

CONSTITUTION

WESTERN AUSTRALIAN RETIREMENT VILLAGES RESIDENTS ASSOCIATION INC

1. NAME OF ASSOCIATION

The name of the Association is "Western Australian Retirement Villages Residents Association Inc".

2. DEFINITIONS

In these rules (Constitution), unless the contrary intention appears:

"ballot" means voting conducted in a written form;

"Committee" "Council" means the Council of the Association operating in accordance with Rule 10;

"financial year" means the period commencing on 1 January and ending on 31 December in the same year;

"General Meeting" means a meeting to which all members are invited;

"member" means a member of the Association;

"ordinary resolution" means a resolution other than a special resolution;

"special resolution" means a resolution passed by a majority of not less than three-quarters of all members who vote in person or by proxy at a General Meeting of which notice specifying the intention to propose a resolution as a special resolution has been given;

"the Act" means the *Associations Incorporations Act 2015*;

"the Association" means the Western Australian Retirement Villages Residents Association Inc;

"the chairperson" means the person presiding at a General or Council Meeting;

"the Commissioner" means the Commissioner for Consumer Protection exercising powers under the Act.

3. OBJECTS AND PURPOSES OF THE ASSOCIATION

3.1 The objects and purposes of the Association are:

- (a) to provide a forum where residents can express their concerns and share their experiences of living in a retirement village;
- (b) to assist residents in living in and participating in the day to day operations of their retirement village;
- (c) to act as an advocate on behalf of residents and to lobby for changes beneficial to residents; and
- (d) to do such other things and acts that advance the interests of residents in retirement villages.

3.2 The property and income of the Association shall be applied solely towards the promotion of the objects and purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except in good faith in the promotion of those objects and purposes.

3.3 No portion of the income or property of the Association may be paid directly or indirectly, by way of dividend, bonus or otherwise to any member. This does not prevent:

- (a) the payment in good faith of remuneration to any officer, employee or member in return for any services actually rendered to the Association or for goods supplied in the ordinary and usual course of business; and
- (b) the reimbursement of expenses incurred by any member on behalf of the Association.

4. POWERS OF THE ASSOCIATION

4.1 The Association may do all things necessary and convenient for carrying out its objects and purposes and, in particular, may:

- (a) acquire, hold, deal with and dispose of any real or personal property;
- (b) open and operate bank accounts;
- (c) invest its money in any security in which trust monies may be lawfully invested;

- (d) borrow money on such terms and conditions as the Association thinks fit;
- (e) give such security for the discharge of liabilities incurred by the Association as the Association thinks fit;
- (f) appoint agents to transact any business of the Association on its behalf;
- (g) appoint and remunerate staff to assist in the operation of the Association; and
- (h) enter into any other contract it considers as necessary or desirable in the pursuit of its objectives.

- 4.2 No member shall have power to commit the Association in any way whatsoever without the authority of the Council or the members in a General Meeting.
- 4.3 These rules bind every member of the Association to the same extent as if every member and the Association had signed and sealed these rules and agreed to be bound by all their provisions.

5. MEMBERSHIP OF THE ASSOCIATION

- 5.1 Membership of the Association is open to residents of a retirement village to which the Retirement Villages Act applies.
- 5.2 A person may become a member of the Association by:
 - (a) being a resident of a retirement village where the resident body (by whatever name known) determines to pay a subscription to the Association for all the residents of the retirement village and provides the name of a contact person;
 - (b) being a resident of a retirement village and applying direct to the Council in writing in such form as the Council from time to time directs.
- 5.3 The Council shall consider each application made under sub-rule 5.2(b) at a Council meeting and shall at that Council meeting or a subsequent Council meeting accept or reject the application. The Council may determine not to accept any application for membership.

6. REGISTER OF MEMBERS OF THE ASSOCIATION

- 6.1 The Secretary shall keep and maintain a register of the individual members and of those retirement villages that have paid for all residents to be members and that register shall be kept and maintained at his or her place of residence.
- 6.2 The Secretary shall cause the name of a person who dies or who ceases to be a member under rule 7.3, 8.1 or 9 to be deleted from the register of members referred to in sub-rule 6.1.

7. MEMBERSHIP SUBSCRIPTIONS

- 7.1 The membership subscription shall be determined from time to time at a General Meeting of the Association.
- 7.2 The membership subscription shall be due on the first of January or such other date as the Council from time to time determines.
- 7.3 A member whose subscription is not paid within 3 6 months after becoming due shall cease to be a member.

8. RESIGNATION OF MEMBERS OF THE ASSOCIATION

A member who delivers notice in writing of his or her resignation from the Association to the Secretary ceases on that delivery to be a member but is not due any reimbursement of fees.

- 8.2 A person who ceases to be a member under rule 8.1 remains liable to pay to the Association the amount of any subscription due.

9. EXPULSION OF MEMBERS OF THE ASSOCIATION

- 9.1 A member may be expelled from membership of the Association if the Council considers his or her conduct to be detrimental to the interests of the Association. The Council shall, in such circumstances, communicate in writing to the member
 - (a) notice of the proposed expulsion and of the time, date and place of the Council meeting at which the

- question of that expulsion will be decided; and,
- (b) particulars of that conduct,
not less than 30 days before the date of the **Council** meeting referred to in rule 9.1 (a).
- 9.2 At the **Council** meeting referred to in a notice communicated under rule 9.1, the **Council** may, having afforded the member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the **Council**, expel or decline to expel that member from membership of the Association and shall forthwith communicate that decision in writing to that member.
- 9.3 Subject to rule 9.5, a member who is expelled under rule 9.2 from membership of the Association ceases to be a member 14 days after the day on which the decision so to expel him or her is communicated to him or her under rule 9.2.
- 9.4 A member who is expelled under rule 9.2 from membership of the Association shall, if he or she wishes to appeal against that expulsion, give notice to the Secretary of his or her intention to do so within the period of 14 days referred to in rule 9.3.
- 9.5 When notice is given under rule 9.4:
- (a) the Association in a General Meeting may, after having afforded the member who gave that notice a reasonable opportunity to be heard by, or to make representations in writing to, the Association in the General Meeting, confirm or set aside the decision of the **Council** to expel that member; and
- (b) the member who gave that notice does not cease to be a member unless and until the decision of the **Council** to expel him or her is confirmed under this rule.

10. **COUNCIL**

- 10.1 The management and administration of the Association shall be vested in the **Council** which shall:
- (a) comprise not less than five nor more than ten members elected from the members of the Association except the **Council** may co-opt up to a further two persons with particular skills or abilities to assist the **Council** fulfil its responsibilities.
- (b) at their first meeting following **their election** the **Council** Annual General Meeting elect from among their number:
- (i) a President;
- (ii) a Vice President;
- (iii) a Secretary; and
- (iv) a Treasurer
- who shall hold office for a period of twelve months but may offer themselves for re-election. **The Council may fill any vacancies in these offices during the year.**
- 10.2 The President, Vice President, Secretary and Treasurer shall comprise the Executive of the **Council**.
- 10.3 The members of the **Council** will be elected **by ballot** at the Annual General Meeting **in each year** and shall hold office until **the following** second Annual General Meeting but shall be eligible for re-election. A member of the **Council** may be removed by a General Meeting at any time by special resolution.
- 10.4 No person shall be entitled to hold a position on the **Council** if the person has been convicted of, or imprisoned in the previous five years for:
- (a) an indictable offence in relation to the promotion, formation or management of a body corporate; or
- (b) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
- (c) an offence under Part 4 Division 3 or section 127 of the Act; unless the person has obtained the consent of the Commissioner.
- 10.5 No person shall be entitled to hold a position on the **Council** if the person is, according to the *Interpretation Act* section 13D, a bankrupt or a person whose affairs are under insolvency laws unless the person has obtained the consent of the Commissioner.

- 10.6 A person is not eligible for election as a member of the Council unless a member has nominated him or her for election by delivering a written nomination to the Secretary and the nominee has signified in writing his or her willingness to stand for election not less than 21 days before the date of the Annual General Meeting. The Secretary shall ensure that all advise members are advised of the names of persons nominated for election to the Council in the notice calling at least 14 days before the Annual General Meeting.
- 10.7 If the number of persons nominated for election to the Council does not exceed the number of vacancies to be filled, the Secretary will report accordingly to the Chairperson and the Chairperson will declare those persons duly elected as members of the Council at the Annual General Meeting concerned.
- 10.8 If a vacancy remains on the Council after the application of rule 10.5 3, or when a casual vacancy within the meaning of rule 11 occurs in the membership of the Council, the Council may appoint a member to fill that vacancy; and a member appointed under this rule will hold office until and be eligible for election at the next following Annual General Meeting.
- 10.9 The Council shall carry out the directions of any General Meeting.
- 10.10 The Council shall not adopt any new policy, borrow any money or give any security for the discharge of its liabilities or approve any capital expenditure exceeding \$5,000 without the approval of the members at a General Meeting.
- 10.11 The Council may delegate, in writing, to one or more sub-Committees (consisting of such members of the Association as the Council thinks fit) the exercise of such functions of the Council as are specified in the delegation other than the power of delegation and a function which is a duty imposed on the Council by the Act or any other law.
- 10.12 Any delegation under rule 10.11 may be subject to such conditions and limitations as to the exercise of that function or as to time and circumstances as are specified in the written delegation and the Council may continue to exercise any function delegated.
- 10.13 The Council may, in writing, revoke wholly or in part any delegation under rule 10.11.

11. CASUAL VACANCIES IN MEMBERSHIP OF THE COUNCIL

A casual vacancy occurs in the Council if a Council member:

- (a) dies;
- (b) resigns by notice in writing delivered to the President or, if the Council member is the President, to the Vice President;
- (c) is convicted of an offence under the Act;
- (d) is permanently incapacitated by mental or physical ill-health;
- (e) ceases to be a member of the Association.
- (f) is removed by special resolution.

12. PRESIDENT AND VICE PRESIDENT

- 12.1 The President shall exercise a leadership role within the Association and beyond and be the spokesperson for the Association and for the Council.
- 12.2 Subject to this rule, the President shall preside at all General Meetings and Council Meetings.
- 12.3 In the absence or inability to act for any reason of the President, the Vice President shall act as President and have all the rights and powers of the President.
- 12.4 In the event of the absence from a General Meeting or a Council Meeting of the President and Vice President, a member elected by the other members present will preside at that meeting.

13. SECRETARY

The Secretary shall be responsible for:

- (a) co-ordinating the correspondence of the Association;

- (b) keeping full and correct minutes of the proceedings of the Council and of the Association;
- (c) keeping on behalf of the Association:
 - (i) the register of members of the Association;
 - (ii) an up to date copy of the Constitution of the Association and, upon request of a member of the Association, provide a copy of the Constitution;
 - (iii) maintaining a record of:
 - (A) the names and residential or postal addresses of the officers of the Association and the persons who are authorized to use the common seal of the Association;
 - (B) the names and residential or postal addresses of any persons who are appointed or act as trustees on behalf of the Association, and upon request of a member of the Association provide a copy of the record;
- (d) having custody of all books, documents, records, and registers of the Association other than those required by rule 14 to be kept and maintained by, or in the custody of, the Treasurer; and
- (e) performing such other duties as are imposed by these rules on the Secretary or as directed by the Council from time to time.

14. TREASURER

The Treasurer shall be responsible for:

- (a) the receipt of all monies paid to or received by, or by him on behalf of, the Association and shall issue receipts for those moneys in the name of the Association;
- (b) paying all moneys received into such account or accounts of the Association as the Council may from time to time direct;
- (c) making payments from the funds of the Association with the authority of a General Meeting or of the Council and in so doing ensure that all cheques are signed by any two of the designated Council members;
- (d) keeping such accounting records as correctly record and explain the financial transactions and financial position of the Association, as will enable true and fair accounts of the Association to be prepared and audited from time to time, and will submit within four months after the end of the financial year to each Annual a General Meeting the accounts of the Association showing the financial position of the Association at the end of the immediately preceding financial year;
- (e) whenever directed to do so by the President or the Council, submitting to the Council a report balance sheet or financial statement in accordance with that direction;
- (f) unless the members resolve otherwise at a General Meeting, having custody of all securities, books and documents of a financial nature and accounting records of the Association;
- (g) maintaining a register of the assets of the Association; and
- (h) performing such other duties that are imposed by these rules on the Treasurer or as directed by the Council from time to time.

15. QUORUM AND PROCEEDINGS AT COUNCIL MEETINGS

- 15.1 The Council shall meet not less than once every three months and the President, or at least half the members of the Council, may at any time convene a meeting of the Council.
- 15.2 Each Council member has a deliberative vote.
- 15.3 A question arising at a Council Meeting shall be decided by a majority of votes, but if there is an equality of votes, the person presiding at the Council Meeting shall have a casting vote in addition to his or her deliberative vote.
- 15.4 The quorum for a Council Meeting shall be the next whole number above one-half of the number of members of the Council at the time.
- 15.5 The procedure and order of business to be followed at a Council Meeting shall be determined by the Council

members present at the Council Meeting.

- 15.6 A Council member having any direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in the contemplation, of the Council (except if that pecuniary interest exists only by virtue of the fact that the member of the Council is a member of a class of persons for whose benefit the Association is established), will as soon as he or she become aware of that interest, disclose the nature and extent of his or her interest to the Council; and not take part in any deliberations or decision of the Council with respect to that contract.
- 15.7 Rule 15.6 does not apply with respect to a pecuniary interest that exists only by virtue of the fact that the member of the Council is an employee of the Council.
- 15.8 The Secretary will cause every disclosure made under rule 15.6 by a member of the Council to be recorded in the minutes of the meeting of the Council at which it is made.
- 15.9 The President is authorised to deal with urgent matters arising between Council Meetings of a nature normally requiring Council approval which shall be reported to the next following Council Meeting for ratification or otherwise of any actions of the President.

16. GENERAL MEETINGS

- 16.1 The Council:
- may at any time convene a General Meeting and will convene a General Meeting at least once in each quarter;
 - shall convene Annual General Meeting within four months after the end of the Association's financial year or such longer period as may in a particular case be allowed by the Commissioner;
 - shall, within 30 days of receiving a request in writing to do so from not less than five percent (5%) of the combined number of individual members and the Villages which have paid a group subscription, convene a Special General Meeting for the purpose specified in that request and for no other purpose; and
 - shall, within 30 days of the Secretary receiving a notice under rule 9.4, convene a Special General Meeting for the purpose of dealing with the appeal to which that notice relates and for no other purpose.
- 16.2 The members making a request referred to in rule 16.1(c) shall state in that request the purpose for which the Special General Meeting concerned is required, and sign that request.
- 16.3 If a Special General Meeting is not convened within the relevant period of 30 days referred to in rule 16.1(c), the members who made the request concerned may themselves convene a Special General Meeting as if they were the Council.
- 16.4 If a Special General Meeting is not convened within the relevant period of 30 days referred to in rule 16.1(d), the member who gave the notice concerned may himself convene a Special General Meeting as if he or she were the Council.
- 16.5 When a Special General Meeting is convened under rule 16.3 or 16.4, the Association will pay the reasonable expenses of convening and holding the Special General Meeting.
- 16.6 The Secretary shall give to all members not less than 21 14 days notice of any General Meeting and that notice will specify when and where the General Meeting concerned is to be held and particulars of the business to be transacted at the General Meeting concerned and of the order in which that business is to be transacted.
- 16.7 At the Annual General Meeting, the business and the order in which it is to be transacted shall be:
- the consideration of the reports of the Council and the accounts of the Association for the preceding financial year;
 - the election of Council members to replace outgoing Council members to hold office for the ensuing year; and
 - any other business requiring consideration by the Association at the Annual General Meeting.
- 16.8 A special resolution may be proposed at any General Meeting provided that notice of the proposed special resolution is included in the notice of that General Meeting.
- 16.9 The Secretary may give a notice of any General Meeting by:
- servicing it on a member personally;

- (b) sending it by post to the address of the member appearing on the register of members;
- (c) sending it by email to the member if an email address has been provided; or
- (d) including it in any newsletter sent to members; or
- (e) in the case of a village membership, sending it by post or email to the secretary of the Residents Committee or contact person for display in a prominent position in the village.

16.10 When a notice is sent by post under rule 16.9, sending of the notice shall be deemed to be properly effected if the notice is sufficiently addressed and posted to the member concerned by ordinary prepaid mail.

17. QUORUM AND PROCEEDINGS AT GENERAL MEETINGS

- 17.1 A member may appoint in writing another member to be his or her proxy and to attend, and vote on his or her behalf, at any General Meeting. **No member may hold more than two proxies.**
- 17.2 Votes at a General Meeting may be cast personally or by proxy.
- 17.3 At a General Meeting, 20 members present in person or by proxy constitute a quorum.
- 17.4 If within 30 minutes after the time specified for the holding of a General Meeting a quorum is not present, the General Meeting stands adjourned to the same time on the same day in the following week at the same venue.
- 17.5 If within 30 minutes of the time appointed for the resumption of an adjourned General Meeting a quorum is not present, the members who are present in person or by proxy may nevertheless proceed with the business of that General Meeting as if a quorum were present.
- 17.6 The chairperson may, with the consent of a General Meeting at which a quorum is present, and will, if so directed by such a General Meeting, adjourn that General Meeting from time to time and from place to place.
- 17.7 There will not be transacted at an adjourned General Meeting any business other than business left unfinished or on the agenda at the time when the General Meeting was adjourned.
- 17.8 When a General Meeting is adjourned for a period of 30 days or more, the Secretary will give notice under Rule 16 of the adjourned General Meeting as if that General Meeting were a fresh General Meeting.
- 17.9 At a General Meeting:
 - (a) an ordinary resolution put to the vote will be passed if approved by a majority of votes cast on a show of hands or by a ballot; and
 - (b) a special resolution put to the vote will be passed if approved by three-fourths of the votes cast on a show of hands or by a ballot.
- 17.10 A declaration by the chairperson of a General Meeting that a resolution has been passed as an ordinary or special resolution at the meeting will be evidence of that fact.
- 17.11 At a General Meeting, a ballot may be requested by the chairperson or by **three** **two** or more members present in person or by proxy.

17A. DISPUTES

- 17A.1 If there is a dispute between members or between one or more members and the Association, and if the parties cannot resolve the dispute between themselves, then any party to the dispute may initiate a procedure under this rule by giving written notice to the Secretary of the parties to and details of the dispute.
- 17A.2 The Secretary must convene a Council Meeting within 28 days after the Secretary receives notice of the dispute for the **Council** to determine the dispute.
- 17A.3 At the **Council** Meeting to determine the dispute, all parties to the dispute must be given a full and fair opportunity to state their respective cases orally, in writing or both.
- 17A.4 The Secretary must inform the parties to the dispute of the **Council**'s decision and the reasons for the decision within 7 days after the **Council** Meeting.
- 17A.5 If any party to the dispute is dissatisfied with the decision of the **Council**, they may elect to take the matter to the next General Meeting of the Association which shall determine a resolution of the dispute.
- 17A.6 If a dispute cannot be resolved under these procedures, any party to the dispute may apply to the State

Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law.

18. MINUTES OF MEETINGS OF THE ASSOCIATION

- 18.1 The Secretary shall cause proper minutes of all proceedings of all General Meetings and **Council** Meetings to be taken and then entered within 30 days of the holding of each General Meeting or Council Meeting, as the case requires, in a minute book kept for that purpose. The use of audio recording to assist in maintaining accurate records and for no other purpose is permitted provided that the audio recording is erased following the confirmation of the minutes in question.
- 18.2 The Chairperson shall ensure that the minutes taken of a General Meeting or **Council** Meeting are checked and signed as correct by the Chairperson of the General Meeting or **Council** Meeting to which those minutes relate or at the next succeeding General Meeting or **Council** Meeting, as the case requires.
- 18.3 When minutes have been entered and signed as correct under this rule, they shall, until the contrary is proved, be evidence that:
- (a) the General Meeting or **Council** Meeting to which they relate was duly convened and held;
 - (b) all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and
 - (c) all appointments or elections purporting to have been made at the meeting have been validly made.

19. AMENDMENTS TO THE RULES OF THE ASSOCIATION

- 19.1 The Association may alter or rescind these rules, or make rules additional to these rules, or seek to change its name by special resolution but not otherwise.
- 19.2 Within one month of the passing of a special resolution altering the Constitution or the name of the Association, or such further time as the Commissioner may in a particular case allow (on written application by the Association), the Association will lodge with the Commissioner notice of the special resolution setting out particulars of the alteration or name change together with a certificate given by the President, or the Vice President if the President is not available, certifying that the resolution was duly passed as a special resolution and that the Constitution of the Association or name of the Association as so altered conform to the requirements of this Act.
- 19.3 An alteration of the Constitution of the Association does not take effect until Rule 19.2 is complied with and in the case of a change of name or of the objects of the Association the approval of the Commissioner is given to the change of name or of the objects.

20. COMMON SEAL OF THE ASSOCIATION

- 20.1 The Association shall have a common seal on which its corporate name shall appear in legible characters.
- 20.2 The common seal of the Association shall not be used without express authority of the Committee and every use of that common seal shall be recorded in the minute book.
- 20.3 The affixing of the common seal of the Association shall be witnessed by any two of the President, the Vice President, the Secretary and the Treasurer.
- 20.4 The common seal of the Association shall be kept in the custody of the Secretary or of such other person as the Committee from time to time decides.

20. INSPECTION OF RECORDS ETC. OF THE ASSOCIATION

A member may at any reasonable time inspect without charge the books, documents, records and securities of the Association.

21. DISSOLUTION OF THE ASSOCIATION

Subject to the Act, the Association may be dissolved by a special resolution passed at a General Meeting.

22. DISTRIBUTION OF SURPLUS PROPERTY ON DISSOLUTION OF THE ASSOCIATION

If, on the dissolution of the Association, any property of the Association remains after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that winding up, that property shall be distributed:

- (a) to another association incorporated under the Act having objects similar to those of the Association, or
- (b) to an organisation that holds a current licence under the *Charitable Collections Act 1946* for charitable purposes, which association or purposes, as the case requires, shall be determined by resolution of the members.

DRAFT 5