



CONSTITUTION

Contents

- 1. Preliminaries3
- 2. The Company’s Object.....5
- 3. Limited liability5
- 4. Income and assets of the Company.....5
- 5. Winding up6
- 6. Members.....6
- 7. Fees to be paid by Members.....7
- 8. Rights of Members.....7
- 9. Cessation of Membership7
- 10. Discipline of Members8
- 11. Register of Members9
- 12. Meetings of Members10
- 13. Representation at meetings.....11
- 14. Proceedings at meetings of Members10
- 15. Voting at meetings of Members13
- 16. Board of Directors14
- 17. Appointment and removal of office bearers17
- 18. Chief Executive Officer.....17
- 19. Proceedings of Directors.....20
- 20. Directors’ contracts with Company21
- 21. Powers and duties of Directors20
- 22. Committees21
- 23. Rules and regulations.....22
- 24. Accounts22
- 25. Notices22
- 26. Indemnity236
- 27. Substantial changes to operations.....26

Schedule 1: Initial Members

Schedule 2: Membership application form

1. Preliminaries

1.1 Preamble

1.1.1 This is the Constitution (hereinafter called “the Constitution”) of Nambucca Valley Care Limited, hereinafter called “the Company”.

1.1.2 The Constitution has effect from 28 October 2010 and from and including that date replaces the Company’s constitution extant prior to that date.

1.1.3 The Company is a company limited by guarantee.

1.1.4 If a provision of the Constitution is in conflict with a provision of the *Corporations Act 2001* (“the Act”) or of any other Act of the Commonwealth or of New South Wales then to the extent of that conflict that provision of that Act takes precedence. To the extent that a procedure or any other thing relevant to the conduct of the company is not provided for in the Constitution but is provided for in a Section or other element of the Act, that provision of the Act is to be read into and forms part of the Constitution.

1.2 Definitions

In the construction of the Constitution, unless the contrary intention appears:

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

Board Charter means a charter which is accepted by the Board as the rules and organisational arrangements by which the Board is to operate;

Chairman means the Chairman of the Board appointed from time to time;

Chief Executive Officer (“the CEO”) means the person appointed from time to time as provided in Clause 18;

Client means a person (other than a Resident) to whom the Company provides care services from time to time;

Director means a duly elected Director of the Company;

Employee means a person included within the ordinary meaning of the word “employee” in the *Australian Fair Work Act 2009*;

General meeting means a meeting of Members duly called and constituted in accordance with the Constitution and any adjourned holding of it;

Member means any person entered in the Register as a member for the time being of the Company and includes voting Members and non-voting Members;

Membership means Membership of the Company;

Object of the Company means the object set out in Clause 2;

Officer is an Officer of the Company as defined in the Act;

Ordinary Resolution means a resolution of a general meeting where more than 50% of the total votes cast on the resolution are in favour of the resolution;

Register means the register of Members of the Company kept under the Act;

Registered Office means the registered office for the time being of the Company;

Remuneration includes, but is not limited to, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes and profit sharing schemes;

Resident means a person to whom the company provides accommodation in connection with residential care and services;

Seal means the common seal of the Company and includes any official seal of the Company;

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily;

Special Business means business at a general meeting on which any action by the Company would require a Special Resolution;

Special Resolution means a Special Resolution of a general meeting as defined in the Act (where at least 75% of the votes cast on the resolution are required for the resolution to be adopted);

1.3 Interpretation

In the Constitution, except where the context otherwise provides:

- (a) headings are disregarded;
- (b) singular includes plural and vice versa and words importing any gender include all other genders;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of, or schedule or annexure to, the Constitution, and a references to the Constitution includes its schedules and annexures;
- (d) a reference to a statutory provision is construed as a reference to that provision for the time being in force.
- (e) a reference to a document or instrument includes the document or instrument as notated, altered, supplemented or replaced from time to time.
- (f) words have their ordinary meaning and are not limited as to meaning by any specific example in a provision of the Constitution.

1.4 Replaceable rules

The Replaceable Rules as defined and included in the Act apply to the Company only to the extent (if any) that they form part of the Constitution.

2. The Company's Object

Without limiting the activities which might properly contribute to its achievement, the object for which the company is established is to undertake the care and welfare of aged persons or, if the board so decides, any other cohort of persons requiring care services.

3. Limited liability

3.1 Members' liability

The liability of a Member is limited to the liability as stated in Clause 3.2.

3.2 Members' contributions

Each Member undertakes to contribute a total amount not exceeding \$20 to the assets of the Company if it is wound up either while the Member is a Member or within one year after the Member ceases to be a Member, for:

- (a) the payment of the debts and liabilities of the Company, contracted before the Member ceased to be a Member; and
- (b) the expenses of winding up the Company.

4. Income and assets of the Company

4.1 Application of Company income and property

4.1.1 The income and property of the Company will be applied solely towards the promotion of the object of the Company defined in Clause 2.

4.1.2 No income or property is to be paid or transferred directly or indirectly to any Member except for payment to a Member in accordance with Clause 4.2.

4.2 Payments of Company expenses

Nothing in Clause 4.1 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers or employees of the Company or to any Member in return for services rendered to the Company;
- (b) interest on money borrowed from any Member by the Company provided the interest rate does not exceed the rate charged by the Company's bank on similar commercial risks.

5. Winding up

5.1 Surplus

5.1.1 On the winding up of the Company, a Member's liability is limited to the amount unpaid in relation to any contractual obligation with the company together with the amount stated in Clause 3.

5.1.2 If after the winding-up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any assets whatsoever, such assets shall be transferred to some other institution or institutions having an object similar to the object of the Company and which shall impose a prohibition on the distribution of its or their income and property among its or their members to an extent at least as great as is imposed in the Company under the Constitution, such institution or institution to be determined by the Members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to the aforesaid provision then to some charitable object, such institution being one approved by the Commissioner for Taxation as a benevolent institution for the purposes of the relevant commonwealth taxation law.

6. Members

6.1 Membership

All persons who appear on the Register at the date of commencement of the Constitution are confirmed to be Members.

6.2 Membership qualifications

6.2.1 A person cannot be considered for Membership by the Board unless the person is a natural person and:

- (a) applies to become a Member using the application for Membership form prescribed in Schedule 2;
- (b) is over 18 years of age;
- (c) the said form is signed by the applicant in the presence of a Justice of the Peace; and
- (d) is proposed for Membership by an existing Member and such proposal is seconded by a second existing Member. The person applying to become a Member must be of good character, personally known to both the proposing Members and capable of demonstrating a commitment to the objects of the Company.

6.2.2 An individual is not eligible to be admitted to Membership if they are mentally incapacitated or have been convicted or currently charged with an indictable offence.

6.2.3 The board may not admit to Membership a person:

- (a) who does not own or occupy a place or residence which in the opinion of the Board is within a reasonable distance of the Company's care facilities; or
- (b) who is proposed or seconded by a Director or employee.

6.2.4 Despite the restriction as to Membership relating to the usual place of residence, the board may admit to Membership a person whom a Resident nominates as their sole delegate.

6.3 Admitting Members

No person may be admitted to Membership and have their name entered in the Register unless the applicant agrees in writing to be bound by this Constitution.

6.4 Discretion to admit

6.4.1 The Board must consider an application for Membership at the next meeting of the Board after the receipt of both the duly completed application form referred to in Clause 6.2.1(a), and the entrance fee referred to in Clause 7.1.

6.4.2 The Board may refuse to admit any person as a Member. If the Board refuses to admit a person as a Member, the Board is not obliged to give reasons for so refusing.

7. Fees to be paid by Members

7.1 Entrance fee

A standard entrance fee of \$50, or such other standard fee as is set by the Board from time to time, is payable by a person on application for Membership. The fee is refundable should the person not be admitted to Membership.

7.2 Annual subscription

No annual subscription is required to be paid by Members.

8. Rights of Members

Members are entitled to all the rights of Members under this Constitution.

9. Cessation of Membership

9.1 Cessation

9.1.1 A person ceases to be a Member if the person:

- (a) dies; or
- (b) resigns that Membership by giving notice in writing; or
- (c) is convicted of an indictable offence; or
- (d) is mentally incapacitated; or
- (e) is expelled from the Company under this Constitution.

9.1.2 If the actions of a Member in the opinion of the Board have or potentially have damaged the Company's professional reputation in the aged care industry or the community in general the Board may withdraw that person's Membership and the person ceases to be a Member.

9.2 Appointment as Member not transferable

A right, privilege or obligation arising from a person's Membership:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of the person's Membership.

10. Discipline of Members

10.1 Initial resolution of Directors

Where the Directors are of the opinion that a Member of the Company:

- (a) has refused or neglected to comply with a provision of the Constitution; or
- (b) has acted in a manner prejudicial to the reputation or interests of the Company,

the Directors may, by ordinary resolution ("the Initial Resolution"):

- (i) reprimand the Member;
- (ii) suspend the Member from Membership for a specified period; or
- (iii) expel the Member from the Company.

10.2 Suspended operation

An Initial Resolution is of no effect unless it is confirmed at a meeting of the Directors in accordance with the following clauses. For that purpose, the meeting of Directors must be held not earlier than 7 days and not later than 21 days after the Member has been served with a notice under Clause 10.3.

10.3 Notice to Member

The Secretary must, as soon as practicable following the Initial Resolution, cause a notice in writing to be served on the Member. The notice must:

- (a) set out the Initial Resolution and the grounds on which it is based;
- (b) state that the Member may personally address the Directors in relation to the Initial Resolution at a meeting of the Directors to be held not earlier than 7 days and not later than 21 days after service of the notice;
- (c) state the date, place and time of that meeting of the Directors; and
- (d) inform the Member that the Member may submit to the Directors at or before the date of that meeting a written representation relating to that resolution and speak to the representation.

10.4 Confirming resolution of Directors

At a meeting of the Directors held as referred to in the preceding clause, the Directors must:

- (a) give to the Member an opportunity to speak to the written representation;
- (b) give due consideration to any written representation submitted to the Directors by the Member at or before the meeting; and
- (c) by ordinary resolution (“the Confirming Resolution”) confirm, vary or revoke the Initial Resolution.

10.5 Immediate or suspended effect

The Confirming Resolution may take effect immediately, after any period of time or on conditions specified in the Confirming Resolution.

10.6 Right of appeal

There is no right of appeal against a Confirming Resolution.

10.7 Notice to a Member

The Secretary must, within 7 days of the passing of the Confirming Resolution, by notice in writing, inform the Member of the fact and that there is no right of appeal under the Constitution.

11. Register of Members

The Secretary must maintain at the Company’s offices a Register containing the following details of each Member:

- (a) full name;
- (b) residential, mailing, and if available, email address; and
- (c) date on which the entry of the Member’s name in the Register is made.

12. Meetings of Members

Note: The law regulating meetings of the Company is generally expressed in relevant sections of the Act.

12.1 Convening general meetings

Any 3 directors may call a general meeting of the Company.

12.2 Requisition of meetings

12.2.1 A member may request the Directors to convene a general meeting only in accordance with the Act.

12.2.2 A member may not convene or join in convening a general meeting except in accordance with the Act.

12.3 Notice of meeting

12.3.1 A notice convening a general meeting:

- (a) must specify the place, date and time of the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate such arrangements; and
- (b) must state the general nature of the business to be transacted at the meeting.

12.3.2 Every notice of an annual general meeting must:

- (a) set out the place, date and time of meeting;
- (b) in the case of Special Business, state the general nature of the business;
- (c) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
- (d) in the case of an election of Directors, give the names of the candidates for election;
- (e) contain a statement setting out in relation to proxy voting that the Member has a right to appoint a proxy.

12.4 Entitlement to notice

Notice of an annual general meeting must be given to:

- (a) each Member; and
- (b) the auditor of the Company.

12.5 Notice period

Notice of an annual general meeting must be given in accordance with the Act.

12.6 Proxy voting by Members

12.6.1 A Member may appoint a proxy to attend and vote at any meeting at which the Member is entitled to attend and vote.

12.6.2 A proxy may only be appointed on a proxy appointment form authorised for the purpose of the meeting, and made available by the Board. To be a valid appointment, the completed form is to be delivered to the Registered Office at least 48 hours before the scheduled commencement of the meeting. Without limiting the method of its delivery, a proxy appointment may be delivered by facsimile transmission or by the transmission by email of a scanned signed copy.

12.6.3 If a member appoints more than one proxy and no notice has been received of revocation of one or more of the appointments, the latest appointment, or if more than 1 proxy is named on a single proxy appointment form, the proxy first named on the form, present at the meeting prevails.

12.7 Failure to give notice

The accidental failure to give notice of a general meeting to, or the non-receipt of any such notice by a person entitled to receive it, does not invalidate the proceedings of, or any resolution passed at, any such meeting.

12.8 Cancellation or postponement of meeting

The Directors may cancel or postpone the holding of any general meeting. If the meeting was called by requisitioning Members or in response to a requisition by Members, the Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members.

12.9 Notice of cancellation or postponement

The Directors may notify the Members of a cancellation or postponement of a meeting by such means as the Directors see fit. If any meeting is postponed for 28 days or more, no less than 5 days' notice must be sent to the Members of the postponed meeting. It is not necessary again to specify in such notice the nature of the business to be transacted at the postponed meeting.

12.10 Venue

Despite any other rule, the Company may hold a general meeting of Members at two or more venues using technology that gives all Members attending those venues a reasonable opportunity to participate in the meeting.

13. Representation at meetings

13.1 Persons entitled to attend

The following persons only may attend a general meeting:

- (a) Members;
- (b) the CEO, each Secretary, and the auditor of the Company;
- (c) a proxy of a Member;
- (d) other persons only with leave of the Chairman and then only while the leave has not been revoked in accordance with the terms of the leave.

13.2 Powers of the chairman

The right of a person to attend is subject to the powers of the chairman of the meeting, the provisions of the Act, and the Constitution.

14. Proceedings at meetings of Members

14.1 Quorum

14.1.1 No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

14.1.2 A quorum of Members is constituted by 10 persons present and entitled to vote on a resolution at that meeting.

14.2 Failure of quorum

14.2.1 If a quorum is not present within 15 minutes after the time appointed for a general meeting:

- (a) where the meeting was called in response to a requisition of Members pursuant to the Act, the meeting is dissolved; or, in any other case
- (b) the meeting stands adjourned to such day, and at such time and place, as the Directors determine.

14.2.2 If no determination as to time and place for an adjourned meeting is made by the Directors, the meeting stands adjourned to the same day in the second week following, at the same time and place. If at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, 3 Members constitute a quorum.

14.3 Business of annual general meeting

The business of an annual general meeting must include:

- (a) the receiving of the Company's financial report, a Directors' report and the auditor's report on the financial statements;
- (b) the election of Directors in the place of those retiring;
- (c) any other business which under this Constitution or the Act ought to be transacted at an annual general meeting;

and may include:

- (d) any other business of which notice has been given in the notice paper,

14.4 Report on Company's activities

The Board must at each general meeting in addition to the matters in Clause 14.3, submit to the Members a report on the activities of the Company in the period since the previous general meeting.

14.5 Special Business

No Special Business may be transacted at any general meeting other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Act to be transacted at the meeting.

14.6 Chairman of meeting

The Chairman, or in the Chairman's absence the deputy Chairman (if any), is entitled to take the chair at each general meeting. If neither of those persons is present at any general meeting within 15 minutes after the time appointed for holding the meeting, or neither of them is willing to take the chair, the Members present must elect a person to be chairman of the meeting.

14.7 Passing the chair

If the chairman of a general meeting is unwilling or unable to be the chairman for any part of the business of the meeting:

- (a) that chairman may withdraw as chairman for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairman. The prior chairman is then entitled to resume as the chairman of the meeting.

14.8 Responsibilities of Chairman

The chairman of a general meeting is responsible for the general conduct of the meeting and to ascertain the will of the meeting concerning any item of business which is properly before the meeting. For these purposes the chairman of the meeting may, without limitation:

- (a) delay the commencement of the meeting if the chairman determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers, to adjourn the meeting or any item of business of the meeting, without the consent of the meeting if the chairman determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

14.9 Admission to meetings

The chairman of a general meeting may refuse admission to, or require to leave and remain out of the meeting any person who:

- (a) is in possession of a pictorial-recording or sound-recording device;
- (b) is in possession of a placard or banner;
- (c) is in possession of an article considered by the chairman to be dangerous, offensive or liable to cause disruption;
- (d) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) is not entitled under the Constitution to attend the meeting.

14.10 Adjournment of meeting

The chairman of a general meeting at which a quorum is present may, and must if so and as directed by the meeting, adjourn the meeting from time to time and from place to place.

14.11 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. Subject to the following, no notice need be given of an adjournment or of the business remaining to be transacted at an adjourned meeting. However, if any meeting is adjourned for more than 14 days, no less than 7 days' notice of the adjourned meeting must be given.

15. Voting at meetings of Members

15.1 Entitlement to vote

Subject to the Constitution, each person other than an employee of the Company and who is present at a general meeting may vote if they are a Member or a proxy of a Member.

15.2 Number of votes

Each Member who is, under the preceding clause, entitled to vote has:

- (a) on a show of hands, or on the voices, one vote; and
- (b) on a poll, one vote.

15.3 Method of voting

Every resolution put to a vote at a general meeting (except a resolution for an election of Directors pursuant to Clause 16.13) must be determined by the voices or a show of hands as determined by the chairman of the meeting, unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

15.4 Demand for poll

A demand for a poll under the preceding clause may be made by:

- (a) the chairman of the meeting; or
- (b) at least 5 persons present having the right to vote at the meeting.

15.5 Declaring result of vote on show of hands

In respect of any general meeting (unless a poll is so demanded):

- (a) a declaration by the chairman of the meeting that a resolution has on a show of hands or on the voices been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (b) an entry made in the record of minutes of proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

15.6 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded and the demand not withdrawn, it must be taken in such manner and at such time, either at once or after an interval or adjournment or otherwise, as the chairman of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a

chairman or on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

15.7 Casting vote of Chairman

If, on a show of hands or on a poll the votes are equal, the chairman of the meeting has a casting vote in addition to the deliberative vote, if any, of the chairman.

15.8 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register must be adopted and acted on as the valid list of Members.

15.9 Ruling on votes

The chairman of the meeting is the sole judge of the validity of every vote tendered at the meeting, or on a secret ballot, the sole judge of the validity of the report of a duly appointed returning officer, and the determination of the chairman is final.

16. Board of Directors

16.1 Composition of the Board of Directors

The Board shall comprise at least 5 and not more than 7 Directors.

16.2 Requirements to be a Director

16.2.1 Subject to the requirements of the Act, no age limit shall apply with respect to the appointment of a person as Director.

16.2.2 A Director must be a Member.

16.2.3 No Resident or employee is eligible to become a Director.

16.2.4 Notwithstanding Clause 16.2.3, neither the CEO, nor the 3 employees of the Company with prime responsibility for care, hotel services and finance (respectively) are eligible to become a Director at any time within 2 years after ceasing to be employed by the Company.

16.3 Appointment of Directors

Subject to the Constitution and the Act, the Company may by resolution passed in general meeting:

- a) appoint new Directors; and
- b) remove any Director before the end of the Director's period of office.

16.4 Powers and Duties of Directors

16.4.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that the Constitution and the Act do not require to be exercised by the Company in general meeting.

16.4.2 Directors shall fill the positions of Chairman, deputy Chairman, and treasurer of the Company.

16.4.3 A Director may be appointed to be a Secretary.

16.5 Casual appointment

The Directors may at any time appoint a person as a Director to fill a vacancy, being a vacancy in the number of directors up to and including 7. Until that person is re-elected at a general meeting, that Director is a "casual appointee".

16.6 Retirement of casual appointee

A casual appointee, following their appointment by the Directors, holds office only until the next annual general meeting and is then eligible for re-election for the remaining term of the Director whom the casual appointee replaced. A casual appointee is not taken into account in determining the number of Directors, if any, who are to retire by rotation at such meeting.

16.7 RSL appointee

A Director appointed by the RSL under the constitution of the Company extant immediately prior to the date of commencement of the Constitution becomes a Casual Appointee on that date of commencement.

16.8 Retirement by rotation

16.8.1 At every annual general meeting, one-third of the Directors (rounded down to the next whole number), or in the case of the annual general meeting when the Director referred to in clause 16.7 retires, 3 Directors, must retire from office. The Directors who have served longest since they were last elected must retire first. If there are equally serving Directors, those equally serving Directors may, among themselves, agree who is to retire by rotation. If those Directors are unable to decide, the Directors to retire by rotation will be chosen by drawing lots.

16.8.2 A Director who is required to retire under this rule retains office until dissolution or adjournment of the meeting at which the retiring Director retires.

16.8.3 A retiring Director is eligible for re-election.

16.9 Deemed re-appointment

If there are fewer persons or an equal number of persons standing for election or re-election for the vacancies, all such persons are deemed to be elected without the need for an election.

16.10 Candidates requiring nomination

No person is eligible for election to the office of Director at any general meeting unless duly nominated by two Members eligible to vote, except for:

- (a) a Director retiring by rotation; or
- (b) a Casual Appointee.

16.11 Valid nominations

16.11.1 At least 14 days before the close of nominations for the position of Director, the Secretary must procure an advertisement in the Nambucca Guardian Newspaper or equivalent seeking such nominations, *inter alia* quoting the provisions of clause 16.11.2.

16.11.2 A nomination of a person to be a Director must be submitted to the Secretary. Nominations are to close at 5.00pm on the day which is 42 days before the date for the holding of the meeting. For a nomination to be valid:

- (a) the nomination must name the candidate and be signed by not less than 2 voting Members;
- (b) the person nominated must consent in writing to be a Director if elected; and
- (c) consent is sufficient if the person signs a form of consent on the nomination paper. A Secretary may accept any other form of consent, whether or not accompanied by the nomination paper, that the Secretary deems satisfactory.

16.12 Vacation of office

A person is immediately removed as a Director and such position becomes vacant if:

- (a) the Director is prohibited by the Act from holding office or continuing as a Director;
- (b) the Director dies;
- (c) the Director fails to report to three successive Directors' meetings without leave being granted by the Directors;
- (d) the Director ceases to be a Member;
- (e) subject to compliance with the relevant provisions of the Act relating to the removal of a Director, the Director is removed by resolution of the Company;
- (f) the Director retires from office by giving notice in writing to the Company of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time, the maximum such time being 3 months from the date of the giving of the notice.

16.13 Election of Directors

16.13.1 If the number of nominations for the position of Director is greater than the number of Directors required to be elected, the election of the required number is to be carried out by secret ballot.

16.13.2 Each candidate in such ballot may nominate 1 scrutineer to attend the opening and counting of votes

16.13.3 Each voting Member may cast 1 vote for each candidate which the Member supports, with a maximum number of votes per Member equal to the number of Directors to be elected in the ballot.

16.14 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in the Board. If the number falls below the minimum number fixed in accordance with Clause 16.1, the Directors may act only:

- (a) to appoint Directors up to that minimum number; or
- (b) to call a general meeting.

16.15 Directors' interests

A Director who has a material personal interest in a matter, contract, arrangement or proposed contract or arrangement being considered at a Directors' meeting must not vote on the matter or on anything proximately pertaining to the matter.

17. Appointment and removal of office bearers

17.1 Chairman

17.1.1 The Directors must elect from among their number a Chairman and may determine the period for which that person is to hold office.

17.1.2 If no Chairman is elected or if the Chairman is not present at any Directors' meeting or any part of any Directors meeting, the Directors present must elect a Director to be the Chairman of the meeting.

17.1.3 The office of the Chairman shall become vacant if the Chairman ceases to be a Director.

17.2 Other officers

The Directors may elect from among their number such other officers as are determined by the Directors from time to time and may determine the period for which each is to hold office.

18. Chief Executive Officer

18.1 Appointment of Chief Executive Officer

The Board must appoint a person to be the CEO.

18.2 Powers of the CEO

18.2.1 The Board may delegate any of the powers of the Board to the CEO:

(a) on the terms and subject to any restrictions the Board decides; and

(b) so as to be concurrent with the powers of the Board,

and may revoke the delegation at any time.

18.2.2 Without affecting the generality of the foregoing, the CEO shall:

(c) be the chief executive officer of the Company;

(d) insofar as the resources available permit, implement the policies of the Board;

(e) prepare an annual report for the Board on the work and activities of the Company during the preceding 12 months ending 30 June in each year; and

(f) exercise such other functions, duties and responsibilities as may be determined from time to time by the Board.

18.3 Remuneration of Chief Executive Officer

Subject to any contract with the Company, the Board shall fix the remuneration of the CEO and that remuneration may consist of salary, bonuses, or any other element but must not be a commission or a percentage of profits or operating revenue.

18.4 Chief Executive Officer not a Director

The CEO may not be a Director.

18.5 Termination of appointment of CEO

The appointment of a CEO terminates:

- (a) at the expiration of a fixed term contract if so defined in a written contract; or
- (b) if the Board removes the CEO from office, whether or not the appointment was expressed to apply for a specified term.

19. Proceedings of Directors

19.1 Calling of meetings

A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting.

19.2 Reasonable notice of meetings

Every Director (excluding any Director given leave of absence) must be given reasonable notice in writing of a Board meeting.

19.3 Number of Board meetings

At least 9 Board meetings must be held in each financial year. At least 1 Board meeting must be held in every period of 3 consecutive months.

19.4 Mode of meeting

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The Directors may conduct their meetings in person, by telephone, audio visual link or by using any other technology consented to by all Directors. A meeting conducted by telephone or other means of communications is considered to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

19.5 Quorum

A quorum of the Board comprises the majority of the total number of Directors at the time of the meeting.

19.6 Votes of Directors

Questions arising at any meeting of the Directors must be decided by a majority of votes cast. Each Director has 1 vote. If there is an equality of votes, provided more than 3 Directors present are competent to vote on the question at issue but not otherwise, the Chairman has a second or casting vote.

19.7 Board Charter

Directors both individually and collectively are to comply with the Board Charter as promulgated from time to time by the Board.

20. Directors' contracts with Company

20.1 Directors' contracts and conflicts of interest

In relation to a Director's contracts and conflicts of interest, but subject to Clause 4:

- (a) no Director may be an employee of the Company;
- (b) despite any rule of law or equity to the contrary, no Director is disqualified by that office from contracting with the Company
- (c) any such contract, or any contract entered into by or on behalf of the Company in which any Director is in any way interested, is not avoided;
- (d) any Director so contracting or being so interested is not liable to account to the Company for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established;
- (e) the nature of the Director's interests must be disclosed by that Director at the meeting of the Directors at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case disclosure must occur at the first meeting of the Directors after the acquisition of those interests; and
- (f) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is proximately interested. However, such Director may, despite that interest, participate in the execution of any instrument by or on behalf of the Company, whether through signing or sealing it or otherwise.

20.2 Requirement to leave the meeting

Despite anything in the preceding clause, the entitlement to vote or be present at a meeting of the Directors of any Director who has a material personal interest in a matter that is being considered at the meeting is restricted in accordance with the Act and with every other relevant mandatory law.

20.3 Notice of interest

A general notice given to the Directors by any Director to the effect that they:

- (a) are an officer or a member of, or are interested in, a specified firm or body corporate; and
- (b) are to be regarded as interested in all relevant transactions with such firm or body,

is sufficient disclosure as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any such transaction with such firm or body.

20.4 Director of wholly owned subsidiary

If a Director is or becomes a director of a wholly owned subsidiary of the Company, and the constitution of that subsidiary expressly authorises the Director to act in the best interests of the Company that Director is taken to be acting in the best interests of the wholly owned subsidiary when they act in good faith in the best interests of the Company.

21. Powers and duties of Directors

21.1 Powers generally

Subject to the Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Directors who may exercise all powers of the Company and do all such acts or things (not expressly required by the Constitution or by the Act) as are decided by general meeting. No clause adopted or resolution passed by a general meeting invalidates any prior act of the Directors which would have been valid if that clause or resolution had not been adopted or passed.

21.2 Borrowing

The Directors have the power to raise or borrow any sum of money and to secure the payment or repayment of such money and any other obligation or liability of the Company in such manner and on such terms as they determine.

21.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Directors determine.

21.4 Official Seal

The Directors must provide for the safe custody of any seal. The seal may only be used with the authority of the Directors. Each instrument to which the seal is affixed must be signed by a Director and countersigned by the Secretary or by a second Director or by some other person delegated with the authority to do so by the Board.

21.5 Appointment of attorney

The Directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may determine. Any such powers of attorney may:

- (a) contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may determine; and
- (b) authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

21.6 Delegation

The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under the Constitution by the Directors for such time as they may think fit and to be exercised for such objects and purposes and upon such terms and

with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

21.7 Meritorious Service Awards

The Directors may confer on a person whom they consider to have made an outstanding contribution to the Company an award to be known as a Meritorious Service Award. Any such award would only be made after careful consideration by the Directors of such matters as length of service, contribution to the operations of or community engagement with the Company, the development of the organisation, or any other form of contribution to the Company that the Directors consider to have been particularly meritorious.

21.8 Validity of acts

Despite anything contained in the Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid.

22. Committees

22.1 Delegation to committee

The Directors may:

- (a) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit but subject always to an obligation of such committees to report promptly to the Board any decisions which bind the Company pursuant to such delegations which bind the Company; and
- (b) establish advisory or other committees not having delegated power of Directors consisting of such persons as they think fit.

22.2 Committee powers

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors.

22.3 Committee meetings

The meetings and proceedings of any committee consisting of two or more persons are governed by the provisions in the Constitution for regulating the meetings and proceedings of the Directors so far as those provisions are applicable and not affected by any resolution or regulation made by the Directors under the preceding clause.

22.4 Committee Members as officers

Each person appointed to a committee under Clause 22.1(a), if not otherwise an officer of the Company, is, when exercising the powers so delegated or functions entrusted, an Officer.

23. Rules and regulations

The Board shall have the power to make rules and instigate procedures (for instance, relating to the receiving and treatment of complaints) from time to time that are not inconsistent with the Constitution and that are in the opinion of the Board necessary for the administration and management of the Company, and may amend or rescind such by-laws, rules or regulations as considered appropriate by the Board.

24. Accounts

24.1 Books of account

The Company must keep proper books of account (which may include computer records) of the Company at its principal office and make entries of all such matters, transactions and things which are usually entered in books of accounts kept by entities engaged in concerns of a similar nature.

24.2 Audit

The Company must in accordance with the Act and any State legislation applicable to the registration of charities or charitable fundraising entities arrange for the accounts to be audited in accordance with applicable legislation.

25. Notices

25.1 Service of notices

Where the Constitution, the Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this clause referred to as "served"), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence; or
 - (ii) the address of the business of the person last known to the person serving the document; or
 - (iii) in the case of a Member to the address, or if the Member has given prior agreement, the email address of the Member entered in the Register; or
- (c) subject to the Act, by publication in a newspaper circulating generally in the State in which the Registered Office is located.

25.2 Date of deemed service

A document served under Clause 25.1 is treated as having been duly served:

- (a) where Clause 25.1(b) applies - on the day 2 working days after the day when dispatch occurred; and
- (b) where Clause 25.1(c) applies - on the day the newspaper is first published.

25.3 Counting of days

Subject to the Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

25.4 Service on the Company or its officers

Every document required to be served upon the Company or upon any Officer may be served by leaving it at the Registered Office.

25.5 Signature

The signature to any document to be given by the Company may be written, printed or stamped.

26. Indemnity

26.1 Indemnity for Officers

To the extent that the Act allows, each Officer and each officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

26.2 Insurance premiums

26.2.1 The Company may at any time pay premiums in respect of a contract insuring an Officer or a Director (whether with others or not) against a liability arising from actions as an Officer, or as an officer of a related body corporate, or a Director, as the case may be.

26.2.2. The Company may also pay an insurance premium in respect of a contract insuring a person who is or has been a Director against a liability arising from any action of the Company or of one or more of its Directors.

27. Substantial Changes in Operations

No substantial change to the operations of the Company (for instance but not limited to merger with or takeover by others, or sale of a care facility) may be committed or carried out unless such change is approved by Members by Special Resolution.

Schedule 2

NAMBUCCA VALLEY CARE LIMITED

ABN 91 001 255 689

20 Riverside Drive, Nambucca Heads, NSW 2448

A COMPANY LIMITED BY GUARANTEE, NOT HAVING A CAPITAL DIVIDED INTO SHARES

APPLICATION FOR MEMBERSHIP

I, Mr/ Mrs/ Miss/ Ms

Of.....

..... Post code.....

E-mail.....Phone.....

Date of birth....., hereby apply for Membership of Nambucca Valley Care Limited.

The Membership fee of \$50.00 (or such other amount as may be set down from time to time by the Board) is attached.

I hereby agree to be bound by the Constitution of the Company.

Signature of the applicant.....

Witnessed by me JP Date.....

Proposed by (print name).....

I have known the applicant personally for years

Signature..... Date.....

Seconded by (print name).....

I have known the applicant personally foryears.

Signature..... Date

Note: Both the proposer and seconder must be a current Member of Nambucca Valley Care Limited.

For Office use:

Received by NVC L..... Receipt no.

Approved by Board..... Minute No.....

REGISTERED TRAINING ORGANISATION COMMITTEE TERMS OF REFERENCE

Formulated: December 2012

Revised:

Membership:

Membership will be appointed by the Board of Directors and include at least two Directors, apart from the Chairperson of the Board who is an ex-officio member. Management membership shall comprise the Chief Executive Officer, Executive Care Manager and Registered Training Organisation Manager.

Additional members may be seconded from time to time by virtue of their aptitude and skills.

Power to appoint:

Power to appoint outside consultants on an 'as needed' basis.

Quorum:

A quorum shall consist of at least three (3) from the Membership. At least one Director must be present

Reporting arrangements:

The Committee is expected to meet at least once every three (3) months.

Minutes of the committee are to be tabled at the subsequent Board meeting together with any recommendations requiring action by either the Board or Management.

Areas of Responsibility:

The Committee will be responsible for ensuring that the organisation has in place appropriate systems processes and procedures to:

- Govern the RTO in an equitable and open manner.
- Allow all stakeholders (including trainees, supervisors) to participate actively in governance.
- Distribute trainees across NVC in ways that share workforce equitably among sites and that share training opportunities equitably among trainees.
- Ensure that core orientation activities essential to a safe start at work are provided to all trainees.
- Promote best practice methods as standards.
- Ensure that all trainees have access to high quality education and training based upon the The Australian Quality Training Framework (AQTF).
- Monitor formal education programs across NVC to ensure that trainees do not have gaps or unnecessary repetition as they rotate around NVC sites.

- Monitor the quality of supervision provided to trainees and take actions to improve supervision when required.
- Monitor the quality of training terms and education programs using trainee feedback.
- Monitor the progress of trainees as they move from site to site to ensure that difficulties are detected early and remediated consistently, and that opportunities for professional development build as trainees progress.
- Develop ideas and strategies to improve training within NVC and to remedy identified deficiencies.
- Support the RTO Manager.

FINANCE AND PLANNING COMMITTEE TERMS OF REFERENCE

Formulated: 25 May 2010

Revised:

Responsible to: The Finance and Planning Committee is a committee of the Board of Directors of Nambucca Valley Care Limited.

Chairperson Appointment: The Chairperson of the Committee shall be appointed by the Board of Directors.

Membership: Membership will be appointed by the Board of Directors and include at least three Directors, apart from the Chairperson of the Board who is an ex-officio member. Relevant and appropriate members of Management will also be in attendance and other Non-Board members may be appointed to the Committee by virtue of their personal skills and aptitudes.

Additional members may be seconded from time to time by virtue of their aptitude and skills.

Power to Appoint: Power to appoint outside consultants on an 'as needed' basis.

Quorum: A quorum shall consist of at least two (2) Board members.

Reporting Arrangements: The Committee is expected to meet monthly.

These actions are to be tabled by the Committee Chair at the subsequent Board meeting as a recommendation from the Finance and Planning Committee requiring action by either the Board or Management.

The Committee will provide minutes of its meetings to the Board. The Chairperson, Committee Members or Manager may speak to any report at a Board meeting.

Areas of Responsibility: The Finance and Planning Committee will be responsible for ensuring that the organisation has in place appropriate systems, processes and procedures to:

1. Ensure budgets and business plans achieve the desired and projected annual surplus. Included in this responsibility is a review of variations to the Budget where shortfalls occur and the instigation (through management) of remedial action where required to address shortfalls;
2. Review Business Cases (where outside of normal delegations) established by management for Board approval and develop recommendations as appropriate;
3. Ensure finance operations of NVC are maintained to:
 - a. Enable business models in use by the organisation provide acceptable returns on accumulated funds.
 - b. Secure bonds and entry contributions held on behalf of residents.
 - c. That solvency and capital levels are maintained at acceptable levels.
4. Ensure the Strategic Plan reflects the desired strategic direction, most current business models and maximises the long term viability of NVC;
5. Ensure that a Master Plan is developed and maintained for all sites;
6. Oversee all major capital works programs and projects; and
7. Regularly reviewing process improvements (including IT) and cost management of all areas of operation.

**CARE AND QUALITY COMMITTEE
TERMS OF REFERENCE**

Formulated: 25 May 2010

Revised:

- Responsible to:** The Care and Quality Committee is a committee of the Board of Directors of Nambucca Valley Care Limited.
- Chairperson Appointment:** The Chairperson of the Committee shall be appointed by the Board of Directors.
- Membership:** Membership will be appointed by the Board of Directors and include at least three Directors, apart from the Chairperson of the Board who is an ex-officio member. Relevant and appropriate members of Management will also be in attendance and other Non-Board members may be appointed to the Committee by virtue of their personal skills and aptitudes.
- Additional members may be seconded from time to time by virtue of their aptitude and skills.
- Power to appoint:** Power to appoint outside consultants on an 'as needed' basis.
- Quorum:** A quorum shall consist of at least two (2) Board members.
- Reporting arrangements:** The Committee is expected to meet monthly.
- These actions are to be tabled by the committee chair at the subsequent Board meeting as a recommendation from the Care and Quality Committee requiring action by either the Board or Management.
- The Committee will provide minutes of its meetings to the Board. The Chairperson, Committee Members or Manager may speak to any report at a Board meeting.
- Areas of Responsibility:** The Care and Quality Committee will be responsible for ensuring that the organisation has in place appropriate systems, processes and procedures to:

1. Facilitate quality care (in its widest definition) throughout Nambucca Valley Care Limited; the ongoing achievement of accreditation and the maintenance of a regime of Continuous Improvement;
2. Facilitate the input of new and emerging care models into the Strategic Plan;
3. Ensure the effective management and development of staff including recruitment, induction, training, succession planning, remuneration and recognition systems;
4. Review WH&S compliance and Workers Compensation, particularly Return to Work Procedures and introduce remedial action where appropriate;
5. Establish working groups for special tasks related specifically to the Committee's mandate;
6. Review complaints and assaults with potential adverse outcomes and report to the Board of Directors;
7. Review all care policies annually and as required; and
8. Prepare new policies for recommendation to the Board of Directors for approval and adoption.

**AUDIT AND COMPLIANCE COMMITTEE
TERMS OF REFERENCE**

Formulated: 25 May 2010

Revised:

Responsible to: The Audit and Compliance Committee is a committee of the Board of Directors of Nambucca Valley Care Limited.

Chairperson Appointment: The Chairperson of the Committee shall be appointed by the Board of Directors.

Membership: Membership will be appointed by the Board of Directors and include at least three Directors, apart from the Chairperson of the Board who is an ex-officio member. Relevant and appropriate members of Management will also be in attendance and other Non-Board members may be appointed to the Committee by virtue of their personal skills and aptitudes.

Additional members may be seconded from time to time by virtue of their aptitude and skills.

Power to appoint: Power to appoint outside consultants on an 'as needed' basis.

Quorum: A quorum shall consist of at least two (2) Board members.

Reporting arrangements: The Committee is expected to meet at least once every three (3) months.

These actions are to be tabled by the Committee Chair at the subsequent Board meeting as a recommendation from the Audit and Compliance Committee requiring action by either the Board or Management.

The Committee will provide minutes of its meetings to the Board. The Chairperson, Committee Members or Manager may speak to any report at a Board meeting.

Areas of Responsibility:

The Audit and Compliance Committee will be responsible for ensuring that the organisation has in place appropriate systems, processes and procedures to:

1. Minimise the risk associated with the accounting systems, procedures and records including cash control and financial investments and aged care prudential requirements;
2. Facilitate auditing of the company's accounts in accordance with Australian Accounting Standards;
3. Ensure compliance with Corporation Legislation including overseeing the provision of appropriate statutory reporting;
4. Oversee the relationship between the organisation and its external Auditors;
5. Ensure compliance with the *Aged Care Act (1997)* including the associated Accreditation Standards and Aged Care Principals (1997); and
6. Ensure compliance with a range of legislation including, but not limited to:
 - a. Health Services Act (1997)
 - b. Retirement Villages Act (1999)
 - c. Therapeutic Goods Act (1989)
 - d. Privacy Act (1988)
 - e. Work Health & Safety Act (2011)
 - f. Anti-Discrimination Act (1977)
 - g. Fair Work Act (2009)
7. In addition, the Audit and Compliance Committee will perform the role of primary point of reference for overseeing any areas identified by external agencies in relation to legislative non-compliance.
8. In conjunction with the Board's Strategic Plan, review and examine new business models and opportunities and strategies to determine Audit and Compliance implications and provide recommendations to the Board of Directors on appropriate courses of action.
9. Monitor all compliance registers and follow up any outstanding items.