rule "Disqualified Individual" means a person who is disqualified from holding, or otherwise not permitted to hold, office as a Board member by the *Associations Incorporation Act 1985*, or the *Aged Care Act 1997*, or is disqualified or otherwise not permitted to act as a responsible entity for the purposes of the *Australian Charities and Not-For-Profits Commission Act 2012*.

## **8. ANNUAL GENERAL MEETING**

The Annual General Meeting of the Association shall be held not later than 31st October each year and shall be summoned by notice published in a daily newspaper circulating in Adelaide or other routine means of communication by the Association not less than twenty one (21) days prior to the meeting and no other notice of the meeting shall be necessary.

## **9. EXTRAORDINARY GENERAL MEETING**

- 9.1 An Extraordinary General Meeting shall be called by the Chair and shall be held within twenty eight (28) days following:
- (a) A resolution by the Board;
  - (b) Receipt of a petition signed by not less than four (4) members of the Board; and
  - (c) Receipt of a petition signed by not less than twenty (20) members of the Association.
- 9.2 Any petition calling for an Extraordinary General Meeting shall state the nature of the business to be discussed at the Extraordinary General Meeting.
- 9.3 An Extraordinary General Meeting shall be summoned by notice published in a daily newspaper circulating in Adelaide or other routine means of communication by the Association not less than twenty one (21) days prior to the holding of the meeting and no other notice shall be necessary.
- 9.4 The notice of an Extraordinary General Meeting shall state the nature of business for which the meeting has been called and advise that details are available for perusal at the office of the Association. No other business may be transacted at the Extraordinary General Meeting.

## **10. PROCEEDINGS AT GENERAL MEETINGS**

- 10.1 At every General Meeting of the Association, each member as defined in Rule 5 of this Constitution shall be entitled to be present and each shall have one (1) vote. The Chair of the Board shall be Chair of the meeting. In his or her absence, the meeting shall choose a Chair from those present. In the event of an equality of votes, the Chair shall have a casting vote as well as a deliberative vote.
- 10.2 A quorum at any General Meeting shall be fifteen (15) members.
- 10.3 Subject to Rule 10.4 and to particular majorities otherwise provided for under these Rules, resolutions put to a General Meeting will be passed by simple majority of those present and voting.
- 10.4 Any matter in respect of which a special resolution at a General Meeting is provided for under the Act, or this Constitution (and for which a particular majority is not prescribed by the Act) may be passed

by a majority of not less than two-thirds ( $\frac{2}{3}$ ) of such members of the Association as, being entitled to do so, vote in person at the relevant meeting notice for which is published in a daily newspaper circulating in Adelaide or other routine means of communication by the Association not less than twenty one (21) days prior to the holding of the meeting.

## **11. NOMINATIONS COMMITTEE**

- 11.1 There will be a Nominations Committee comprising:
- (a) Three (3) members of the Board appointed by the Board (one of whom will act as Chair of the Nominations Committee); and
  - (b) Two (2) other persons, each of whom is a member of the Association, who are elected by the members of the Association at a General Meeting and each will hold office for a term of three (3) years, provided that in the event of a vacancy arising in respect of such appointees the Nominations Committee may appoint another member of the Association as a replacement until the next Annual General Meeting whereupon the position will be vacated and submitted to such meeting for a further appointment.
- 11.2 The Nominations Committee will have such terms of reference as the Board determines from time to time having regard to contemporary corporate good governance but will carry the following responsibilities:
- (a) Assisting the Board achieve its objective of an effective composition with skills, size and commitment to adequately discharge its responsibilities and duties;
  - (b) Advertising for, identifying and recommending to the Board, nominees for appointment to membership of the Board;
  - (c) Identifying and assessing the necessary and desirable competencies and characteristics for Board membership and regularly assessing the extent to which those competencies and characteristics are represented within the Board membership; and
  - (d) Ensuring succession plans are in place to maintain an appropriate balance of skills on the Board, and reviewing those plans from time to time as it deems necessary or appropriate.

## **12. MINUTES**

- 12.1 Proper minutes of all proceedings of General Meetings of the Association and of meetings of the Board, shall be entered within one (1) month after the relevant meeting in minute books kept for the purpose.
- 12.2 The minutes kept pursuant to this Rule must be confirmed by the members of the Association or the members of the Board (as relevant) at a subsequent meeting.

- 12.3 The minutes kept pursuant to this Rule shall be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting at which the minutes are confirmed.
- 12.4 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

### **13. FINANCIAL REPORTING**

- 13.1 The accounting period for the Association shall be the 1st July to the 30th June.
- 13.2 The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association in accordance with the Act.
- 13.3 The accounts, together with the Auditor's report on the accounts, the Board's statement and the Board's report shall be laid before members at the Annual General Meeting.
- 13.4 Annual or other returns detailing the financial and other affairs of the Association (together with such other reports as may be required) shall be lodged or deposited as required by law from time to time.
- 13.5 At each Annual General Meeting, the members shall appoint an Auditor of the Association.
- 13.6 The Auditor shall hold office until the next Annual General Meeting and be eligible for re-appointment.

### **14. COMMON SEAL**

The Association shall have a common seal upon which its corporate name shall appear in legible characters. Each member of the Board shall be a seal holder, any two (2) of whom shall affix the seal by direction of the Board.

### **15. AMENDMENT TO CONSTITUTION**

Any amendment to this Constitution shall first be considered by the Board which may in its absolute discretion recommend the amendment to an Annual General or an Extraordinary General Meeting. Approval of the amendment shall require a two-thirds ( $\frac{2}{3}$ ) majority of those members present and voting at the General Meeting.

### **16. WINDING UP**

- 16.1 In the event of the winding up or dissolution of the Association any property remaining after the satisfaction of all its liabilities or debts shall be transferred as the Uniting Church in Australia (S.A. Synod)

shall direct to an institution or institutions which is or are a Public Benevolent Institution or Institutions for the purpose of the Commonwealth *Income Tax Assessment Act, 1997* (**Tax Act**).

- 16.2 If the endorsement of the Association as a deductible gift recipient under the Tax Act is revoked, the following shall be transferred to another entity (or more than one) having objects or activities of a similar nature to the Association to which income tax deductible gifts can be made as is recommended by the Board and approved by the Uniting Church in Australia (S.A. Synod) – any surplus:
- (a) Gifts of money or property for the principal purpose of the Association;
  - (b) Contributions made in relation to an eligible fundraising held for the principal purpose of the Association; and
  - (c) Money received by the Association because of such gifts and contributions.

## **17. TRANSITIONAL PROVISIONS**

In relation to Board appointments subsequent to the adoption of this Constitution:

- (a) All appointments ratified at the Annual General Meeting for 2017 will be for a period of three (3) years;
- (b) Of those whose term of office expires at the Annual General Meeting for 2018, two (2) (determined by lot by the Board) will have their term of office extended to the Annual General Meeting for 2019; and
- (c) Each may seek further appointment in accordance with Rule 7.