

# Constitution

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## RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INCORPORATED

We confirm that this Constitution was adopted by the Members at an Annual General Meeting held on 15 August 2025:



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Member – Generus Living Group



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Member – Summerset

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# Constitution of the Retirement Villages Association of New Zealand Incorporated

## Part I – PRELIMINARY

### 1. Definitions and Interpretation

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1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

**Accredited Member** means a Member as set out in clause 9.1.1.

**Accredited Retirement Village** means a Retirement Village approved as such by the Executive in accordance with such criteria as the Executive may determine from time to time.

**Act** means the Incorporated Societies Act 2022 or any Act which replaces it (including amendments to it from time to time), and any regulations made under the Act or under any Act which replaces it.

**Annual General Meeting** has the meaning given to that term in clause 16.1.

**Associate Member** means a Member as set out in clause 9.1.3.

**Association** means the Retirement Villages Association of New Zealand Incorporated.

**Bylaws** means the bylaws of the Association (if any) published from time to time, and administered and supervised, by the Executive.

**Code of Practice and Standards** means:

- (a) the Retirement Villages Code of Practice 2008 as updated, amended or replaced from time to time; and
- (b) the standards of the Association promulgated from time to time by the Executive and published by the Association,

in each case to which all Members should adhere, and against which each Provisional Member and all Accredited Members will be audited as part of the RVA Audit.

**Constitution** means this constitution of the Association and all amendments made to it from time to time.

**Disciplinary Authority** means the authority established and administered in accordance with clause 14.1 and in further accordance with the Rules.

**Dispute** means a disagreement or difference of opinion (or suchlike) of substance between two or more persons that cannot be resolved informally to the satisfaction of those persons.

**Dispute Notice** means a written notice of the details of a Dispute written with sufficient clarity to enable the other party to understand the nature and basis of the Dispute.

**Distribution** means the direct or indirect transfer of money or property to any person, or the incurring of any debt for the benefit of any person.

**Executive** means the body of persons elected or appointed in accordance with clause 19.

**Executive Director** means the natural person (who need not be a Member) appointed in accordance with clause 19.11.1.

**Executive Member** means each natural person elected or appointed in accordance with clause 19 and **Executive Members** means all such persons collectively.

**Financial Year** means the 12 month period that begins on 1 April in one year, and ends on 31 March of the following year, or such other 12 month period as the Executive may determine from time to time.

**Industry** means the industry in New Zealand of Retirement Village planning, construction, marketing, administration, operation, and all associated activities.

**Interests' Register** means the register retained by the Association where Executive Members disclose transactions or proposed transactions with the Association in which they may be interested, in accordance with the requirements of section 62 of the Act and this Constitution.

**Law** means all common, customary or statute law affecting or applicable to Retirement Villages or the Industry that can be enforced in New Zealand; and reference to any statute is to a New Zealand statute, including all regulations, orders, bylaws, codes and notices made under or in accordance with such a statute, including any code of practice or conduct applicable to Retirement Villages or the Industry or regulating the activities of and setting compliance standards for Operators which is promulgated pursuant to any such law, and including all amendments to that statute whether by subsequent statute or statute passed in substitution for the statute;

**Life Member** means a Member as set out in clause 9.1.4.

**Member** means a member of the Association in accordance with this Constitution and includes Accredited Members, Associate Members, Provisional Members and Life Members, including, where the context requires, the Representative appointed by any Member, and **Members** collectively means all such persons.

**Members' Register** means the register retained by the Association in which Members' details are recorded, kept up-to-date and retained, in accordance with the requirements of section 79 of the Act and this Constitution.

**Objects** means the specific purposes for which the Association has been established and in pursuit of which it will function, as described in clause 4.1 and in Schedule 1.

**Occupation Right Agreement** has the meaning given to that term in the Retirement Villages Act.

**Operator** has the meaning given to that term in the Retirement Villages Act.

**Ordinary Resolution** has the meaning given to that term in clause 17.4.1.

**Past President** means the natural person holding such office in accordance with clause 19.5.

**President** means the person for the time being holding the office of president of the Association pursuant to this Constitution.

**Provisional Member** means a Member as set out in clause 9.1.2.

**Quorum** has the meaning set out in clause 17.1 (as it relates to meetings of Members) and in clause 21.4 (as it relates to meetings of the Executive).

**Registrar** means the Registrar of Incorporated Societies appointed in accordance with section 240 of the Act.

**Representative** means the natural person appointed by an Accredited Member in accordance with clause 17.6 to exercise the rights of that Accredited Member at a Members' meeting.

**Resident** means a person who is occupying, or is entitled to occupy, a Unit in a Retirement Village subject to an Occupation Right Agreement, including a Resident (or the representative of a Resident) whose right to occupy a Unit has terminated but is waiting to be paid by the Operator under the terms of that Occupation Right Agreement.

**Retirement Village** means a retirement village recorded on the register of retirement villages (such register maintained in accordance with the Retirement Villages Act 2003).

**Retirement Villages Act** means the Retirement Villages Act 2003 or any act which replaces it (including amendments to it from time to time), and any regulations made under the act or under any act which replaces it.

**Returning Officer** means the natural person appointed in accordance with clause 19.11.2.

**Rules** means the rules of the Disciplinary Authority that are described in Schedule 2, as they may be amended from time to time.

**RVA Audit** means the audit against the Code of Practice and Standards to be undertaken by an independent firm of auditors at least once every three years.

**Special Levy** has the meaning given to that term in clause 11.6.

**Special General Meeting** has the meaning given to that term in clause 16.3.

**Special Resolution** has the meaning given to that term in clause 17.4.2.

**Unit** means a completed dwelling in a Retirement Village for which the basis of residency is an Occupation Right Agreement.

**Vice-President** means the person for the time being holding the office of vice-president of the Association pursuant to this Constitution.

**Working Day** means any day of the year other than a Saturday, a Sunday or statutory holiday in the place where the Society's registered office is located.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- 1.2.1 headings are for ease of reference only and will not be deemed to form any part of the context or affect the interpretation of this Constitution;
- 1.2.2 expressions defined in the main body of this Constitution bear the defined meanings in the whole of this Constitution, including the Schedules (if any);
- 1.2.3 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.2.4 the singular includes the plural and vice versa;
- 1.2.5 the meaning of general words is not limited by specific examples introduced by the words *including*, *for example* or similar expressions;

- 1.2.6 the decision of any person made in relation to this Constitution, or the exercise of any discretion by any person, requires that person to act reasonably;
- 1.2.7 a reference to *property* is deemed to include:
- (a) anything that is capable of being owned, whether real or personal, tangible or intangible (including, for the avoidance of doubt, shares);
  - (b) (without limiting the above) any estate, interest or right in any property; and
  - (c) (without limiting the above) any right, benefit or undertaking;
- 1.2.8 to *dispose* includes to sell, assign, exchange, transfer, grant a concession, release, part with possession, or grant any option, right or interest whatever, or any agreement for any of the same (but excludes any transaction that is a security), and to *acquire* is to be construed accordingly;
- 1.2.9 a *security* includes any mortgage, charge, encumbrance, assignment by way of security or other arrangement of any nature having similar economic effect to any of the foregoing;
- 1.2.10 a reference to:
- (a) a *clause* or *Schedule* is a reference to a clause or schedule of this Constitution unless stated otherwise;
  - (b) an agreement or other document (including this Constitution) is to that agreement or document as may be amended, assigned, ratified or replaced from time to time;
  - (c) an agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body that performs most closely the functions of the obsolete body;
  - (d) *written* or *in writing* means any form of reproducing words in a tangible and permanently visible record, and includes any transmission by email;
  - (e) an event includes any act, omission, transaction or other occurrence;
  - (f) a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
  - (g) an obligation or duty to perform an affirmative action includes procuring that action or causing that action to take place;
  - (h) a *right* includes any right, authority, discretion, remedy or power;
  - (i) a *month* or a *year* is to a calendar month or a calendar year respectively; and
  - (j) time and date is to a time and date in New Zealand unless a contrary intention is expressed;
- 1.2.11 if a period of time is specified from a given day, or from the day of an act or event, the period of time is to be calculated exclusive of that day;
- 1.2.12 if there is any ambiguity or inconsistency between a provision in this Constitution and any document referred to in this Constitution, this Constitution will prevail.

- 1.2.13 a person is deemed to be '*present*' at a meeting if that person (or their Representative, if relevant) is physically present, or attends electronically in accordance with clause 16.6 (for a Members' meeting) or clause 21.3 (for an Executive meeting); and
- 1.2.14 terms used in this Constitution that are also used in the Act, and that are not otherwise defined in this Constitution, will have the meaning given to them in the Act.

## 2. Name of Association

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The Association created by this Constitution will be known as the **Retirement Villages Association of New Zealand Incorporated** or such other name as the Executive may from time to time determine.

## 3. Rights, Powers, Duties and Obligations

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- 3.1 The Association, the Executive and each Member has the rights, powers, duties and obligations conferred or imposed by the Act, except to the extent that the Act allows them to be negated or modified by a term of this Constitution.
- 3.2 The Association:
- 3.2.1 may carry on any business or activity, do any act, or enter into any transaction that is consistent with its Objects; and
- 3.2.2 must not conduct or carry on any business or activity, do any act, or enter into any transaction that is not consistent with its Objects.
- 3.3 The Association shall take into account the principles and values of Te Tiriti o Waitangi in relation to the pursuit of its Objects.
- 3.4 The Association is entitled to pay for services rendered if the payment is reasonable and does not exceed amounts that would usually be paid for the service in an arm's length transaction.
- 3.5 Subject to it acting in good faith and in what each Executive Member believes to be the best interests of the Association, the Executive (when acting on or determining any issue that comes before it) has the power to act, or determine any issue, at its sole and absolute discretion.

## Part II – CAPACITY AND POWERS

### 4. Objects of Association

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- 4.1 **Objects:** The Association is established, and will be maintained, exclusively in pursuit of its Objects in New Zealand, as described in Schedule 1, provided that any private benefit conferred on any person is merely incidental to the Objects.
- 4.2 **Profits and Surpluses:** All profits or surpluses of the Association must be retained or reinvested in the Association, or otherwise used by the Association exclusively toward the pursuit of its Objects.

### 5. Application of Association's Property

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The Association may pay or apply any of its property, at the Association's absolute discretion, in the furtherance of its Objects.

### 6. Restrictions Relating to Private Profit

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- 6.1 **No Private Profit:** Nothing expressed or implied in this Constitution will permit the activities of the Association, or any business carried on by, for, or for the benefit of the Association, to be carried on for the private pecuniary profit of any person so as to affect the operation of the Association and its pursuit of its Objects within New Zealand.
- 6.2 **Distributions:** The Executive must not authorise any Distribution by the Association to any person, provided that:
- 6.2.1 each Executive Member is entitled to be reimbursed for all reasonable costs, charges and expenses properly incurred by the Executive Member in connection with the affairs of the Association;
- 6.2.2 the Executive may pay reasonable and proper remuneration to any person (including an Executive Member or a Member) in return for services actually rendered to the Association; and
- 6.2.3 an Executive Member or a Member (**Person A**) may retain any remuneration properly payable to them by any person connected with the Association (**Person B**) even though Person A's connection with Person B comes from Person A's connection with the Association.
- 6.3 **Expenses:** The Executive, in determining all reimbursements, remuneration and charges payable to any person in terms of this Constitution, must ensure that the restrictions imposed by clause 6.2 are strictly observed.
- 6.4 **Professional Services:** A person who, in the course of and as part of the carrying on of their business of a professional public practice, renders professional services to the Association, will not, by reason only of such person rendering professional services to the Association, be in breach of clause 6.2.

### 7. Acts and Disclosures

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#### 7.1 Acting for Association:

- 7.1.1 Any Executive Member may, with the prior approval of the Executive Director or President, act by himself or herself or by the Executive Member's firm in a

professional capacity for the Association, and the Executive Member or the Executive Member's firm will be entitled to remuneration for professional services as if the Executive Member were not an Executive Member. However, nothing in this clause authorises an Executive Member or the Executive Member's firm to act as an auditor or a reviewing accountant (in accordance with clause 24.1) to the Association.

- 7.1.2 An Executive Member may hold any other office or place of profit under the Association (other than the office of auditor or reviewing accountant) in conjunction with being an Executive Member for such period and on such terms (as to remuneration and otherwise) as the Executive may determine.
- 7.1.3 An Executive Member may only become an employee of the Association with the prior approval of the Executive.
- 7.1.4 Other than as provided in clause 7.2, an Executive Member is not disqualified by virtue of their office from entering into any transaction with the Association and any such transaction will be valid and enforceable to the same extent as if they were not an Executive Member and not in a fiduciary relationship with the Association.
- 7.2 **Interests' Register:** An Executive Member who is interested (as defined in section 62 of the Act) in a transaction entered into, or to be entered into, by the Association must, immediately upon becoming aware that they are interested in the transaction:
  - 7.2.1 enter into the Interests' Register and disclose to the Executive the nature, monetary value (if quantifiable) or nature of the extent (if the monetary value is not quantifiable) of any such interest;
  - 7.2.2 not participate in any discussion about the transaction, unless otherwise determined by the Executive); and
  - 7.2.3 not participate in any vote, or sign any document, relating to the transaction.
- 7.3 **Threshold passed:** If, at any time, the majority of the Executive disclose a conflict of interest in relation to a particular transaction, that matter must be referred to, and dealt with at, a Members' meeting.
- 7.4 **Sufficient Disclosure:** A general notice entered in the Interests' Register and disclosed to the Executive to the effect that an Executive Member is a shareholder, director, officer or trustee of a named entity, or related or associated with a named person, and is to be regarded as interested in any transaction that may, after the date of entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- 7.5 **Interests' Register:** The Interests' Register may may be inspected by any Executive Member at any reasonable time.

## 8. Maintaining Eligibility

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The Association must do all things necessary to ensure that the Association is, and will remain, compliant with the law, and do all things necessary to be eligible to benefit from any concessions available to the Association, including:

- 8.1 registering with the Registrar under the Act and maintaining that registration; and
- 8.2 complying with all relevant obligations under:
  - 8.2.1 the Act;

- 8.2.2 all revenue legislation, including the Income Tax Act 2007, the Estate and Gift Duties Act 1968, the Goods and Services Tax Act 1985 and the Tax Administration Act 1994; and
- 8.2.3 all consumer protection legislation, including the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Commerce Act 1986.

## Part III – MEMBERSHIP

### 9. Membership Categories / Voting Rights

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9.1 Members shall be classified as Accredited Members, Provisional Members, Associate Members, or Life Members as follows:

9.1.1 **Accredited Members:** An Accredited Member is an Operator in respect of one or more Accredited Retirement Villages that complies with the criteria set out in clause 10.5 and that has been accepted as an Accredited Member of the Association by the Executive pursuant to this Constitution.

Accredited Members shall be entitled to vote in accordance with clauses 17.4.4 and 17.4.6 and shall have the right to advertise themselves as Accredited Members of the Association.

9.1.2 **Provisional Members:** A Provisional Member is an Operator in respect of a Retirement Village, or an intending operator of a retirement village that is yet to be registered (whether or not that Operator is an Accredited Member) that complies with the criteria set out in clause 10.6 and that has been accepted as a Provisional Member of the Association by the Executive pursuant to this Constitution.

An admission as a Provisional Member shall last for a period of 12 months from the date of admission, or, where the Retirement Village owned by that Provisional Member is a newly constructed village, for a period of 12 months from the commencement date of the first Occupation Right Agreement issued at that village (or for such other period as is determined by the Executive in its sole discretion). Provisional Members have no voting rights and may only advertise themselves as Provisional Members of the Association.

9.1.3 **Associate Members:** An Associate Member is a person, partnership, company, body corporate, trust or other legal entity (other than an Operator) who shares a common interest or who has knowledge or experience relevant to the Industry and who complies with the criteria set out in clause 10.6 and has been accepted as an Associate Member of the Association by the Executive pursuant to this Constitution.

Associate Members have no voting rights and may not attend Members' meetings (except by the invitation of the Executive – see clause 16.6) and may only advertise themselves as Associate Members of the Association.

9.1.4 **Life Members:** A Life Member is a person who has been nominated and approved as a Life Member of the Association in accordance with clause 10.7.

Life Members shall have one vote at a Members' meeting and are entitled to one free registration at each of the Association's conferences and any other benefits determined by the Executive from time to time. Such benefits are exclusively for the Life Member and cannot be transferred to any other person. Any other expenses incurred by the Life Member to attend the Association's conferences shall be the Life Member's responsibility.

### 10. Admission to Membership

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#### 10.1 Method of Application

10.1.1 Any person who wishes to become a Member of the Association shall apply for membership to the Executive Director.

- 10.1.2 The application shall be made in such form prescribed by the Executive for the applicable class of membership from time to time.

## 10.2 **Application to become an Accredited Member**

Any application to become an Accredited Member must also:

- 10.2.1 be made in respect of a specific nominated Accredited Retirement Village;
- 10.2.2 disclose, and give particulars of, any known material financial interest for the purpose of clause 10.8.5; and
- 10.2.3 contain an undertaking that the Operator will, from the date of admission as an Accredited Member, comply with the Code of Practice and Standards, this Constitution, and all relevant Law that may be in force from time to time relating to the Industry.

## 10.3 **Application to become a Provisional Member**

Any application to become a Provisional Member must also:

- 10.3.1 be made in respect of a specific nominated Retirement Village, or retirement village that is yet to be registered;
- 10.3.2 disclose, and give particulars of, any known material financial interest for the purpose of clause 10.8.5; and
- 10.3.3 contain an undertaking that the Operator will, from the date of admission as a Provisional Member, comply with the Code of Practice and Standards, this Constitution and all relevant Law that may be in force from time to time relating to the Industry.

## 10.4 **Accredited Membership relating to a specific Accredited Retirement Village**

- 10.4.1 An Accredited Member must be an Accredited Member in relation to a specific Accredited Retirement Village owned by that Member.
- 10.4.2 The following provisions shall apply if any Accredited Member owns or acquires more than one Retirement Village:
- (a) if an Accredited Member has or acquires more than one Accredited Retirement Village, the Member must be an Accredited Member in relation to each Accredited Retirement Village owned by that Member;
  - (b) if an Accredited Member acquires a Retirement Village that is not accredited, that Accredited Member must take such steps as may be necessary to gain accreditation for that village and apply for that Retirement Village to become an Accredited Retirement Village; and
  - (c) until that Retirement Village is accepted as an Accredited Retirement Village pursuant to this Constitution, the Accredited Member shall be treated as a Provisional Member in relation to that Retirement Village on the terms applicable to Provisional Membership.

## 10.5 **Admission as an Accredited Member**

- 10.5.1 The Executive may admit and register any Operator as an Accredited Member in respect of an Accredited Retirement Village(s) provided that the Operator has:

- (a) signed the correct application form for admission containing the information and undertakings set out in this clause 10;
- (b) satisfied a majority of the Executive as to that applicant's suitability for membership (both generally and in accordance with the membership criteria set out in clause 9, or as otherwise specified by the Executive from time to time); and
- (c) paid the fees from time to time prescribed by this Constitution or in accordance with the powers conferred by this Constitution; and
- (d) in the case of the nominated Accredited Retirement Village demonstrated a sufficient level of competence in the management of, and passed an RVA Audit in respect of, that nominated Accredited Retirement Village.

#### **10.6 Admission as an Associate Member or Provisional Member**

10.6.1 The Executive may admit and register any Provisional Member or Associate Member to the Association who has:

- (a) signed the correct application form for admission containing the information and undertakings set out in this clause 10; and
- (b) fulfilled any other requirements for admission specified by the Executive from time to time.

10.6.2 Following its admission as a Provisional Member, each Provisional Member must take such steps as may be necessary to gain accreditation for each village of which it is an Operator and apply for that Retirement Village to become an Accredited Retirement Village in accordance with clause 10.5.

#### **10.7 Life Member**

10.7.1 The Executive may admit and register any person as a Life Member to the Association who:

- (a) has been nominated and seconded for such an admission by an Accredited Member of the Association (not being the nominee);
- (b) in the opinion of the Executive is a fit, proper and suitable candidate for admission as a Life Member; and
- (c) meets the other requirements for admission as a Life Member specified by the Executive from time to time.

#### **10.8 Admission to Membership – General Provisions**

10.8.1 The Executive shall consider each application for membership submitted to it in accordance with clause 10 and determine whether each applicant shall be admitted as a Member, and each successful applicant will become a Member on acceptance of that application by the Executive.

10.8.2 Each applicant must provide to the Executive any information and/or documentation requested by the Executive for the purpose of considering the applicant's membership application.

10.8.3 The determination as to whether an applicant has fulfilled the criteria for membership of any class of Member and the decisions to approve or reject the admission to the Association of any class of Member and to designate an applicant

to any class of membership (including by variation of a Member's class of membership) shall be at the sole discretion of the Executive (whose decision shall be final and binding) and in making such decision, the Executive may take into account any matter it considers relevant.

- 10.8.4 The Executive shall be under no obligation to give reasons for the refusal to admit any person to any class of membership.
- 10.8.5 Where the Executive determines that a new or existing Member is part of a group of incorporated or unincorporated entities (for example, but without limitation, partnerships, trusts, joint ventures) and/or related companies or a subsidiary of a holding company (as defined in the Companies Act 1993) or an incorporated or unincorporated entity, the Executive may, as a condition of approval of any application for membership, or as a condition of continuation of membership, require that one or more other entities (whether incorporated or unincorporated) within the group and/or the holding company or one or more other related companies (as the case may be) make an application for membership of the Association in accordance with this Constitution.
- 10.8.6 The Executive shall send a notice of admission or readmission, refusal of admission or change of class of membership, to each person whose application for admission or change of membership has been determined or considered by the Executive.
- 10.8.7 Where an application for membership is approved, the Executive shall arrange for the new Member to be invoiced for the membership fee determined in accordance with clause 11.
- 10.9 **Transfer of Membership:** The Executive shall have the power, if, in their absolute discretion, they consider it necessary, to transfer a Member to a class of membership other than that to which the Member may originally, or at any time, have been approved, appointed or transferred.

## 11. Fees And Subscriptions

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- 11.1 Membership fees and annual subscription fees for Members for each Financial Year and the timing and manner of payment shall be determined by the Executive in its sole discretion, noting that:
- 11.1.1 the different classes of membership may be levied different subscription rates; and/or
- 11.1.2 different members within each class of membership may be levied different subscription rates; and/or
- 11.1.3 a concessionary subscription may be applied where a membership is for less than a complete year; and/or
- 11.1.4 the annual subscription for the forthcoming year for a particular class of membership may be set at zero.
- 11.2 Every person seeking admission as a Member shall pay a membership fee to the Association upon their application for membership being approved by the Executive.
- 11.3 Every Member shall pay an annual subscription fee on the date and in the manner determined by the Executive.
- 11.4 The Executive may discount and/or waive annual subscription fees as it sees fit.

- 11.5 If any Member fails to pay that Member's annual subscription fee in full within sixty days of the due date for payment, the Executive may take action to recover the amount of the subscription as a debt owing to the Association together with all legal costs associated with the recovery of the debt.
- 11.6 The Executive may, in addition to any annual subscription fees, levy Members for any amounts and in such proportions as it sees fit, for the cost of any special objectives to be lawfully carried out by the Association (such level being a **Special Levy**), provided that the Special Levy is approved by Special Resolution of the Members. In the event of any Special Levy not being paid then the powers available to the Executive in respect of unpaid subscriptions contained in clauses 11.5 and 15.1.4(a) shall apply.

## 12. **Members' Register:**

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- 12.1 The Association:
- 12.1.1 must maintain the Members' Register to include each Member's relevant membership details as specified in clause 12.2 and otherwise as authorised by the Executive. Each Member must keep the Association informed of any changes as soon as reasonably practicable. The Members' Register must be kept in a secure place and in accordance with the requirements of the Privacy Act 2020 and the Act; and
- 12.1.2 may use data and information recorded in the Members' Register, and, unless otherwise agreed, each Member grants the Association an irrevocable, non-exclusive, transferable and royalty-free licence to use, modify, develop or adapt all such information for its own purposes, provided that the use of such data and information is subject at all times to the requirements of the Privacy Act 2020 and the Act.
- 12.2 **Content of Members' Register:** For each current Member, the information contained in the Members' Register will include:
- 12.2.1 their name;
- 12.2.2 the date on which they became a Member (if there is no record of the date they joined, this date will be recorded as 'Unknown') and their category of membership; and
- 12.2.3 their contact details, including a physical or electronic address and a telephone number.
- 12.3 The Association will also keep a record of the former Members of the Association. For each Member who ceased to be a Member within the previous seven years, the Association will record the former Member's name and the date the former Member ceased to be a Member.
- 12.4 **Inspection of Members' Register:** No Member, other than an Executive Member, has the right to inspect the Members' Register (or to take a copy of the Members' Register or any extract from it) except as conferred by statute or as authorised by the Executive, provided that access by any person is at all times subject to the requirements of the Privacy Act 2020.

## 13. **Ongoing Member Obligations**

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- 13.1 **Member Commitment:** Each Member agrees, throughout the period of their membership:
- 13.1.1 to be bound by this Constitution and any rules and/or bylaws of the Association;

- 13.1.2 to abide by decisions made in accordance with the Constitution either by the Executive, the Executive Director or by the Members at a Members' meeting;
- 13.1.3 to pay all such membership fees, annual subscription fees or any Special Levy or other fees in the manner provided for in this Constitution;
- 13.1.4 to provide to the Executive any information and/or documentation reasonably requested by the Executive from time to time in connection with the Executive's work to further the Objects of the Association including, without limitation, for the purpose of assessing the Member's compliance with the Code of Practice and Standards, this Constitution and relevant Laws; and
- 13.1.5 (for each Accredited Member only) to undergo an RVA Audit at the Member's expense at least once every three years, and to implement any recommendations made by the auditor.

## 14. Disciplinary Authority

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- 14.1 The Association has established and will continue to maintain and administer a Disciplinary Authority, whose constitution, jurisdiction and proceedings will be governed and regulated in the manner described in Schedule 2.
- 14.2 **Referral to Disciplinary Authority:** Where, in the sole opinion of the Executive, a Member fails to comply with any provisions of the Code of Practice and Standards, this Constitution, any Laws relating to the Industry, fails to act in a manner which is consistent with well-established and recognised Industry "best practice" (as determined by the Executive from time to time) or the Member has acted in a manner which has, or is likely to, bring the Industry into disrepute, the Executive may advise that Member by notice in writing of its opinion in this regard and:
  - 14.2.1 invite such Member to comply with the notice within one month from the date of that notice; and/or
  - 14.2.2 submit the matter to the Disciplinary Authority for final determination pursuant to the process set out Schedule 2.

## 15. Resignation / Termination of Membership

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- 15.1 A Member ceases to be a Member:
  - 15.1.1 (provided that a Member has paid its annual subscription fee) by resignation from that Member's class of membership by written notice given to the Executive Director;
  - 15.1.2 on termination of a Member's membership on order of the Disciplinary Authority following the dispute resolution process set out in clause 14 and Schedule 2;
  - 15.1.3 on death (of a natural person Member); or
  - 15.1.4 by resolution of the Executive where that Member:
    - (a) fails to pay the annual subscription fee or any other payment due to the Association within 90 days of the date appointed for payment of that amount;
    - (b) fails to comply with the time frames set down by clause 14.2;
    - (c) fails to comply with any order or determination of the Disciplinary Authority;

- (d) is convicted of any indictable offence;
- (e) is adjudicated bankrupt;
- (f) makes a compromise with its creditors (other than for reasons of a solvent restructuring);
- (g) is wound up or passes an effective resolution for the winding up or dissolution of the Member or an order of the court is passed for the winding up or dissolution of the Member; or
- (h) is a company or body corporate and a receiver or liquidator is appointed in respect of the whole or any part of its assets.

15.2 with effect from (as applicable):

15.2.1 the date of receipt of the Member's notice of resignation by the Executive Director (or any subsequent date stated in the notice of resignation);

15.2.2 the date of termination of the Member's membership under this Constitution;

15.2.3 the date of death of the Member; or

15.2.4 the date specified in a resolution of the Executive, and when a Member's membership has been terminated the Executive Director will promptly notify the former Member in writing.

15.3 In the event that a Member's membership is terminated, no part of the annual subscription or Special Levy that has been paid will be refunded and, in the event that the annual subscription and/or any Special Levy has not been paid, it will remain due and payable; and

15.4 Termination of membership will not release any Member from any liability to the Association arising prior to the date of termination, nor will it affect the Association's right to refer the Member to the Disciplinary Authority.

## Part IV – MEMBERS' MEETINGS

### 16. Meetings of Members

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- 16.1 **Annual General Meeting:** The Executive must call an annual general Members' meeting (**Annual General Meeting**) to be held:
- 16.1.1 not later than six months after the completion of the Financial Year of the Association; and
  - 16.1.2 not later than 15 months after the previous Annual General Meeting.
- 16.2 **Purposes of Annual General Meeting:** The Annual General Meeting shall be held for the following purposes:
- 16.2.1 to receive from the Executive an annual report (on the operations and affairs of the Association during the preceding Financial Year), balance sheet and audited financial statements for the preceding Financial Year and an estimate of the receipts and expenditure of the current Financial Year;
  - 16.2.2 to elect auditors (or, as the case may be, reviewing accountants) for the next Financial Year;
  - 16.2.3 to fill vacancies in the Executive and to re-elect Executive Members who make themselves eligible for re-election;
  - 16.2.4 to consider and confirm the minutes of the previous Annual General Meeting, and any intervening Special General Meeting, provided that failure to confirm any minutes will not invalidate the meeting of which the minutes are a record and will not prevent or otherwise restrict the continued operation of the Association; and
  - 16.2.5 to consider any business of which notice has been given in accordance with clause 16.11.
- 16.3 **Special General Meetings:** A special general meeting (being any Members' meeting other than an Annual General Meeting) of Members (**Special General Meeting**) entitled to vote on an issue:
- 16.3.1 may be called at any time by the Executive; or
  - 16.3.2 must be called by the Executive on the written request of Accredited Members entitled to not less than one third of the votes of the current Members of the Association as at the date the written request is received by the Executive.
- 16.4 No business may be considered at a Special General Meeting other than any business in respect of which notice has been given in accordance with clause 16.11.
- 16.5 **Method of Holding Meetings:**
- 16.6 Only Accredited Members, Provisional Members and Life Members may attend Members' meetings. Non-Members and Associate Members may attend a Members' meeting only at the invitation of the Executive.
- 16.7 Members may attend a Members' meeting by being personally present, by telephone or by a form of electronic communication link. No Member is permitted to record all or any part of a Members' meeting without the express permission of the Executive.
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- 16.8 All members of the Executive as well as any current legal or financial advisers of the Association are entitled to attend and speak at all Members' meetings.
- 16.9 **Chairperson for Members' Meetings:**
- 16.9.1 The President will be the chairperson of every Members' meeting provided that, if the President is unable or unwilling to chair a meeting, the Vice-President or such other person as is appointed by the Executive will chair that meeting. In the absence of an Executive Member, the Accredited Members present may choose one of their number to chair that meeting.
- 16.9.2 The chairperson of a meeting has the right to conduct and control the meeting in accordance with generally accepted meeting procedures, and otherwise as they see fit, provided that each Member lawfully present at the meeting has the right reasonably to engage and participate in the business of the meeting.
- 16.9.3 The chairperson of a meeting may require any person to remove themselves, or to be removed, from the meeting if the chairperson forms the view that the person's continued attendance is detrimental to the business of the meeting.
- 16.10 **Notice of Members' Meeting:** Written notice of the time and place of a Members' meeting must be sent to every Member entitled to receive notice of the meeting, not less than 10 Working Days before the meeting (**Notice of Meeting**).
- 16.11 **Contents of Notice of Meeting:** The Notice of Meeting must:
- 16.11.1 state whether the meeting is an Annual General Meeting or a Special General Meeting;
- 16.11.2 state the date, time, and venue of the meeting
- 16.11.3 state the nature of the business to be transacted at the meeting;
- 16.11.4 (for the Annual General Meeting only) include the minutes of the previous Annual General Meeting, and all Special General Meetings (if any) held since the last Annual General Meeting, each to be confirmed at the Annual General Meeting;
- 16.11.5 state the text of any Special Resolution to be submitted to the meeting; and
- 16.11.6 include copies of all documents that relate to an Ordinary Resolution and/or to a Special Resolution to be considered at the meeting.
- 16.12 **Copy Documents:** A copy of the documents referred to in clause 16.2.1 are to be provided to each Member within a reasonable time prior to the Annual General Meeting.
- 16.13 **Irregularities in Notice of Meeting:** An irregularity in a Notice of Meeting is waived if all the Members attending the Members' meeting (who together constitute a Quorum) and who are entitled to vote at that meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver.
- 16.14 **Omission to Give Notice:** The accidental omission to give a Notice of Meeting to, or the failure to receive a Notice of Meeting by, a Member does not invalidate the proceedings at that meeting.
- 16.15 **Adjournments:** If a Members' meeting is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the re-convened meeting other than by announcement at the meeting that is adjourned.

- 16.16 **No Entitlement if Subscription Unpaid:** Where a Member has been levied an annual subscription or a Special Levy (or other charge) that has not been paid in full within three months of the due date for payment (such due date to be set by the Executive) that Member will not be entitled to receive a Notice of Meeting, and will not be entitled to attend and/or vote at any Members' meeting until payment in full of that Member's annual subscription, Special Levy (or the other charge) has been received by the Association, unless otherwise determined by the Executive.
- 16.17 Except as provided in this Constitution, any Members' meeting may regulate its own procedure.
- 16.18 **Minutes:**
- 16.18.1 The chairperson of each Members' meeting must ensure that accurate minutes are kept of all proceedings at that meeting.
- 16.18.2 Minutes that have been confirmed at an Annual General Meeting as being correct (or are confirmed as being correct, subject to agreed changes) in accordance with clause 16.2.4 will be *prima facie* evidence of the proceedings at the meeting of which they are a record.
- 16.18.3 Minutes of each Members' meeting will be retained by the Association and will be available for inspection by any Member at any reasonable time. A Member, by written request to the Executive, has a right to a copy of the confirmed minutes of any Members' meeting in accordance with section 88 of the Act.

## 17. Voting at Meetings

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- 17.1 **Quorum:** A Quorum is present at any Members' meeting if there are 10 Accredited Members present (either in person or by way of a Representative) who together represent not less than 15% of the total number of the Accredited Retirement Villages.
- 17.2 **No Business if No Quorum:**
- 17.2.1 No business may be transacted at a Members' meeting if a Quorum is not present.
- 17.2.2 If a Quorum is not present within 30 minutes after the time appointed for the meeting the meeting shall be adjourned for 10 Working Days following that date at the same time and place, or to such other date, time and place as the chairperson may appoint. If at the re-convened meeting a Quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) but there are at least five Accredited Members present (either in person or by way of a Representative) who together represent not less than 5% of the total number of Accredited Retirement Villages, those Accredited Members present at the meeting will be a Quorum for the purposes of the re-convened meeting; or
- (b) there are fewer than five such Accredited Members present, the meeting will be dissolved.
- 17.3 **Executive Members**
- For the avoidance of doubt, an Executive Member who:
- 17.3.1 is an Accredited Member (or its Representative) may attend, speak at and vote at any Members' meeting; or

17.3.2 is not an Accredited Member (or its Representative) may attend and speak at a Members' meeting but may not vote at that Members' meeting.

#### 17.4 **Voting:**

17.4.1 **Ordinary Resolution:** Unless a resolution is required under this Constitution to be passed as a Special Resolution, resolutions of the Association at Members' meetings shall be decided by a simple majority of the votes of those Members entitled to vote at that meeting (such resolution being an **Ordinary Resolution**).

17.4.2 **Special Resolution:** A Special Resolution shall be a resolution passed by a majority of three-quarters of the votes of those Members entitled to vote at that Members' meeting.

17.4.3 **Matters to be decided by Special Resolution:** The following matters shall be decided by Special Resolution:

- (a) any alteration to this Constitution as set out in clause 26;
- (b) any borrowing by the Association;
- (c) removal of any Executive Member from office as set out in clause 19.10.1;
- (d) approval to raise any funds from Members by way of a Special Levy, on the recommendation of the Executive pursuant to clause 20.1.2(g); and
- (e) the winding up of the Association as set out in clause 28.1.

17.4.4 **Entitlement to vote:** Accredited Members and Life Members shall be entitled to vote at a Members' meeting if:

- (a) they are present at the meeting either in person or by way of a Representative; and
- (b) they have paid all fees and subscriptions up to date; and
- (c) they have registered the name of their Representative (if any) with the Executive Director of the Association at least 48 hours prior to the meeting pursuant to clause 17.6.

17.4.5 **Method of Voting:** At any Members' meeting, unless a poll is demanded, voting at that meeting will be by a show of hands.

17.4.6 **Vote allocation for Accredited Members:**

- (a) **Show of hands:** On any resolution at a Members' meeting which is to be passed by a show of hands, each Accredited Member shall have one vote.
- (b) **Ballot or poll:** On any resolution at a Members' meeting which is to be passed by way of a ballot or poll (including, without limitation, the election of the Executive in accordance with clause 19.4.6) the number of votes of each Accredited Member shall be based on the number of completed Units existing in each Accredited Retirement Village:
  - (i) owned by any Accredited Member at the commencement of the Financial Year in which the vote takes place; or
  - (ii) if an Accredited Member is newly admitted to the Association, owned by that Accredited Member on the date of its admission.

and each Accredited Member shall have one vote for each Accredited Retirement Village which has up to and including 99 Units and two votes for each Accredited Retirement Village which has 100 Units or more.

- 17.4.7 **Vote allocation for Life Members:** On any resolution at a Members' meeting (whether it is to be passed by show of hands, ballot or poll) each Life Member shall have one vote.
- 17.4.8 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 17.5.1.
- 17.4.9 A Member present at a Members' meeting is deemed to have agreed to, and to have voted in favour of, a resolution put to the meeting unless that Member expressly abstains from voting or votes against the resolution at the meeting.
- 17.4.10 The chairperson of a Members' meeting is not entitled to a second or casting vote.

## 17.5 Poll

- 17.5.1 At any Members' meeting a poll may be demanded by:
- (a) Accredited Members who are present at the meeting (either in person or by Representative), who are eligible to vote pursuant to clause 17.4.4 and who, together, represent not less than 30% of the total number of Accredited Retirement Villages; or
  - (b) the chairperson.
- 17.5.2 A poll may be called for either before the vote is taken on a resolution, or after (in which case the vote already taken will be vacated) but, in either case, must be called for before the meeting is formally closed by the chairperson. The demand for a poll may be withdrawn before the poll is taken.
- 17.5.3 Any poll demanded in respect of the election of a chairperson or on the question of the adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at that meeting at such time as the chairperson of the meeting directs and any business other than that upon which a poll has been demanded may be proceeded with pending taking of the poll.
- 17.5.4 If a poll is duly demanded, and for any ballot for the election of Executive Members under clause 19.4, the following rules will apply:
- (a) all voting will be supervised by the Returning Officer in accordance with the requirements of this Constitution, or, if the Returning Officer is not present at that Members' meeting, by such other person appointed by the chairperson to fulfil that role (and for the purposes of this clause any reference to 'Returning Officer' shall be read as including such person);
  - (b) the votes must be in writing and, where the vote is for the election of Executive Members must be by way of the ballot papers circulated to Members prior to the Members' meeting;
  - (c) where the vote is a vote for the election of an Executive Member:
    - (i) a Member may vote for fewer, but may not vote for more, than the number of Executive Member positions available;

- (ii) each Life Member is entitled to one vote per available position and each Accredited Member is entitled to the number of votes specified in clause 17.4.6 per available position;
- (d) the votes will be counted by the Returning Officer;
- (e) the Returning Officer will at all times use their best endeavours to understand the voter's intention expressed on the voting paper, provided that the Returning Officer may accept or reject any vote at their discretion;
- (f) the Returning Officer must report back to the Members' meeting with the results of the vote, such report only to state whether or not the resolution has passed or failed, or whether a nominee has or has not been appointed as an Executive Member (as the case may be) and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded;
- (g) the voting papers must be destroyed by the Returning Officer as soon as possible following the conclusion of the meeting; and
- (h) any decision of the Returning Officer will be final.

#### **Accredited Members Representative:**

- 17.6 Each Accredited Member entitled to vote at a Members' meeting must, if they are not a natural person, appoint a Representative to represent the Accredited Member at a Members' meeting, and must advise such appointment to the Executive Director at least 48 hours before the meeting.
- 17.7 The instrument appointing a Representative must:
- 17.7.1 be in or substantially in the form set out in Schedule 3;
  - 17.7.2 state whether the appointment is for a particular meeting or a continuing appointment; and
  - 17.7.3 identify the Accredited Retirement Village(s) for which it is made.
- 17.8 A Representative is entitled to attend and be heard at a Members' meeting as if the Representative were the Accredited Member and any vote exercised by the Representative will be final and binding on, and cannot later be vacated or changed by, the nominating Accredited Member.
- 17.9 The instrument appointing a Representative to vote for an Accredited Member at a Members' meeting confers authority to demand or join in demanding a poll and a demand by a person appointed by an Accredited Member in accordance with this clause 17 has the same effect as a demand by the Accredited Member.
- 17.10 An Accredited Member may revoke its Representative's appointment at any time and for any reason, provided that the notice of revocation must be delivered to the Executive Director to be valid.

## **18. Written Resolution in Lieu of Meeting**

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- 18.1 A resolution in writing signed by not less than 75 percent in number of the Members who would be entitled to vote on that resolution at a Members' meeting is as valid as if it had been passed at a meeting of those Members.

- 18.2 The written resolution document, and other papers, relating to any written resolution to be circulated to Members are to be in the form determined by the Executive from time to time, but in each case must:
- 18.2.1 specify the resolution proposed to be put for the consideration of Accredited Members;
  - 18.2.2 include an explanatory memorandum, setting out the general effect of the resolution; and
  - 18.2.3 state the time and date by which the written resolution is to be returned.
- 18.3 Within five Working Days of a resolution being passed under clause 18.1, the Association must send a copy of the resolution to every Member who did not sign the resolution.

## Part V – EXECUTIVE AND OTHER PERSONNEL

### 19. Election, Appointment and Removal

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#### Executive

- 19.1 The Executive Members are the persons elected, appointed or co-opted from time to time who have not died, retired, resigned, been disqualified or removed from office under this Constitution.
- 19.2 An Executive Member holds office as an Executive Member until the earlier of the date of the next Annual General Meeting, or until their retirement, resignation, disqualification or removal in accordance with this Constitution.
- 19.3 At every Annual General Meeting, the Members shall elect, from the persons nominated in accordance with clause 19.4, an Executive comprising not less than five and not more than ten persons to conduct and manage the business and affairs of the Association. The Executive shall then elect from among themselves a President and Vice-President and any other officers as it sees fit.
- 19.4 **Election of Executive Members:** In accordance with clause 19.3, up to ten Executive Members may be elected at each Annual General Meeting of the Association on the basis of the following procedure:
- 19.4.1 at least six weeks before the date of the Annual General Meeting, the Executive Director will invite all Accredited Members to submit nominations for each available Executive Member position;
- 19.4.2 any Accredited Member may nominate a person to stand for election to the Executive. Each such nomination must be:
- (a) by written notice addressed to the Executive Director;
  - (b) signed by the nominating Accredited Member and by the person who is being nominated (with counterpart signatures being acceptable) and the nominee must also certify that they are not disqualified from being appointed or holding office as an officer under section 47(3) of the Act;
  - (c) set out the key biographical details of the nominee, including their Industry experience (if any) and interests (if any) in accordance with clause 7.2; and
  - (d) received by the Executive Director at least 15 Working Days prior to the Annual General Meeting at which the election shall take place;
- 19.4.3 the Executive Director shall ensure that details of those persons nominated for election to the Executive, together with the ballot paper for the vote, are provided to Accredited Members prior to the relevant meeting;
- 19.4.4 any person is eligible for nomination as an Executive Member, provided that they are not disqualified from being appointed or holding office as an officer under section 47(3) of the Act;
- 19.4.5 if the nominations received do not exceed the positions available, the nominees will be declared appointed without the need for a vote; and
- 19.4.6 if the nominations received exceed the number of positions available, the Members who are entitled to vote at the Annual General Meeting will vote by way of a ballot

taken in accordance with the procedure set out in this clause and in clause 17.5.4, and the candidates receiving the highest number of votes will be declared to be appointed to the Executive. For the avoidance of doubt, a Member may choose to vote for candidates for all positions available or only some of the positions available.

**19.5 Past President:**

19.5.1 In addition to the (up to) ten elected Executive Members, the immediate Past President shall hold office as an Executive Member immediately after their retirement from the office of President (unless such person declines to hold such office). The immediate Past President shall have all rights and obligations of Executive Members (including the right to vote at meetings of the Executive) and shall be subject to the same requirements and conditions in respect of their term of office as other Executive Members except for the requirement to be elected.

19.5.2 Where a new immediate Past President:

- (a) is deemed to be appointed as Past President in accordance with clause 19.5.1 and does not decline that appointment, the appointment of the person then holding the position of Past President in accordance with clause 19.5.1 is contemporaneously terminated; and
- (b) declines to be appointed as Past President in accordance with clause 19.5.1, the incumbent Past President may continue to hold the office of Past President.

19.5.3 The position of immediate Past President will remain vacant if the person holding that position chooses to retire or otherwise ceases to be the Past President during their term of office.

**19.6 Term of Office:** Subject to clauses 19.5 and 19.9, an Executive Member:

19.6.1 will hold office for a term of one year; and

19.6.2 may be re-elected or re-appointed on the expiry of that term,

such term to commence on the date of election or appointment and to expire on the date of the next Annual General Meeting following the date of election or appointment.

**19.7 Co-option of Executive Members:** The Executive may co-opt any relevant person or professional (for example a secretary, lawyer, accountant, auditor or consultant) to the Executive in addition to the Executive Members. Such person need not be a Member and will not count towards the maximum number of Executive Members described in clause 19.3, but shall not be entitled to vote on Executive business. A co-opted Executive Member will hold office from the day of their co-option to the date of the next Annual General Meeting.

**19.8 Vacancy in Executive:** The Executive shall have power to appoint any person to fill any casual vacancy on the Executive until the next Annual General Meeting and any person so appointed shall:

19.8.1 be entitled to vote; and

19.8.2 retire at the next Annual General Meeting but at that meeting shall be eligible for re-election.

**Ceasing to hold office:**

19.9 An Executive Member ceases to hold office when they: resign (by notice in writing to the Executive Director with effect from the date specified in the notice), are removed, die, are not

re-elected at an Annual General Meeting, becomes disqualified from being an officer of an incorporated society under section 47(3) of the Act, or otherwise vacate office in accordance with this Constitution.

19.10 An Executive Member may be removed from office by way of a:

19.10.1 Special Resolution passed at a Members' meeting called for that purpose; and/or

19.10.2 resolution of the Executive where, that Executive Member:

- (a) is, without reasonable excuse, absent from all meetings of the Executive held within any six-month period;
- (b) becomes of unsound mind or their personal estate is liable to be dealt with in any way under the law relating to mental health;
- (c) holds a role within an Accredited Member (whether as an employee, director or otherwise) and permanently leaves that role and ceases to be associated with that Accredited Member,

with effect from the date specified in that resolution of the Members or the Executive (as applicable).

19.11 **Appointments by the Executive:** The Executive has the power and/or the obligation (as the case may be) to appoint or recommend (as the case may be) a person or persons for each of the following positions:

19.11.1 **Executive Director:** An Executive Director:

- (a) may be appointed (for a period, on terms, and to carry out such duties as determined by the Executive at its sole discretion) or removed from time to time by way of a resolution passed at an Executive meeting, provided that failure to appoint an Executive Director will not affect the continued operation of the Association;
- (b) need not be an Member;
- (c) may attend any Members' meeting, or any meeting of the Executive, but has no voting rights at any meeting and will not be considered to be a part of any Quorum; and
- (d) shall act as the Association's "contact person", as defined in, and for the purposes, of the Act. Any change to the contact person, or to their contact details, must be advised to the Registrar within 20 Working Days of that change occurring.

19.11.2 **Returning Officer:** The Executive may appoint a Returning Officer who whose sole task is to supervise the distribution, collection, counting, reporting and destruction of any ballot or poll taken at a Members' meeting. The Returning Officer:

- (a) shall be a representative of the Association's Auditor, or such other person appointed by the Executive provided that such person must not be an Accredited Member (or representative of an Accredited Member) or a member of the Executive.
- (b) is appointed (for a term of two years (or such lesser term as determined by the Executive at its sole discretion); and

- (c) may be invited to attend and speak, but not vote, at a Members' meeting or an Executive meeting.

19.12 **Accountability:** Each position named in clauses 19.11.1 to 19.11.2 will, at all times, be accountable to the Executive.

## 20. Powers and Duties of the Executive

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### 20.1 Powers of the Executive:

20.1.1 The business and affairs of the Association will be managed by, and under the direction and supervision of the Executive, except to the extent that the Act or this Constitution provides otherwise.

20.1.2 The Executive has, and may exercise, all the powers necessary for managing, directing and supervising the business and affairs of the Association, except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Members or by any other person. Without limiting this clause 20.1.2, and at all times consistent with this Constitution, the Executive has the power to:

- (a) consider and approve applications for membership of the Association, including the power to apply conditions or limitations to membership as the Executive sees fit;
- (b) promulgate standards of the Association (being the "standards" referred to in paragraph (b) of the definition of "Code of Practice and Standards") as the Executive shall determine from time to time;
- (c) comment on, and advise any relevant authority on, any Law or proposed Law;
- (d) require and determine compliance with and certification of the Code of Practice and Standards, and any Law;
- (e) consider and approve the cancellation of any Member's membership, for any reason, provided that the Executive has first given the Member a reasonable opportunity to address the Executive before a decision is made;
- (f) set the annual subscription to be levied on Members for the forthcoming year, provided that if a resolution is not passed, the annual subscription levied for the immediately preceding year will be the annual subscription to be levied for the forthcoming year;
- (g) recommend to a Members' meeting a Special Levy (if any) to be raised to pay the costs of the Association to pursue any Object;
- (h) subject to clauses 16.1 and 16.3, to set the venue, date and time for each Annual General Meeting and any Special General Meeting;
- (i) organise conferences for Members;
- (j) protect (insofar as reasonably practicable) the interests of the Association as a whole and the interests of the Members;
- (k) employ or otherwise engage any person (including an Executive Director appointed in accordance with clause 19.11.1), on such terms and conditions the Executive considers appropriate and to delegate such of the powers

described in this clause 20.1 to the Executive Director as the Executive sees fit;

(l) refer appropriate matters to the Disciplinary Authority in accordance with clause 14.2; and

(m) make Bylaws and impose reasonable penalties for breach of any Bylaw,

and, in each case where the Executive has the power to appoint or employ a person for a role, it also has the power to remove that person from that role at any time and for any reason.

20.1.3 If any case, circumstance or matter should arise which in the opinion of the Executive is not provided for in this Constitution, it shall be decided by the Executive whose decision shall be final.

20.2 **Sub-Committees:** The Executive may appoint such sub-committees to consider and attend to such business of the Executive or the Association as it sees fit and may determine the terms of reference, composition, and rules of procedure and conduct of any such sub-committee from time to time in its absolute discretion.

20.3 **Duties of Executive Members:** Subject to the provisions of clause 3, an Executive Member, when exercising powers or performing duties:

20.3.1 must act in good faith and in what the Executive Member believes to be the best interests of the Association, consistent with the requirements of section 54 of the Act; and

20.3.2 must otherwise comply with their statutory and common law duties to the Association.

## 21. Proceedings at Executive Meetings

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### 21.1 Chairperson:

21.1.1 The President will be the chairperson of every Executive meeting provided that, if the President is unable or unwilling to chair a meeting, the Vice-President will chair that Executive meeting.

21.1.2 If neither the President nor the Vice-President is present within ten minutes after the time appointed for the commencement of the Executive meeting, the Executive Members present may choose one of their number to be the chairperson of that meeting.

### 21.2 Notice of Executive Meeting:

21.2.1 At the request of three Executive Members, the President or the Vice-President may summon a meeting of the Executive.

21.2.2 Not less than five clear days' notice of an Executive meeting must be given to every Executive Member and the notice must include the date, time and place of the meeting and the matters to be discussed.

21.2.3 An irregularity in the notice of the meeting is waived if the Executive Members who attend the meeting (who together constitute a Quorum) do so without protest as to the irregularity or if all Executive Members entitled to receive notice of the meeting agree to the waiver.

- 21.3 **Method of Holding Executive Meetings:** A meeting of the Executive may be held by a number of Executive Members sufficient to form a Quorum:
- 21.3.1 being physically assembled at the place, date and time appointed for the meeting; or
  - 21.3.2 attending by telephone or by a form of electronic communication link.
- 21.4 **Quorum:**
- 21.4.1 Unless otherwise resolved by the Executive, a Quorum for an Executive meeting is a majority of Executive Members provided that such majority comprises not less than four Executive Members.
  - 21.4.2 No business may be transacted at an Executive meeting if a Quorum is not present.
- 21.5 **Voting:**
- 21.5.1 Resolutions of the Executive shall be decided by a majority of votes of those present, each Executive Member having one vote only. If on any resolution there is no majority in favour of passing the resolution, the resolution shall not pass, and for the avoidance of doubt no person shall have a casting vote even in such circumstances.
  - 21.5.2 An Executive Member present at an Executive meeting is deemed to have agreed to, and to have voted in favour of, a resolution of the Executive unless that Executive Member expressly abstains from voting or votes against the resolution at the meeting.
  - 21.5.3 No Executive Member may vote on any matter if that Executive Member has disclosed an interest in accordance with clause 7.2.
- 21.6 **Minutes:**
- 21.6.1 The Executive must keep a minute book and must ensure that full and accurate minutes are kept of all proceedings at Executive meetings, including resolutions passed and a copy of every written resolution passed by the Executive.
  - 21.6.2 Minutes signed correct by the chairperson of the meeting at the succeeding meeting shall be *prima facie* evidence of the proceedings.
  - 21.6.3 An Executive Member may inspect the minute book at any reasonable time, and may request a copy of the minutes of any Executive meeting.
- 21.7 **Unanimous Resolution:**
- 21.7.1 A resolution in writing, signed or assented to by all Executive Members then entitled to receive notice of an Executive meeting and to vote on such resolution, is as valid and effective as if it had been passed at an Executive meeting duly convened and held.
  - 21.7.2 Any such resolution may consist of several documents in like form (including electronic or other means) each signed or assented to by one or more Executive Members.
  - 21.7.3 A copy of any such resolution must be entered in the minute book of Executive proceedings.

- 21.7.4 For the avoidance of doubt, a resolution will not be considered to have been passed under this clause 21.7 if an Executive Member to whom the resolution has been sent has not signed or otherwise assented to the resolution.
- 21.8 **Alternates and Proxies:** No Executive Member has the right to appoint any person to act as their alternate or proxy at Executive meetings either in that Executive Member's absence or for any purpose connected with the business of the Association.
- 21.9 **Other Proceedings:** Except as provided in this clause 21, the Executive may regulate its own procedure.
- 21.10 **Continuing Executive Members:** The continuing Executive Members will comprise the Executive, notwithstanding any vacancy in the number of Executive Members but if their number is reduced below the number fixed by this Constitution as the minimum number of Executive Members, the continuing Executive Members will comprise the Executive only for the purpose of increasing the number of Executive Members to the minimum number or for summoning a Special General Meeting.

## 22. **Indemnity and Insurance**

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- 22.1 The Association is expressly authorised to indemnify and/or insure each Executive Member and employee (including the Executive Director) against liability for acts or omissions and/or costs incurred in connection with claims relating to the position of an Executive Member or an employee (including the Executive Director), as the case may be, provided such indemnity and/or insurance complies with sections 94 to 98 of the Act.
- 22.2 The Executive Members who vote in favour of authorising such insurance must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Association.

## Part VI – GENERAL MATTERS

### 23. Disputes

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- 23.1 **Dispute Process:** This clause 23 sets out a process that must be followed in the event of a Dispute between two or more Members, or between any person(s) and the Association that will apply where such a Dispute does not fall within the jurisdiction of the Disciplinary Authority pursuant to clause 14.
- 23.2 **Dispute Process does not apply for Disciplinary Authority matters:** The Dispute process set out in this clause 23 does not apply to any matter/Dispute if the Executive has referred the that matter/Dispute to the Disciplinary Authority in accordance with clause 20.1.2(l).
- 23.3 **Issue of Dispute Notice:** A person, or the Executive Director on behalf of the Executive (as the case may be), claiming that a Dispute has arisen must give the other party a written Dispute Notice.
- 23.4 **Limited Access to Court:** A party to the Dispute must not start court proceedings (except proceedings seeking urgent or interlocutory relief) unless it has first complied with this clause 23.
- 23.5 **Natural Justice:** All dispute resolution procedures must be undertaken in a manner that it is consistent with the principles and rules of natural justice.
- 23.6 **Escalation Procedure:** The parties must in good faith attempt to resolve any Dispute by negotiation using the following escalation procedure:
- 23.6.1 after a Dispute Notice has been given, the parties must first make an honest attempt to resolve the Dispute;
- 23.6.2 if the parties cannot resolve the Dispute within ten Working Days after the Dispute Notice has been given, the parties must appoint a mediator who will then assist the parties to a resolution through mediation. If the parties cannot agree on the appointment of a mediator within five Working Days of the need to appoint such a person, the President (or the Vice-President, if the President is a party to the Dispute) must appoint a mediator within a further two Working Days;
- 23.6.3 if the parties cannot resolve the Dispute by mediation, or if they agree within ten Working Days after the Dispute Notice has been given not to pursue mediation as a dispute resolution procedure, the parties must appoint an arbitrator. If the parties cannot agree on the appointment of the arbitrator within five Working Days of the need to appoint such a person, the arbitrator will be appointed by the President at the time of the Arbitrators' and Mediators' Institute of New Zealand (**AMINZ**) upon the application of either party. The arbitration will be conducted by one arbitrator in accordance with the Arbitration Protocol of AMINZ in force at the time the Dispute is referred to arbitration.
- 23.7 **Venue for Resolution:** Any mediation or arbitration will take place in the city/town where the Society's registered office is located, unless the parties agree otherwise. Alternatively, with the consent of the mediator or the arbitrator (as the case may be), a mediation or arbitration may be conducted remotely provided that each party can hear, and be heard by, each of the other participating parties.
- 23.8 **Support Person(s):** Each party may have no more than two support persons attending with them at any stage of the dispute resolution process provided that any such support person has no right to speak at any proceedings unless agreed to by the other party, and provided further that any such right to speak may be withdrawn by the other party at any stage of the

process. For the avoidance of doubt, neither party has an automatic right to expect that legal counsel may speak on their behalf at any dispute resolution process contemplated by this clause 23.

- 23.9 **Continue Obligations:** The parties must continue to perform their respective obligations under this Constitution pending the resolution of a Dispute, subject always to any Member's right to terminate their membership of the Association in accordance with this Constitution. For the avoidance of doubt, the Executive may not terminate a Member's membership under clause 15.1.4 while a Dispute is being dealt with in accordance with this clause 23.
- 23.10 **Costs:** Subject to any direction arising out of any resolution process the parties must share the costs of the resolution process, but must otherwise each pay their own costs of complying with this clause 23.
- 23.11 **Right to Appeal:** Any dispute that has been resolved where the dispute resolution process has complied with this clause 23 cannot be reviewed or appealed except on questions of law, and will be dealt with consistent with the process described in clause 23.6.3.
- 23.12 **Exceptions:** If the Executive forms a view that the complaint described in the Dispute Notice discloses any of the following, the Executive reserves the right to decide whether or not proceed with the dispute resolution process described in this clause 23:
- (a) the basis of the Dispute is trivial;
  - (b) the Member involved appears not to have engaged in material misconduct;
  - (c) the Member's rights or interests have not generally been materially damaged;
  - (d) the Dispute appears to be without foundation and/or there appears to be a lack of supporting evidence;
  - (e) the party pursuing the Dispute has an insignificant interest in the matter;
  - (f) the issue has already previously been investigated and dealt with in accordance with the Constitution; or
  - (g) there has been undue delay in raising the Dispute,

provided that where the Executive is a party named in a Dispute Notice or an appeal, the Executive may not make a determination in accordance with this clause 23.12 in relation to the Dispute or in relation to the appeal.

## 24. Auditing or Review

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- 24.1 **Appointment:** Consistent with its obligations under the Act, the Executive may need to appoint a licensed auditor (including a firm of auditors) (**Auditor**), or a reviewing accountant (including a firm of chartered accountants) (**Reviewing Accountant**), from time to time, and:
- 24.1.1 the Auditor will audit the Association's financial statements with a view to certifying that they show a true and fair view of the Association's financial affairs for the most recently completed Financial Year; or
  - 24.1.2 the Reviewing Accountant will review the Association's financial statements for the most recently completed Financial Year based on terms of reference instructed by the Executive,

provided that the Auditor or the Reviewing Accountant (as the case may be) must be a member of Chartered Accountants Australia and New Zealand.

- 24.2 **Terms of Reference:** In setting the terms of reference for a review in accordance with clause 24.1.2, the Executive must give due consideration to:
- 24.2.1 the interests of the Association;
  - 24.2.2 the collective interests of the Members;
  - 24.2.3 the number and value of financial transactions incurred during the Financial Year;
  - 24.2.4 the value of assets and liabilities held or incurred during the Financial Year;
  - 24.2.5 the extent of any contingent liability that might attach to the Association during any future Financial Year; and
  - 24.2.6 any other matter(s) that the Executive considers relevant.
- 24.3 **Certificate:** In addition to any requirement of law or agreement, a certificate evidencing completion of an audit or a review (as the case may be) must be prepared by the Auditor or the Reviewing Accountant (as the case may be), addressed to the Members, and must note any limitations of the audit or the review (if any) and any matter(s) concerning the Association to which the Members should collectively turn their minds.

## 25. Financial Matters

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- 25.1 **Books to be Kept:**
- 25.1.1 The Executive will keep accounting records that comply with the requirements of the Act.
  - 25.1.2 The accounting records will be kept at the Association's premises or at such other place or places as the Executive thinks fit, and will always be open for inspection by any Executive Member. The right of an Executive Member to take a copy of the whole or any part of the accounting records will be at the sole and absolute discretion of the Executive.
  - 25.1.3 Subject to section 88 of the Act, the Executive will from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the financial statements and the books of account of the Association (including any certificate(s) issued in accordance with clause 24.3), or any of them, will be open for inspection by a Member not being an Executive Member. No Member (who is not an Executive Member) will have any right to inspect any account or book or papers of the Association except as conferred by statute or as authorised by the Executive.
- 25.2 **Bank accounts:** The Executive must maintain one or more bank accounts operated within New Zealand by a registered bank and must ensure that all transactions related to each such bank account are authorised by not less than two authorised signatories approved by the Executive from time to time:
- 25.2.1 signed or authorised by the Executive Director and counter-signed or counter-authorised (as the case may be) by any member of the Executive nominated by the Executive from time to time: or
  - 25.2.2 signed or authorised by any two members of the Executive nominated by the Executive from time to time.

- 25.3 All membership fees and subscription fees and other levies shall be paid into the Association general account set up by the Executive for the purpose of receiving the fees and paying any administration expenses.
- 25.4 **Information to Members:** The Executive will ensure that the audited or reviewed financial statements for the Association's most recently completed Financial Year are presented and available for discussion at each Annual General Meeting, in accordance with section 86 of the Act. A Member may request, in accordance with section 88 of the Act and by written request to the Executive at any time, and the Executive must provide to the Member without cost and within a reasonable period of time, a copy of the most recently presented financial statements for the most recently completed Financial Year, and/or the minutes of the most recently completed Members' meeting.

## 26. Amendments to Constitution

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**Power to Repeal or Amend:** The Accredited Members and Life Members may, by way of a Special Resolution passed at an Annual General Meeting or at a Special General Meeting called for the purpose, agree to repeal or amend (whether by way of substitution, deletion or addition) this Constitution, or any part of it.

## 27. Execution of Contracts

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- 27.1 **Execution Requirements:** A contract or other enforceable obligation may be entered into by the Association as follows:
- 27.1.1 an obligation which, if entered into by a natural person would by law be required to be by deed, may be entered into on behalf of the Association in writing signed under the name of the Association by:
- (a) two Executive Members;
  - (b) one Executive Member and the Executive Director; or
  - (c) an attorney appointed by the Association in accordance with clause 27.2 below, whose signature must be witnessed;
- 27.1.2 an obligation which, if entered into by a natural person is by law required to be in writing, may be entered into on behalf of the Association in writing by the Executive Director or such other person acting under the express authority of the Executive; and/or
- 27.1.3 an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Association in writing or orally by a person acting under the Association's express or implied authority.
- 27.2 **Appointment of Attorney:** The Association may, by an instrument in writing executed in accordance with clause 27.1.1, appoint a natural person (who need not be a Member) as its attorney either generally or in relation to a specified matter or matters. Any act of the attorney in accordance with the instrument will bind the Association.

## 28. Dissolution and Liquidation

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- 28.1 **Dissolution:** The Members may, by way of a Special Resolution passed at a Special General Meeting called for the purpose, agree to dissolve the Association and appoint a liquidator. Alternatively, if one or more of the circumstances described in section 210 of the Act apply, the High Court may appoint a liquidator.

28.2 **Division of Assets:** If the Association is liquidated (whether in accordance with clause 28.1 or as a result of a process of law), the liquidator must, subject to the payment of all known debts and liabilities and subject to any sanction required by the Act, distribute the surplus assets of the Association to one or more 'not for profit' societies within New Zealand that:

28.2.1 are registered under the Act; and

28.2.2 have objects similar to the Association's Objects,

provided that the liquidator must give consideration to any recipient 'not for profit' society or societies suggested by the Members' meeting held in accordance with clause 28.1.

28.3 **Direction of Registrar:** In the event that each of the requirements of clause 28.2 is not met, the surplus assets of the Association will be distributed in accordance with the direction of the Registrar.

28.4 **Liability of Members:** No Member is liable for any debts of the Association by virtue only of their membership.

## 29. Removal from the Register

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29.1 **Request to Registrar:** If the Association:

29.1.1 has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with either clause 28.2 or clause 28.3; or

29.1.2 has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court for an order putting the Association into liquidation,

a representative, acting on power given to them by the Executive, may request the Registrar to remove the Association from the register of Incorporated Societies maintained under the Incorporated Societies Act 2022.

## 30. Registered Office

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30.1 The registered office of the Society will be in Wellington, or such other place in New Zealand as the Executive from time to time determines.

30.2 Changes to the registered office will be notified to the Registrar:

30.2.1 at least five Working Days before the change of address for the registered office is due to take effect; and

30.2.2 in a form and as required by the Act.

## 31. Questions Arising

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- 31.1 If at any time any matter should arise that is not provided for in this Constitution or in any of the rules and regulations of the Association or in the case of any doubt as to their interpretation, the matter shall (subject to the Code of Practice and Standards, By-laws, rules or regulations that may be in existence at that time) be determined by the Executive whose decision shall be final.

## 32. Notices

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- 32.1 Any notice given, or required to be given, in accordance with this Constitution to any Member, Executive Member, or the Executive Director, will be by electronic mail message sent to the electronic mail address which such person provides to the Association for that purpose, or if an electronic mail address, is not provided, then a written notice to such person's last place of employment or residence known to the Association.
- 32.2 Any notice served by email (provided the sending computer does not produce a message stating that such email was undelivered or undeliverable) shall be deemed to have been served at the time of completion of transmission.

## Schedule 1: Objects of the Association

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The Objects for which the Association is established are as follows:

- 1 To establish, promote and maintain standards for all participants in the Industry within New Zealand.
- 2 To provide advice and direction to all tiers of government, statutory authorities, organisations, commissions and sponsors of the Industry on design criteria, securing of Residents' tenure (by way of proprietary interest in land or otherwise) and rights, provision of appropriate care/support services to Residents, continuing management, compliance issues and all other facets of the Industry.
- 3 To represent all Members in matters for the general benefit of the Industry.
- 4 To promote the interests and good reputation of Members throughout New Zealand and, if appropriate, internationally.
- 5 To safeguard and support the interests of the Members and others entitled to benefit from the activities of the Association and to impart information on any subject relating to the Industry as and when the Association sees fit.
- 6 To advise and assist Members with regard to any matters, procedures, questions or other things arising and relating to Retirement Villages and otherwise to act for the mutual benefit and advancement of Members as set out in this Constitution, including the recognition of the contribution to the Industry of Members or other persons or legal entities.
- 7 To establish and maintain dispute resolution processes and procedures (as appropriate) from time to time, and to deal with the complaints, issues and any other matters raised by Residents, Operators and other interested parties from time to time.
- 8 To establish and maintain a Disciplinary Authority on the terms set out in clause 14.1.
- 9 To petition Parliament or any other authority on any matter for the general benefit of the Industry including the suggestion of amendments to laws affecting Members' interests and to promote and/or oppose any current or proposed legislation, regulation or requirement that in any way affects the interests of Members and to take such steps for this purpose as the Executive determines.
- 10 To communicate, advise and broadcast the opinion of the Executive to any tier of Government by letter, deputation, conference or otherwise.
- 11 To establish and accept trusts that are consistent with the Objects of the Association including:
  - 11.1 the promotion and general welfare/care and benefit of Residents; and
  - 11.2 the promotion of the general interests of the Industry.
- 12 To promote the Objects of the Association by way of conferences, seminars, exhibitions, classes, meetings and any other similar methods including the establishment of education programmes for the Industry, Operators and/or Retirement Villages and other interested persons of any aspects of the Industry.
- 13 To establish forums where persons with an interest in the Industry can meet to discuss and exchange ideas for the general benefit of Members and/or the Industry.

- 14 To establish and/or promote business opportunities such as insurance and funding schemes for the benefit of Residents and Members.
- 15 To foster the free exchange of ideas and co-operation between Members.
- 16 To improve the conditions of the Industry in every proper and lawful manner.
- 17 To accept affiliation with any association having like interests as determined by the Executive.
- 18 To collect, assimilate and record information on the Industry and where appropriate to print, circulate and publish papers, articles, books, magazines, circulars by print and by way of electronic media.
- 19 To do all such lawful and proper acts and things as are incidental to or conducive to the achievement or attainment of the above Objects of the Association.

## Schedule 2: Rules of the Disciplinary Authority

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- 1 The Disciplinary Authority will make decisions on matters referred to it by the Executive under clause 20.1.2(l), including complaints received by the Executive from the Association's auditing agency, members of the public, Residents, other Members of the Association and any other person from time to time.
  
- 2 The Disciplinary Authority will have jurisdiction in respect of:
  - 2.1 any failure of a Member to comply with the Code of Practice and Standards, any Law and any other relevant By-laws, rules and regulations that may from time be in force relating to the Industry;
  - 2.2 any failure of a Member to act in a manner which in the opinion of the Executive is consistent with well-established and recognised Industry "best practice" (as determined by the Executive from time to time); or
  - 2.3 if, in the opinion of the Executive, the Member has acted in a manner which has, or is likely to, bring the Industry into disrepute,

provided that the Disciplinary Authority's jurisdiction will remain active until the second anniversary of the termination of the Member's membership (by whatever means).
  
- 3 Complaints may be referred to the Disciplinary Authority in the following manner:
  - 3.1 a complaint is made about a Member to the Association by the Association's auditing agency, a member or members of the public, Residents, other Members of the Association and any other person;
  - 3.2 the Executive Director notes the substance of the complaint and refers it to the complaints sub-committee of the Executive for consideration;
  - 3.3 upon examination of the complaint, the complaints sub-committee may, having regard to the nature and substance of the complaint and any other matters, it considers relevant, recommend to the Executive that the matter be referred to the Disciplinary Authority for consideration;
  - 3.4 the Executive will then consider such recommendation and determine whether the matter should be referred to the Disciplinary Authority and if so, make such referral;
  - 3.5 on receipt of a referral from the Executive, the Disciplinary Authority will consider the complaint, make a determination in due course and impose such of the sanctions available to it as referred to in Rule 10 below as it considers appropriate in all the circumstances.
  - 3.6 The Disciplinary Authority's determination and the sanctions imposed (if any) will be conveyed to the Executive, which will be tasked with enforcement of such sanctions.
  
- 4 The Disciplinary Authority will, at all material times, comprise:
  - 4.1 an independent chairperson appointed by the Executive (such person being a person who holds or has held a practising certificate as a Solicitor and/or Barrister of the High Court of New Zealand for a period of not less than seven years); and
  - 4.2 up to two persons selected by the independent chairperson from the Disciplinary Authority pool of persons selected pursuant to Rule 5 below; and

- 5 The Disciplinary Authority pool shall comprise a minimum of six, and a maximum of eight, persons, each to be selected by the Executive in accordance with its selection policy as adopted from time to time.
- 6 In selecting two persons from the pool pursuant to Rule 4.2 above, the independent chairperson will have regard to such matters as the chairperson determines relevant in the circumstances and will be on such terms as the chairperson determines in each case but, in particular, will have regard to the possibility of conflicts of interest arising from the particular circumstances of each complaint or matter.
- 7 The Disciplinary Authority will conduct its affairs in private and will follow the rules of natural justice. All parties before the Disciplinary Authority will have the right to legal representation or to one support person, such person to have speaking rights at the Disciplinary Authority hearing as the independent chairperson may, at their discretion, determine. The Disciplinary Authority may otherwise conduct its affairs entirely as it sees fit.
- 8 Decisions of the Disciplinary Authority will be by majority.
- 9 The Disciplinary Authority will, without limitation, have jurisdiction to make such orders, recommendations or requests relating to any action or inaction (including ceasing any action) by any Member in respect of any matter, dispute or complaint referred to the Disciplinary Authority by the Executive as it determines appropriate in its absolute discretion.
- 10 The Disciplinary Authority may, at its discretion, order any or all of the following sanctions:
  - 9.1 suspension or termination of a Member's membership of the Association;
  - 9.2 a re-audit of the Member against the Code of Practice and Standards;
  - 9.3 a fine or censure of the Member, provided that any such fine must not exceed \$15,000 plus GST (if any); and/or
  - 9.4 an order for costs not exceeding \$15,000 plus GST (if any) in addition to any fine,or it may dismiss the complaint.
- 11 In making any order, recommendation or request under either of Rules 9 or 10 above the Disciplinary Authority will have regard to the effect of the order, recommendation or request on the Residents of the Retirement Village which is the subject of the order, recommendation or request and such other matters as the Disciplinary Authority may, from time to time, be obliged to take into account whether under any Law or otherwise.
- 12 Members of the Association acknowledge and agree that:
  - 11.1 any order of the Disciplinary Authority will be final and binding on the Executive and Members and no appeal will lie from the Disciplinary Authority to any court of law or other forum except on a point of law;
  - 11.2 an order directing the payment of a fine or costs against a Member is deemed and accepted as an acknowledgement of debt by that Member and may be recovered as such; and
  - 11.3 an order directing a Member to carry out or cease certain actions will be deemed to be and accepted as an acknowledgement by that Member that it can and will perform or refrain from those actions.
- 13 A Member whose membership of the Association has been terminated in accordance with Rule 9.1 above may apply to the Executive for reinstatement as a Member at any time. The Executive will refer any such application to the Disciplinary Authority for consideration. The

Disciplinary Authority may, in its sole discretion, decide whether or not the dismissed Member can be reinstated, and whether or not any reinstatement will be subject to:

12.1 any conditions; or

12.2 the payment of any costs of reinstatement,

each as the Disciplinary Authority may determine.

14 All decisions of the Disciplinary Authority will be publicly available although the Disciplinary Authority will, on receipt of a written request to do so from a Member or other interested party, suppress identifying information if, in its discretion, it considers that it is appropriate to do so.

15 The Association will pay the members of the Disciplinary Authority:

14.1 appropriate remuneration, as determined by the Executive, for their services; and

14.2 reimbursement for any out-of-pocket expenses reasonably incurred by them in performing their duties under this Rule.

### Schedule 3: Form for Appointment of Representative

#### APPOINTMENT OF ACCREDITED MEMBER'S REPRESENTATIVE

\_\_\_\_\_  
(Name of Accredited Member)

Hereby appoints \_\_\_\_\_ (Name of Accredited Member's Representative)

as its Representative (or failing him/her) \_\_\_\_\_ (Name of substitute)

to represent \_\_\_\_\_ (Name of Accredited Member)

in respect of the Retirement Villages listed below:

**(Delete one)**

**(i) at the meeting of the Association to be held on [date] and any adjournment thereof;**

**(ii) at all meetings of the Association until further written notice.**

Signed

20\_\_

\_\_\_\_\_  
Director/Individual

\_\_\_\_\_  
Director

Name of Approved Retirement Village(s):

- 
- 
- 
- 
- 
- 
- 

**Note: This form must be completed and sent to the Executive Director at least 48 hours before any meeting at which it is to be operative.**