

Eldercare

Constitution of Eldercare Incorporated

1. Name of Association

The name of the Association shall be Eldercare Incorporated (hereinafter called "the Association").

2. Definitions

"the Act" means the **Associations Incorporation Act 1985** (as amended) of the State of South Australia or any Act which may be enacted in substitution therefore;

"the Board" means the Board of Management of the Association;

"the Synod" means the South Australian Synod of the Uniting Church in Australia or its Standing Committee.

3. Association Office

The office of the Association shall be such address as the Board may from time to time determine.

4. Objects

The objects for which the Association is established are:

- (a) to provide service to the ageing in facilities owned or operated by the Association, in private homes or other accommodation or elsewhere;
- (b) to provide service to disabled people of any age who are in need of permanent care in facilities owned or operated by the Association, in private homes or other accommodation or elsewhere;
- (c) to establish, carry on, or assist, join or be concerned in the establishment and carrying on of homes for aged people, including for those who are financially disadvantaged or who are age pensioners irrespective of their religious connections;
- (d) to establish, promote, carry on or assist, join or be concerned in the establishment and carrying on of homes funded wholly or partially by residents.

5. Powers

(1) In fulfilling its objects and purposes the Association has all the powers conferred by Section 25 of the Act, and without limiting those powers, the Association shall have the power:

- (a) to purchase, sell, take on lease or exchange, hire or otherwise acquire any real or personal property that may be deemed necessary or convenient for any of the objects or purposes of the Association;
- (b) to buy, sell and supply and deal in goods of all kinds;

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- (c) to construct, maintain and alter buildings or works necessary or convenient for any of the objects or purposes of the Association;
 - (d) to accept any gift, legacy or other bequest whether subject to a special trust or not for any one or more of the objects or purposes of the Association;
 - (e) to take such steps from time to time as the Board may deem expedient for the purpose of procuring contributions to the funds of the Association whether by way of donations, subscriptions or otherwise;
 - (f) to print and publish such newspapers, periodicals, books leaflets or other documents as the Board may think desirable for the promotion of the objects and purposes of the Association;
 - (g) to borrow and raise money in such manner and on such terms as the Board may think fit;
 - (h) to invest any moneys of the Association not immediately required for any of its objects or purposes in such manner as the Board may from time to time determine;
 - (i) to hold or administer any property on trust;
 - (j) to appoint, employ, dismiss or suspend its officers agents and servants; and
 - (k) to do all such other lawful things as are incidental or conducive to the attaining of the objects of the Association or of any of the Powers specified in the foregoing provisions of this clause.
- (2) Nothing herein contained shall be deemed to restrict or in any way limit the powers conferred upon the Association by virtue of the provisions of the Act or by any other law of the State of South Australia or the Commonwealth of Australia.

6. Income and Property of Association

The income and property of the Association wheresoever derived 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 as dividend or otherwise by way of profit to Members or relatives of Members provided that:

- (1) Remuneration may be paid in good faith to officers and employees of the Association in return for services actually rendered to the Association;
- (2) Reasonable rental be paid to Members or relatives of Members for property let or hired to the Association;
- (3) Any payment to Members or relatives of Members incidental to the Association's activities provided that it is consistent with the Association's objects.

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7. Financial Year

The financial year of the Association shall commence on the 1st day of July in each year and terminate on the 30th day of June next following.

8. Annual General Meeting

- (1) The Board shall, in each year, hold an annual general meeting.
- (2) The annual general meeting shall be held on such day (being not later than five months after the close of the financial year of the Association) as the Board may determine.
- (3) The annual general meeting shall be in addition to any other meeting that may be held in the same year.
- (4) The ordinary business of the annual general meeting shall be:-
 - (a) to confirm the minutes of the last preceding annual general meeting;
 - (b) to receive from the Board, auditor and officers of the Association reports upon the activities and transactions of the Association during the last preceding financial year;
 - (c) in every third year to elect a person to be nominated to the Synod as Chairman;
 - (d) to elect the Deputy Chairman of the Board; and
 - (e) to appoint the auditor and determine his or her remuneration (if any).
- (5) Not less than seven days' notice in writing of the annual general meeting shall be given to Members of the Board.

9. Management

- (1) The affairs of the Association shall be managed by a Board of Management constituted as provided in clause 11.
- (2) Subject to the provision of sub-clause (3) hereof the Board:-
 - (a) shall control and manage the business and affairs of the Association;
 - (b) may, subject to this Constitution, exercise all such powers and functions as may be exercised by the Association; and
 - (c) subject to the Act and this Constitution, has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Association.

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- (3) The Board may from time to time in its absolute discretion delegate the conduct and management of the business and affairs of the Association (including any of the powers contained in sub-clause (2) hereof) to any person currently employed by the Association.

10. Officers of the Association

- (1) The officers of the Association shall be:-
- (a) a Chairman;
 - (b) a Deputy Chairman; and
 - (c) a Chief Executive who shall also be the Public Officer of the Association for the purposes of the Act.
- (2) The Chairman shall be appointed by the Synod upon the recommendation of the Board and shall hold office for a period of three years from the date on which his or her appointment is declared by the Synod to take effect.
- (3) The Chairman shall be eligible for appointment for up to 9 consecutive years.
- (4) If there shall be a vacancy in the office of Chairman, the vacancy shall be filled by the Board and the person so appointed shall hold office for the balance of the period of the office which has become vacant.
- (5) The Deputy Chairman shall be elected by the Board each year at its Annual General Meeting from among the Members of the Board.
- (6) The Board may fill any casual vacancy occurring in the office of Deputy Chairman and the person so appointed shall hold office until the next Annual General Meeting of the Board.
- (7) The Chief Executive shall be appointed by the Board.

11. Board of Management

- (1) The Board of Management of the Association shall comprise:
- (a) the Chairman;
 - (b) not less than six and not more than ten persons appointed by the Synod (herein referred to as "the ordinary Board Members");
 - (c) up to two other persons who may be co-opted by the Board for a period of up to one year provided however that any such person may be co-opted by the Board for a maximum of three consecutive terms of up to one year each.
- (2) The ordinary Board Members shall hold office for a period of three years from the due date on which his or her appointment is declared by the Synod to take effect except in respect of the first appointments by the Synod in which event one-third of the ordinary Board Members

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(ignoring any fraction) shall be appointed for a period of three years, one-third (ignoring any fraction) shall be appointed for a period of two years and the balance shall be appointed for a period of one year.

- (3) The ordinary Board Members shall be eligible for appointment by the Synod for a term of three years and shall be eligible for re-appointment for a further two consecutive terms or any number of non-consecutive terms.
- (4) A person shall be eligible for appointment to the Board notwithstanding completion of three consecutive terms provided the time between completion of the three consecutive terms and the new appointment is not less than one calendar year.
- (5) Notwithstanding the requirements of sub-clause (3) and sub clause (4) above, the maximum terms of membership of the Board for up to four (4) Members nominated by the Board may, by application to the Synod, be extended beyond the maximum terms of office otherwise applicable under sub-clause (3).
- (6) If there shall be a casual vacancy among the ordinary Members of the Board, the Board may fill that vacancy for the balance of the period of the member whose place has become vacant.
- (7) For the purposes only of sub-clause (6) of this clause where a person is appointed to fill a casual vacancy the term shall be calculated from the date declared by the Synod upon which those ordinary Members of the Board last appointed by the Synod under sub-clause (2) of this clause took office.

12. Chief Executive

The Chief Executive shall be appointed by the Board at such a salary and upon such terms and conditions of service as the Board deems appropriate.

13. Vacation of Office

For the purposes of these rules, the office of an officer of the Association or a Member's membership of the Board becomes vacant if the officer or Member as the case may be:

- (a) dies;
- (b) becomes bankrupt or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his or her creditors, or makes any assignment of his or her estate for their benefit;
- (c) becomes physically or mentally incapable of exercising his or her responsibilities;
- (d) resigns his or her office or position by writing under his or her hand addressed to the Board.

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14. Meetings of the Board and of Sub-Committees

- (1) The Board shall meet at such place and at such times and on such other occasions as the Board may determine but no more than three months shall elapse between meetings.
- (2) A quorum shall be the number next above half the number of the Board for the time being.
- (3) The Chairman, or in his or her absence, the Deputy Chairman or, in his or her absence, a member elected by the Members present shall preside over all meetings of the Board.
- (4) No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to another day and time determined by the Chairman or the Deputy Chairman. Notice of the date and time to which the meeting has been adjourned shall be given to all Members. If at this later day and time a quorum is not present the meeting may be held as though a quorum were present.
- (5) Questions arising at meetings of the Board or any sub-committee appointed by the Board shall be determined by a show of hands.
- (6) Each Member present at a meeting of the Board or of any sub-committee appointed by the Board (including the person presiding at the meeting) is entitled to one vote and, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (7) Any meeting may be adjourned from time to time and place to place.

15. Executive and Sub-Committees

- (1) The Board may appoint from its Members an Executive of such number and with such powers and functions as the Board may determine from time to time.
- (2) The Board may at any time appoint or discontinue a sub-committee as it may think and shall prescribe the powers and functions thereof.
- (3) The Board may co-opt as members of a sub-committee such persons as it thinks fit, but a person so co-opted is not entitled to vote.
- (4) Unless the Board otherwise directs three appointed members of a sub-committee constitute a quorum at a meeting of the sub-committee.

16. Local Committees

- (1) Subject to sub-clause (2) of this clause the Board may appoint a Local Committee to act as a sub-committee of the Board in exercising general oversight of the administration of a Home and to ensure that all activities are in accordance with the policies and guidelines established by the Board.

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(2) The Board may determine that where special circumstances exist a Local Committee shall not be appointed for a particular home or institution.

(3) *Membership*

3.1 A Local Committee shall comprise not more than 11 members including:

- a) up to two members of the Board appointed by the Board;
- b) the Chief Executive or his nominee;
- c) the Director of Nursing where appropriate;
- d) the Director of Care of Manager where appropriate;
- e) up to 2 persons nominated by a Residents' meeting called for that purpose;
- f) up to 5 persons nominated in a manner agreed between the Board and the Local Committee from the community at large, a majority of whom shall normally be members in good standing of the parish or parishes to which the Home is related.

3.2 When an appointee of the Board is unable to attend a meeting of the Local Committee he or she may appoint another member of the Board to attend in his or her place.

3.3 The members of the Local Committee shall hold office for a period of two years from the date of appointment and are eligible for re-appointment provided, however, that in respect of the first appointment one half shall be appointment for a period of one year and one half shall be appointed for a period of two years.

3.4 No person shall be a member of a Local Committee for more than five consecutive terms unless the Board shall approve an extension by a majority of not less than two thirds of the number thereof.

3.5 The Chairman of the Committee shall be appointed by the Board from among the Committee's membership.

3.6 The Chief Executive or his nominee shall be the Secretary of the Committee.

17. Common Seal of the Association

(1) The Common Seal of the Association shall be in the form of a stamp, inscribed with the name of the Association encircling the words "Common Seal".

(2) There shall be four sealholders of the Association appointed by the Board from time to time who shall hold office only while a member of the Board and at the pleasure of the Board.

(3) A sealholder may only be removed from office at a meeting of which not less than 14 clear days' notice has been given in writing to all Members of the Board.

(4) The Common Seal of the Association shall not be affixed to any instrument except by the authority of the Board, and the affixing thereof shall be attested by the signatures of two sealholders on the authority of the Board for that purpose.

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- (5) The Common Seal shall remain in the custody of the Public Officer.

18. Accounts of Receipts, Expenditure, Etc.

The Chief Executive shall take all reasonable steps to ensure that such accounting records are kept as are necessary to record and explain the financial transactions and position of the Association and to facilitate the audit of the accounts and property of the Association.

19. Banking and Finance

- (1) The Chief Executive of the Association shall, on behalf of the Association, receive all moneys paid to the Association and forthwith after the receipt thereof issue official receipts therefor.
- (2) The Board shall cause to be opened with such bank or banks as the Board selects banking accounts in the name of the Association into which all moneys received shall be paid by the Chief Executive or a person authorised by him or her as soon as possible after receipt thereof.
- (3) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by such persons as shall be appointed by the Board for that purpose from time to time.

20. Auditor

- (1) At each annual general meeting of the Association the Members present shall appoint an auditor of the Association.
- (2) The auditor so appointed shall hold office until the annual general meeting next after that at which he or she is appointed, and is eligible for re-appointment.

The auditor must be a registered company auditor.

21. Audit of Accounts

- (1) Once at least in each financial year of the Association the accounts of the Association shall be examined by the auditor.
- (2) The auditor shall certify as to the correctness of the accounts of the Association and shall report thereon to the Members present at the annual general meeting of the Board.
- (3) The audited annual accounts of Eldercare together with the Reports and Statements of the Board and the Auditors' Report are to be given to the Synod within six months of the end of the Financial Year.

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22. By-Laws and Alterations of Rules

- (1) The Board may from time to time make repeal and amend any by-laws relating to the internal management of the Association and the operation of Local Committees of Management not inconsistent with this constitution.
- (2) This constitution may be added to repealed or amended by resolution at any annual general meeting or other meeting provided that:
 - (a) not less than 14 days' notice in writing of any such resolution shall have been given to each member;
 - (b) any such resolution shall require a majority of two-thirds of the Members present and eligible to vote thereon;
 - (c) no such addition, repeal or amendment shall have any force or effect unless and until approved by the Synod.
- (3) The amendment referred to in sub-clause (2) of this clause shall not be approved by the Synod unless the request for approval is accompanied by a certificate from the Board that the amendment is not inconsistent with any statutory requirements of the State or Commonwealth relating to the provision of services and accommodation for ageing persons.
- (4) The Synod shall be the sole authority for the interpretation of this constitution and the decision of the Synod upon any matter affecting the Association and not provided for by this constitution shall be final and binding on the Members.

23. Dissolution and Disposal of Property

- (1) If at least 21 days written notice of a duly convened meeting of the members of the Association has been given, specifying the intention to propose a resolution as a special resolution for the winding up or dissolution of the Association at that meeting, and if the special resolution is passed at that meeting referred to in this paragraph by a majority of not less than three quarters of such members of the Association as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting, and if the Synod shall approve, the Board shall thereupon or at such future date as shall be specified by the Synod, proceed to realise the property of the Association.
- (2) If there be any surplus assets on realisation such surplus shall not be paid or distributed among the Members of the Association but shall be given or transferred as the Synod directs to some other institution or body having objects similar to those of the Association or which is a public benevolent institution or fund providing relief to persons in Australia in necessitous circumstances **PROVIDED**
 - (a) that the institution or fund is approved for the purposes of Section 78(1)(a) of the **Commonwealth Income Tax Act**; and

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- (b) that the institution or fund shall prohibit the distribution of its income and property among its Members.

ORIGINAL: June 1985

AMENDED: Board of Management: 11 March 2008
Synod Standing Committee: 28/29 March 2008 – Decision No PS08.03
Corporate Affairs Commission: A19126 13 May 2008

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