



Rules of Gawler Community Retirement Homes Incorporated

PART 1 - PRELIMINARY

1. Name

- 1.1 The name of the Association is and shall be "*Gawler Community Retirement Homes Incorporated*" ("**the Association**").
- 1.2 The Association was previously known as "*Gawler and District Aged Cottage Homes Incorporated*".

2. Objects or purpose of Association

- 2.1 The general objects of the Association are:
 - (a) to provide independent living accommodation under a retirement village scheme in Gawler through housing which is suitable for Residents as they age;
 - (b) to establish retirement village schemes for retired persons as defined and described in the *Retirement Villages Act 2016 (SA)* in such locations and generally, subject to compliance with the provisions of that Act, on such terms and conditions as the Board may determine from time to time for the purchase of providing community homes for the aged.
 - (c) to establish, conduct, carry on and maintain homes for those Eligible Persons who are, in the opinion of the Board deserving of charitable assistance;

3. Definitions

- 3.1 Unless the context otherwise requires, terms used in these Rules have the meaning given to them in the Act and are as follows:

Act	means <i>Associations Incorporation Act 1985 (SA)</i> as amended from time to time;
Aged Persons	means a person who is eligible under the <i>Retirement Villages Act 2016 (SA)</i> ;
Annual General Meeting	means the annual general meeting of the Association described in paragraph 24;
Association	means " <i>Gawler Community Retirement Homes Incorporated</i> ";
Board Meeting	means a meeting of the Board of Management held in accordance with these Rules;
Board Member	means a member of the Board of Management elected or appointed under these Rules;

Board	means the Board of Management of the business of the Association;
Chairperson	of the Annual General Meeting or Board Meeting means the person chairing the meeting as required under these Rules;
Financial Statements	means the Annual Financial Statements of the Association for the year ended 30 June;
Financial year	means from 1 July in any year to 30 June in the following year;
Gawler	means Gawler and surrounding districts in the State of South Australia;
General Manager	means the General Manager employed by the Association;
ITAA97	means the <i>Income Tax Assessment Act 1997</i> (Cth) as amended from time to time;
Ordinary Resolution	is a resolution passed by a simple majority at a meeting;
Quorum	A Quorum is determined by the presence of 50% plus one of the Board Members holding office. Where there is an odd number of Board Members holding office, the 50% calculation is rounded down to the nearest whole number: e.g. an 11-member Board becomes five plus one or a Quorum of six.
Resident	has the meaning given to it in the <i>Retirement Villages Act 2016 (SA)</i> as amended from time to time;
Rules	means all the provisions contained in these rules and any amendment;
Special Majority Vote	means a vote or resolution requiring a two thirds majority of the Board Members.
Special Resolution	means a vote or resolution requiring a three quarters majority of the Board Members.

PART 2 - POWERS OF ASSOCIATION

4. Powers of Association

4.1 The Association shall have all the powers conferred by section 25 of the Act except such modifications and exclusions as are specified in this rule:

- (a) to establish, assist, support or aid in the establishment or support of any institution or association which has;
 - (i) been approved for the purposes of Division 30 of the ITAA97 in force for the time being in Australia; and
 - (ii) been established or is to be established for the general objects of the Association or any part thereof and having all or some of the powers similar to those of the Association;
 - (iii) and for such purpose or purposes transfer any of the property of the Association whether real or personal by sale or gift to any such institution or association;
- (b) to make by-laws, rules, or regulations for the due maintenance of the Association and for regulating the duties, control and conduct of persons in the employ or under the care and control of the Association.
- (c) to do all such lawful things as may be incidental to or be deemed to be conducive to the attainment of the objects of the Association or any of them and generally to manage the homes of the Association.

5. Not for profit organisation

5.1 The income and capital of the Association from whatsoever source derived shall be applied exclusively in payment of the expenses of management of the Association and in carrying out the objects and purposes and executing the powers, rights, and privileges of the Association in accordance with these Rules.

5.2 The income and capital of the Association shall not be distributed directly or indirectly to its members except as bona fide remuneration for services rendered or expenses incurred on behalf of the Association.

5.3 The funds of the Association shall not be expended except on the authority of the Board.

PART 3 – MEMBERS AND BOARD OF MANAGEMENT

6. Membership

6.1 There will be no members of the Association.

7. Board of Management Roles and Powers

7.1 The business of the Association must be managed by or under the direction of the Board.

7.2 The Board may subject to these Rules or the Act exercise all the powers of the Association.

7.3 The Board shall:

- (a) have and exercise the sole control, direction and management of the Association and the occupancy of the homes erected, owned or controlled by it; and
- (b) have the management and control of the funds and other property of the Association; and
- (c) have the authority to interpret the meaning of these Rules and any other matter relating to the affairs of the Association on which these Rules are silent; and
- (d) exercise all such powers and do all such things as are within the objects of the Association; and
- (e) appoint and remove the General Manager.

8 General rights of Board Members

8.1 A Board Member of the Association who is entitled to vote has the right:

- (a) to receive notice of meetings and of proposed Special Majority Votes in the manner and time prescribed in these Rules; and
- (b) to submit items of business for consideration at a meeting; and
- (c) to attend and be heard at meetings; and
- (d) to vote at a meeting; and
- (e) to have access to the minutes of meetings and other documents of the Association.

8.2 All Board Members shall be indemnified and saved harmless out of the funds of the Association from and against all charges, costs, losses, damages and expenses which they or any of them shall or may incur or sustain in or about the execution of their respective offices except as may be occasioned by or through their own wilful default or fraud and none of them shall be answerable for the acts of the others of them.

- 8.3 Any right, privilege or obligation of a person as a Board Member of the Association.
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates on the cessation of the membership.

9. Delegation of powers

- 9.1 The Board may delegate all or any of its powers to a committee or subcommittee consisting of such Board Member or members of its body or other persons as it thinks fit and may revoke all or any of the powers so delegated.
- 9.2 Any committee or subcommittee so formed shall in the execution of the powers so delegated conform to any regulations which may be imposed on them by the Board. Subcommittees to be formed and managed as outlined in Board Policy No. 002 *Board Meeting Processes Policy* and reviewed from time to time.

10. Composition of Board

- 10.1 The Board consists of:
- (a) a Chairperson; and
 - (b) a Deputy Chairperson; and
 - (c) Chairpersons of the Subcommittees as per paragraph 9.2; and
 - (d) ordinary Board Members (if any) elected in accordance with these Rules.
- With a minimum of 8 Board Members in total.

11. Duties of Board Members

- 11.1 The Board is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Board comply with these Rules.
- 11.2 Board Members must exercise their powers and discharge their duties:
- (a) with reasonable care and diligence; and
 - (b) in good faith in the best interests of the Association; and
 - (c) for a proper purpose.
- 11.3 Board Members and former Board Members must not make improper use of:
- (a) their position; or
 - (b) information acquired by virtue of holding their position
- so as to gain an advantage for themselves or any other person or to cause detriment to the Association.
- 11.4 In addition to any duties imposed by these Rules, a Board Member must perform any other duties imposed from time to time by resolution at an Annual General Meeting or Board Meeting.

12. Chairperson and Deputy Chairperson

12.1 The Chairperson or, in the Chairperson's absence, the Deputy Chairperson is the Chairperson for the Annual General meetings and for any Board Meetings.

12.2 If the Chairperson and the Deputy Chairperson are both absent, or are unable to preside, the Chairperson of the meeting must be; in the case of the Annual General Meeting or of a Board Meeting – a Board Member elected by the other members present.

13. Public Officer

13.1 The General Manager will act as the Public Officer and must perform any duty or function required under the Act to be performed by the Public Officer of an incorporated association.

13.2 The Public Officer must:

- (a) keep custody of the common seal of the Association and all books, documents and securities of the Association; and
- (b) provide Board Members with access, to the minutes of meetings and other books and documents; and
- (c) perform any other duty or function imposed on the Public Officer by these Rules.

14. Tenure of office

14.1 A Board Member holds office until the positions of the Board are declared vacant at the next Annual General Meeting; except that

14.2 A Board meeting of the Association may: by Special Majority Vote remove a Board Member from office.

15. Vacation of office

15.1 A Board Member may resign from the Board by written notice addressed to the Board.

15.2 A person ceases to be a Board Member if he or she:

- (a) fails to attend 3 consecutive Board Meetings without leave of absence.

16. Filling casual vacancies

16.1 The Board may appoint an eligible person to fill a position on the Board that has become vacant or was not filled by election at the last Annual General Meeting.

16.2 If the position of Public Officer becomes vacant, the Board must appoint a Member to the position within 14 days after the vacancy arises; to act until such time as a new General Manager is appointed

16.3 The Board may continue to act despite any vacancy in its membership.

17. Meetings of Board

- 17.1 The number of Board meetings shall be determined and reviewed from time to time by the Board as outlined in Board Policy No. 001 *Alignment of years and Board Calendar Policy*.
- 17.2 The procedures for calling and to be followed at a meeting of the Board shall be determined and reviewed from time to time by the Board as outlined in the Board Policy No. 002 *Board Meeting Processes Policy*.
- 17.3 A Board Member who is not physically present at a Board Meeting may participate in the meeting by the use of technology that allows that Board Member and the Board Members present at the meeting to clearly and simultaneously communicate with each other. For the purpose of this provision, a Board Member participating in a Board Meeting as permitted by these Rules is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.
- 17.4 No business may be conducted at a Board Meeting unless a Quorum is present. The Quorum for a Board Meeting is the presence (in person or as allowed by use of technology) of fifty percent plus one of the Board Members holding office. If a Quorum is not present within 30 minutes after the notified commencement time of a Board Meeting, the meeting is to be adjourned to a later date.
- 17.5 On any question arising at a Board Meeting:
- (a) each Board Member present at the meeting has one vote;
 - (b) each Board Member that has appointed a proxy as per paragraph 18 has one vote;
 - (c) a motion is carried if a majority of Board Members present at the meeting vote in favour of the motion; except in the case of a Special Majority Vote, which requires a two thirds majority;
 - (d) if votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote;

18. Proxies

- 18.1 A Board Member shall be entitled to appoint in writing a natural person who is also a Board Member of the Association to be their proxy, and attend and vote at any general meeting of the Association.
- 18.2 The Board Member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the Board Member in any matter as he or she sees fit.

- 18.3 A form appointing a proxy must be given to the Chairperson of the meeting before or at the commencement of the meeting.
- 18.4 A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Public Officer, prior to the commencement of the meeting.

19. Special Board Meeting

- 19.1 The Board may call a Special Board Meeting of the Association at any time.
- 19.2 The Board must convene a Special Board Meeting if a request to do so is made in accordance with paragraph 19.3 by at least 25% of the total number of Board Members.
- 19.3 A request for a Special Board Meeting must:
- (a) be in writing; and
 - (b) state the business to be considered at the meeting and any resolutions proposed; and
 - (c) include the names and signatures of the Board Members requesting the meeting; and
 - (d) be given to the Public Officer.
- 19.4 If the Board does not convene a Special Board Meeting within one month after the date on which the request is made, the Board Members making the request (or any of them) may convene the Special Board Meeting.
- 19.5 A Special Board Meeting convened by Board Members under paragraph 19.4 must be held within 3 months after the date on which the original request was made and may only consider the business stated in that request.
- 19.6 Any motion or resolutions moved at a Special Board Meeting requires a Special Majority Vote to be carried.
- 19.7 The Association must reimburse all reasonable expenses incurred by the Board Members convening a special general meeting under paragraph 19.4.

20. Conflict of Interest

- 20.1 A Board Member who has a material personal interest in a matter being considered at a Board Meeting must disclose the nature and extent of that interest to the Board.
- 20.2 The member:
- (a) must not be present while the matter is being considered at the meeting; and
 - (b) must not vote on the matter.

21. Leave of absence

- 21.1 The Board may grant a Board Member leave of absence from Board Meetings for a period not exceeding 3 months.
- 21.2 The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board Member to seek the leave in advance.

PART 4 – DISCIPLINARY PROCEDURES AND DISPUTE RESOLUTION

22. Expulsion of a Board Member

- 22.1 Subject to giving a Board Member an opportunity to be heard or to make a written submission, the Board may resolve, by a Special Majority Vote to expel a Board Member upon a charge of misconduct detrimental to the interests of the Association.
- 22.2 Written particulars of the charge shall be communicated to the Board Member at least one (1) calendar month before the meeting of the Board at which the matter will be determined.
- 22.3 The determination of the Board shall be communicated in writing to the Member, and in the event of an adverse determination the Board Member shall, subject to paragraph 22.4, cease to be a member of the Board fourteen (14) days after the Board has communicated its determination to him or her.
- 22.4 It shall be open to a Board Member to appeal to the Association in a general meeting against the expulsion. The appeal shall be made in accordance with the Dispute Resolution Procedures outlined in Board Policy No. 009. *Board Conflict Resolution Policy*.
- 22.5 In the event of an appeal under paragraph 22.4, the appellant's membership of the Board Association shall not be terminated until the matter is resolved in accordance with the policy.

23. Dispute Resolution

- 23.1 The dispute resolution procedures set out in this rule apply to disputes under these Rules between:
 - (a) a Board Member and another Board Member;
 - (b) a Board Member and the Association.
- 23.2 The parties to the dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all the parties.
- 23.3 If the parties are unable to resolve the dispute at the meeting the parties may choose to meet and discuss the dispute before an independent third person agreed to by the parties.

PART 5 – ANNUAL GENERAL MEETING OF THE ASSOCIATION

24. Annual General Meeting

- 24.1 The Annual General Meeting of the Association shall be held once in every year in or about the month of October.
- 24.2 For the Annual General Meeting:
- (a) notice of the time, date and place of holding such meeting shall be given to every Board Member. Such notice shall be given at least once and not less than fourteen (14) days before the date upon which the meeting is to be held.
 - (b) the Chairperson and Deputy Chairperson shall vacate their positions and other Board Members by rotation shall resign; and separate elections must be held for the vacant positions.
- 24.3 The business before the Annual General Meeting shall include:
- (a) the confirmation of the minutes of the previous annual general meeting;
 - (b) determine by Ordinary Resolution the number of ordinary Board Members (if any) it wishes to hold office for the next year.
 - (c) the election of a Chairperson, Deputy Chairperson and other Ordinary Board Members;
 - (d) the appointment of an auditor;
 - (e) the presentation and adoption of the Financial Statements and reports of the board together with the report of the auditor; and
 - (f) Such other business as any Board Member may bring forward of which fourteen (14) days' notice in writing has been given.
- 24.4 Nominations of persons to be elected to each position on the Board shall be made at the meeting at which the election is to take place.
- 24.5 If any person shall be nominated in his or her absence the written consent of the nominee to serve if elected must be produced. If more persons are nominated than are required the election shall be determined by ballot.
- 24.6 Two (2) scrutineers shall be appointed, one by the Chairperson and the other by those persons at the meeting, and they shall draw up a minute of the result which, when countersigned by the Chairperson, shall be final and shall be recorded in the Minute Book.
- 24.7 At any Annual General Meeting fifty percent plus one of the Board Members shall constitute a Quorum.

24.8 If that number is not present fifteen (15) minutes after the time fixed for the commencement of the meeting such meeting shall stand adjourned to the same day and hour of the following week and notice of such adjournment shall be given to each member.

25. Election of Board Members

25.1 A person is eligible to be elected or appointed as a Board Member if the person:

- (a) is 18 years or over; and
- (b) is not a resident of one of the villages of the Association.

25.2 An eligible person may:

- (a) nominate himself or herself; or
- (b) with the eligible person's consent, be nominated by another Board Member.

25.3 An eligible person who is nominated for a position and fails to be elected to that position may be nominated for any other position for which an election is yet to be held.

25.4 If the of number eligible person/s nominated for a position/s are not more than number of vacant positions, the Chairperson of the meeting must declare the Board Member/s elected to the position.

25.5 If more than the number of eligible person/s required nominate for a vacant position/s, a ballot must be held.

25.6 On his or her election, the new Chairperson may take over as Chairperson of the meeting.

26. Minutes of Meetings

26.1 Proper minutes of all proceedings of the Annual General Meeting of the Association and of meetings of the Board shall be entered within one (1) calendar month after the relevant meeting in minute books kept for the purpose. The Board must ensure that the minutes of each Meeting include:

- (a) the names of the members in attendance at the meeting;
- (b) the business considered at the meeting;
- (c) any resolution on which a vote is taken and the result of the vote;
- (d) any material personal interest disclosed under rule 183.

26.2 The minutes kept pursuant to these Rules must be confirmed by the Board Members of the Association at a subsequent meeting.

26.3 The minutes kept pursuant to these Rules shall be signed by the Chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.

26.4 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

27. Voting at Annual General Meeting

27.1 On any question arising at an Annual General Meeting:

- (a) subject to paragraph 27.1 (c), each Board Member who is entitled to vote has one vote; and
- (b) Board Members may vote personally or by proxy as per paragraph 18; and
- (c) except in the case of a Special Majority Vote, the question must be decided on a majority of votes; and
- (d) A Special Majority Vote requires a two thirds majority of the total number of Board Members.

27.2 If votes are divided on a question, the Chairperson of the meeting has a second or casting vote.

28. Determining whether resolution carried

28.1 Subject to paragraph 28.2, the Chairperson of a general meeting may, on the basis of a show of hands, declare that a resolution has been:

- (a) carried; or
- (b) carried unanimously; or
- (c) carried by a particular majority; or
- (d) lost

and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.

28.2 If a poll (where votes are cast in writing) is demanded by three or more members on any question:

- (a) the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
- (b) the Chairperson must declare the result of the resolution on the basis of the poll.

28.3 A poll demanded on the election of the Chairperson or on a question of an adjournment must be taken immediately.

28.4 A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.

PART 6 - FINANCIAL MATTERS

29. Accounts to be kept

- 29.1 The Association shall keep and retain such accounting records as are necessary to correctly record and explain; and
- (a) the financial transactions and financial position of the Association in accordance with the Act;
 - (b) all money received and expended by the Association and the matter in respect of which the receipt or expenditure takes place; and
 - (c) the property, credits and liabilities of the Association.
- 29.2 The accounts, books and records are to be kept at the Association's office or at any other place the Board decides.

30. Accounts available for inspection

- 30.1 The accounts are to be open to inspection by the Board Members of the Association subject to any reasonable restrictions as to time and manner of inspecting the Association may impose.

31. Annual returns

- 31.1 The annual information statement shall be lodged with Australian Charities and Not-for-profits Commission within six months after the end of each financial year; and to ensure that this covers the requirements of the Consumer and Business Services, Corporate Affairs Commission. It must be accompanied by a copy of the accounts, the auditor's report, the Board of Management's statement and report.

32. Appointment of auditor

- 32.1 As a prescribed association under the Act, the Association shall have an auditor who shall not be a member of the Board and who shall be elected at the Annual General Meeting provided that in case no auditor be so elected the Board shall appoint an auditor at the first meeting of the Board held subsequent to the Annual General Meeting.
- 32.2 The auditor shall hold office until the next Annual General Meeting and is eligible for re-appointment.
- 32.3 The auditor may only be removed from office by Special Majority Vote.
- 32.4 If a casual vacancy occurs in the office of auditor during the course of a financial year of the Association, the Board may appoint an auditor to hold office until the next succeeding annual general meeting.
- 32.5 The auditor so appointed shall undertake an audit of the Financial Statements, and report to the Board as required under the Act.

PART 7 – GENERAL MATTERS

33. Common Seal

- 33.1 The Association shall have a common seal upon which its corporate name shall appear in legible characters.
- 33.2 The seal shall not be used without the express authorisation of the Board, and every use of the seal shall be recorded in the minute book of the Association.
- 33.3 A document may only be sealed with the common seal by the authority of the Board and the sealing must be witnessed by the signatures of two Board Members.
- 33.4 The seal shall be kept in the custody of the Public Officer or such other person as the Board may from time to time decide.

34. Notice requirements

- 34.1 Any notice required to be given to a Board Member under these Rules may be given:
- (a) by handing the notice to the Board Member personally; or
 - (b) by sending it by post to the Board Member or
 - (c) by electronic transmission.
- 34.2 Any notice required to be given to the Association or the Board may be given:
- (a) by handing the notice to a Board Member; or
 - (b) by sending the notice by post to the registered address; or
 - (c) by leaving the notice at the registered address; or
 - (d) if the Board determines that it is appropriate in the circumstances:
 - i. By email address of the Association or the Public Officer; or
 - ii. By other electronic means of the Association.

35. Winding Up

- 35.1 The Association may be wound up voluntarily by Special Resolution.
- 35.2 Any disbursement of Village Assets must take into account the requirements of the *Retirement Villages Act 2016 (SA)*.
- 35.3 Upon the winding up or dissolution of the Association if there remains after the payment and discharge of all just debts, liabilities and contractual obligations any money or assets whatsoever the same shall be paid to or distributed:
- (a) Amongst some institution or institutions having objects similar to the objects of the Association to be determined by the members of the Board at or before the winding up and dissolution: or in default thereof;
 - (b) As directed by the Supreme Court of South Australia or any Judge thereof who may have or may acquire jurisdiction in the matter.

35.4 The institution or institutions to receive the payment or distribution should be within the region governed by the Corporation of the Town of Gawler in the State of South Australia or the surrounding region.

36. Alteration of Rules

36.1 These Rules may be altered (including an alteration to the Association's name) by Special Majority Vote of the Board Members of the Association. This includes rescission or replacement by substitute rules.

36.2 The alteration shall be registered with Consumer and Business Services, Corporate Affairs Commission, as required by the Act.

36.3 The registered rules shall bind the Association and every Board Member to the same extent as if they have respectively signed and sealed them, and agreed to be bound by the provisions thereof.

36.4 Subject to any provision in these Rules or a resolution to the contrary, an alteration to the Rules comes into force at the time that the alteration is passed. This does not apply to an alteration to the name of the Association which does not come into force until registered by Consumer and Business Services, Corporate Services Commission.

36.5 No alteration shall be made to the Constitution which shall in any way affect the status of the Association as a "*public benevolent institution*" for the purposes of Division 30 of the *Income Tax Assessment Act 1997* (Cth) (as amended) for the time being in force in Australia.