

CONSTITUTION



United in Christian Care

UNITED PROTESTANT ASSOCIATION OF N.S.W. LIMITED as at 1 January 2018

NATIONAL COMPANIES AND SECURITIES COMMISSION

Companies (New South Wales) Code

(Sub-section 35 (2))

Registered No.:

482173-30
.....

CERTIFICATE OF INCORPORATION OF PUBLIC COMPANY

This is to certify that

UNITED PROTESTANT ASSOCIATION OF N.S.W. LIMITED

is on and from the ninth day of August, 1990

incorporated as a public company, being a company limited by guarantee.

Given under the seal of the National Companies and Securities Commission at

Sydney on this ninth day of August, 19 90.



A. Mitchellson

A person authorized by the
Corporate Affairs Commission of New South Wales
Delegate of the National Companies
and Securities Commission

UNITED PROTESTANT ASSOCIATION
OF NSW LIMITED

UPA

CONSTITUTION

ACN 050 057 620
ABN 71 050 057 620

As at 1 January 2018, as adopted 26 October 2017

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PART ONE: INTRODUCTION

1. Definitions and Interpretation

1.1 Definitions.

In this Constitution;

ACNC Act means the *Australian Charities and Not-for-Profits Commission Act 2012 (Commonwealth)*.

Annual General Meeting of the UPA is the annual meeting of *members* representing all *Regions*.

Board means, the Board appointed by the Annual General Meeting of the UPA.

Branch means a group of *members* within or outside a *Region* as approved by resolution of the *Board*.

Charities Legislation means the ACNC Act and all relevant laws, regulations, rules and compulsory governance standards which apply to charities in Australia, as amended or replaced from time to time.

Client means any person who receives any direct service from *UPA*.

Company means UPA.

Committee means a group of persons selected by the *Board* or *Regional Executive* to undertake a specific task.

Constitution means the *Constitution* of the *Company* as amended from time to time.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Director means a member of the *Board*.

Financial Member is a *member* who has paid all required membership fees, or a *Life Member*.

General Manager means the General Manager of UPA appointed by the *Board* pursuant to clause 7.3(c).

General Meeting is a meeting at which all *members* of the *UPA* are eligible to attend.

Life Member means a *member* of the *Company* appointed as a Life Member pursuant to clause 3.6.

Member means a member of the *Company*.

Police Check means a certificate of compliance as required by the policies and procedures of UPA from time to time, which may include as relevant:

- (a) a Working with Children Check in accordance with the *Child Protection (Working with Children) Act 2012 (NSW)*; and
- (b) Police checks for aged care workers in accordance with the *Aged Care Act 1997 (Cth)* and *Accountability Principles 2014*.

President means the President of the *Board and Company*.

Region means a geographic area defined as such by the *Board*.

Regional Annual General Meeting is the annual meeting of the *members* of a *Region*.

Regional Executive means the governing committee within the *Region*.

Regional President means President of the *Region*.

Seal means the Common Seal of the *UPA*.

Secretary means the company secretary of the *UPA*, appointed in accordance with clause 8.

Special Resolution has the same meaning as defined in section 9 of the *Corporations Act*.

Staff member is any person employed by the *UPA*.

UPA means the United Protestant Association of NSW Limited ABN 71 050 057 620.

1.2 Interpretation

In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- (a) The singular denotes the plural and vice versa.
- (b) Any gender denotes the other genders.
- (c) Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (d) Headings and any table of contents must be ignored in the interpretation of this *Constitution*.
- (e) Unless the context otherwise requires a reference to a time of day means that time of day in the state or territory in which the registered office of the *Company* is situated.

- (f) For the purposes of determining the length of a period (but not its commencement) a reference to:
 - (i) a day means a period of time commencing at midnight and ending 24 hours later;
 - (ii) a month means a calendar month.
- (g) Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.
- (h) A provision of this *Constitution*, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.
- (i) A reference to a business day means a day other than a Saturday, Sunday or public holiday in New South Wales.
- (j) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under the statute.
- (k) Where a reference is made to a document or agreement or a provision of a document or agreement, such reference shall be deemed to refer to that document, agreement or provision as amended, supplemented, replaced or novated.
- (l) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (m) This *Constitution* shall be construed according to the laws of New South Wales.
- (n) Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, facsimile, electronic mail and other modes of representing or reproducing words in a visible form.
- (o) Words or expressions contained in this *Constitution* shall be interpreted in accordance with the provisions of the *Corporations Act*
- (p) Words in *italics* shall have the meaning set out in clause 1.1.

PART TWO: NAME, OBJECTIVES AND PRELIMINARY

2. Name, Objectives and Preliminary

2.1 Name

The name of the *Company* is UNITED PROTESTANT ASSOCIATION OF NSW LIMITED (hereinafter called "the *UPA*").

2.2 Replaceable Rules

The Replaceable Rules contained in the *Corporations Act* do not apply to the *Company*.

2.3 Interpretation of this Constitution

- (a) This *Constitution* is designed for a public company limited by guarantee which is:
 - (i) incorporated under the *Corporations Act*, and
 - (ii) a charity registered under the *ACNC Act*.
- (b) If the *Corporations Act* and/or the *ACNC Act* is repealed or amended, then this *Constitution* may require amendment.
- (c) To the extent of any inconsistency between this *Constitution* and a mandatory requirement of a relevant law (including the *Corporations Act* and the *ACNC Act*), the relevant law takes priority.
- (d) A word or expression that is defined in the *Corporations Act* or the *Charities Legislation* has the same meaning as in this *Constitution*.

2.4 Nature of Company

- (a) The *UPA* is a not for profit company limited by guarantee under the provisions of the *Corporations Act*.

2.5 Company to Comply with Objects

- (a) All of the *UPA* objects are to be carried out according to the basis and acceptance of Christian belief and practice and the Bible will be our source for guidance.
- (b) The *Company* must only act in furtherance of the objects described in clause 2.6.

2.6 Objects

The objects for which the *UPA* is established are -

- (a) To promote care based on Christian principles demonstrating the love of God as revealed in Jesus Christ.
- (b) To offer within a Christian environment, services and facilities for people in need, including aged and/or disabled people, disadvantaged children, young people and families.
- (c) To aim to offer care of the highest possible standard, consistent with the *UPA's* Christian commitment acknowledging the demands and expectations of society and government at all levels, without regard to gender, marital status, ethnic status, or religion.
- (d) To apply for and receive grants, financial assistance or other help in furtherance of the above purposes and for any other not-for-profit objectives of the *UPA*.
- (e) Solely for the purpose of carrying out the aforesaid objects and not otherwise, the *UPA* has all the powers conferred on it by the *Corporations Act*.

2.7 **Liability:**

The liability of the *members* is limited.

2.8 **Income and Property:**

All income and property of the *UPA* shall be applied solely towards the promotion of the objects of the *UPA* as set out in this *Constitution*; and no portion shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise, to the *members* of the *UPA*, provided that nothing in this *Constitution* shall prevent the payment, in good faith, of:

- (a) reasonable and proper remuneration to any *Staff* of the *UPA*, or *member* of the *UPA* in return for any services actually rendered to the *UPA*,
- (b) interest at a rate not exceeding the lowest rate of interest for the time being charged by financial institutions for loans of a similar nature,
- (c) reasonable and proper rent for premises let by any *member* of the *UPA* to *UPA*, and
- (d) reasonable expenses incurred by *members*, staff and volunteers in the course of *UPA* work.

2.9 **Prohibited Acts**

The *Company* does not have the power to:

- (a) issue shares of any kind; or

- (b) pay, transfer, apply, directly or indirectly, any portion of the income and property of the *Company*, by way of dividend, bonus or otherwise by way of profit, to or for the benefit of a *member*.
- (c) The *Company* must not be operated for the purpose of the profit or gain of any *member*.
- (d) Nothing in this *Constitution* authorises the *Company* to do an act that is prohibited by law of a State or a Territory of Australia or gives the *Company* a right that the law of a State or Territory of Australia denies to the *Company*.
- (e) Even though section 124(1) of the *Corporations Act* may prescribe additional purposes and powers, the *Company* may only act in furtherance of the objects described in clause 2.6.

2.10 **Winding Up:**

Every *member* of the *UPA* undertakes to contribute to the property of the *UPA* in the event of the *UPA* being wound up while he/she is a *member*, or within one (1) year after she/he ceases to be a *member*, for payment of the debts and liabilities of the *UPA* contracted before he/she ceases to be a *member* and the costs and charges and expenses of winding up and for the adjustments of the rights of the contributories among themselves such amount as may be required not exceeding the sum of One Dollar (\$1.00).

2.11 In the event of *UPA* being dissolved or upon winding up or it ceases to be a *DGR* for any reason, the amount of any assets which remain after such dissolution or winding up or loss of *DGR* status and the satisfaction of all debts or liabilities shall be transferred to an organisation or organisations having similar objects and to which income tax deductible gifts can be made being an organisation accepted by the Commissioner of Taxation as public benevolent institution(s) for the purposes of any Commonwealth Taxation Act. Such organisation or organisations are to be determined by the *members* of the *Company* at or before the time of dissolution or winding up (if possible) and in default thereof by application to the Supreme Court for determination.

2.12 For the avoidance of doubt, if a *Gift Fund* operated by the *UPA* is wound up but the *UPA* remains a *DGR* and operates any other *Gift Fund* in accordance with this clause 2, any surplus assets of the *Gift Fund* that is being wound up may be transferred to any other gift fund operated by the *UPA*.

2.13 For the purpose of clauses 2.10 to 2.12 the following definitions apply:

- (a) *DGR* means a 'deductible gift recipient' within the meaning of section 30-227 of the *Income Tax Assessment Act 1997* (Cth).
- (b) *Gift Fund* means a fund that is maintained for the objects set out in clause 2.6.

PART THREE: MEMBERSHIP

3. Membership

3.1 Membership Year and membership fees.

- (a) The membership year will commence on 1st July in each year and membership fees are due for payment on that date.
- (b) The *Board* shall determine the annual member fees to be paid by *members*.

3.2 Becoming a member

- (a) Any natural person (and not a body corporate) may apply to become a *member* of a *UPA Region* or *Branch* by completing an application form and submitting it for consideration by the *Board* or *Regional Executive*.
- (b) Approval of membership is subject to approval by ordinary resolution of the *Board* or *Regional Executive* in their discretion after an applicant subscribes to the objects of the *UPA* and pays the annual membership fees.

3.3 Ongoing member obligations

- (a) Each *member* of the *Company* agrees to be bound by the provisions of this *Constitution* and relevant by-laws and rules approved by the *Board* from time to time.
- (b) For so long as a *member* abides by the provisions of this *Constitution*, the *member* shall enjoy the rights and privileges of membership under this *Constitution* and the *Corporations Act*.
- (c) The rights and privileges of every *member* are personal to that *member* and may not be transferable by any act of that *member* or by operation of law.
- (d) Each *member* is expected to subscribe to the objects of *UPA* and behave in a manner consistent with the relevant *UPA Code of Conduct*.
- (e) Such persons as the *Board* or *Regional Executives* shall admit to membership, in accordance with this *Constitution* shall be *members* of the *UPA*.
- (f) A person may not be a member of more than one *Region* or *Branch*.

3.4 Register of Members

- (a) A register of the *members* must be kept in accordance with the *Corporations Act*.

- (b) The following details must be entered and kept current in the register in respect of each *member*:
 - (i) The full name and contact details of the *member*;
 - (ii) The date of admission to and cessation of membership;
 - (iii) Whether or not the *member* is a *Life Member*;
 - (iv) If the *member* is a member of a *Region* or *Branch*, the relevant *Region* or *Branch*; and
 - (v) Such other information as the *Board* requires.
- (c) Each *member* is responsible to notify the *Secretary* of the *Company* in writing of any change in that person's name, address, telephone or facsimile number or email address within one month after the change.

3.5 Removal or cessation of membership

- (a) A person may resign their membership by notice in writing to the relevant *Regional Executive*.
- (b) Membership will cease if:
 - (i) The membership fee is six (6) months in arrears and on resolution of the *Regional Executive* or *Board*;
 - (ii) The *member* dies;
 - (iii) The *member* is insolvent; or
 - (iv) The *member* becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health.
- (c) Where any *member*, in the opinion of the *Regional Executive* -
 - (i) has acted contrary to the objects of the *UPA*, as set out in this *Constitution*; or,
 - (ii) has refused to comply with the *Constitution* when requested to do so; or,
 - (iii) has engaged in disorderly or offensive conduct or
 - (iv) has engaged in conduct that has brought the *UPA* into disrepute,

the *Regional Executive* may resolve to suspend the membership of that *member* by written notice to the relevant *member* and the *member* may be refused admittance to any meetings of the *UPA* for a period not exceeding three months.

- (d) Where any *member*, in the opinion of the *Board* -
- (i) has acted contrary to the objects of the *UPA*, as understood in the light of the *Constitution*; or,
 - (ii) has refused to comply with the *Constitution* when requested to do so; or,
 - (iii) has engaged in disorderly or offensive conduct or
 - (iv) has engaged in conduct that has brought the *UPA* into disrepute,
- the *Board* may resolve to suspend or terminate the membership of that *member* by written notice to the relevant *member* and they may be refused admittance to meetings of the *UPA*.
- (e) Any *member* dealt with under clauses 3.5(c) or 3.5(d) shall have the right of appeal to the *Board* within a period of one month of receipt of notification from the *Board*.
- (f) Any *member* while subject to a resolution under clauses 3.5(c) or 3.5(d) during the period of suspension or termination shall not be entitled to any of the benefits of membership.
- (g) Where a dispute arises between *members* timely attention must be given, in good faith, to endeavour to resolve the dispute in accordance with the Dispute Resolution Process authorised by the *Board* from time to time in the Policy and Procedure Manual.

3.6 **Life Membership**

The granting of *Life Membership* shall be subject to recommendation from the *Board* and approval of the *members* at the *Annual General Meeting of the UPA*. Nominations of individuals who have rendered outstanding service to the *UPA* for *Life Membership* shall be submitted to the *Board* for consideration and recommendation before the August *Board* meeting. A life member shall not be required to pay any further membership fees.

3.7 **Junior Membership**

Any *member* aged less than 18 years of age shall not be entitled to vote or hold office.

PART FOUR: CORPORATE STRUCTURE

4. Corporate Structure

4.1 UPA Organisation Chart

Members of the UPA	
Governance	Management
<p>Board Appointed by the <i>Annual General Meeting of the UPA</i> and has ultimate authority to govern UPA pursuant to clause 7.</p>	<p>General Manager Appointed by the <i>Board</i> to ensure the effective and efficient management of all UPA's activities pursuant to clause 20.</p>
<p>Regional Executive Appointed by <i>members</i> of the relevant Region at the <i>Regional Annual General Meeting</i>. The <i>Regional Executive</i> have delegated authority from the <i>Board</i> to govern a <i>UPA Region</i> pursuant to clauses 12 & 13.</p>	<p>Regional Manager Appointed by the <i>Board</i> after considering the recommendation of the <i>General Manager</i> and <i>Regional Executive</i> pursuant to clause 21.</p>
<p>Regional Committees Appointed by the <i>Regional Executive(s)</i> for a specific task pursuant to clauses 13.4 and 13.6.</p>	<p>Care Managers and other Senior Staff Appointed by the <i>Regional Executive</i> and <i>Manager</i></p>
<p>Branches and Auxiliaries Made up of <i>members</i> with special interest in a particular area of work <i>Branches</i> are established by the <i>Board</i> pursuant to clause 14. <i>Auxiliaries</i> are established by the <i>Board</i> or <i>Regional Executive</i> pursuant to clause 15.</p>	<p>Operational Staff Employed in specific program areas or administration.</p>

- 4.2 The *Board* may approve from time to time organisational structures, reporting and subcommittees, including *Board* subcommittees for planning, projects, audit & risk, remuneration, work, health and safety and clinical governance.

5. Chairman

5.1 The Chairman of any meeting shall be in order of priority, as listed in 5.1(a) to 5.1(e) below. If that person is not present or is unwilling to act, then the person next listed shall act:

- (a) the *President* of the *Board* of the *UPA*;
- (b) the Vice-President of the Board of the *UPA*;
- (c) the *President* of the *Region, Branch* or other Committee as the case may be;
- (d) Regional Vice President, *Branch* or other Committees;
- (e) in the event that none of the above are present or willing or able to act, the *members* shall elect a chairman from amongst themselves.

5.2 At any meeting of the *UPA* if there is a tied vote on any matter, status quo will remain and the Chairman does not have a casting vote.

6. General Meetings of the UPA (including Annual General Meetings)

6.1 General Meetings of the UPA

General Meetings of the *UPA* shall be held upon:

- (a) Resolution of the *Board*, or
- (b) Written request signed by at least 40 *members*, being members of at least two *Regions* and including at least two Executive members from each *Region*. The written request shall be forwarded to the *President* or General Manager and shall state the purpose of the *General Meeting*;
or
- (c) Written request signed by at least 100 *members* from at least two *Regions* provided that the request includes a notice of a proposed resolution which complies with the *Corporations Act*; or
- (d) Written request of at least one half of the members of a *Region* disbanded under clause 18.1, to hear an appeal under 18.2.

6.2 Voting Delegates

Voting delegates (the *members* who are entitled to vote) at a *General Meeting* of *UPA* shall comprise -

- (a) members of the *Board*;
- (b) up to seven delegates to represent each *Region*, elected pursuant to clause 12.3(b)(v);
- (c) Regional Managers;

- (d) two *Life Members* nominated by the *Regional Executive* of the *Region* which is hosting the *General Meeting*; and
- (e) up to two delegates to represent any *Branch*. The *Branch* delegates must be elected as *Branch* delegates at a *Branch* *General Meeting*. A *Branch* is defined by the *Board* as not being associated with or represented by any *Region*.

6.3 **Members Entitled to Attend**

All *members* are entitled to attend *General Meetings* but only those included in clause 6.2 have voting rights at that *General Meeting*.

6.4 **Special Business**

- (a) Proposed amendments of the *Constitution* of the *UPA* and/or any other business for consideration by a *General Meeting* other than covered by clauses 6.1(b), 6.1(c) or 6.1(d), shall before submission, have been duly passed by the *Board*, *Region* *General Meeting*, or *Regional Executive*; and
- (b) Shall be submitted to the *Secretary* at least two months prior to the relevant *General Meeting*.

6.5 **Business to be Considered at General Meeting**

- (a) Subject to the *Corporations Act*, all business to be considered by a *General Meeting* of the *UPA*, including the notice of meeting and agenda, must be made available to:
 - (i) *Regional Executives* at least twenty one days prior to the *General Meeting*; and
 - (ii) *Voting Members* and other *members*.
- (b) A copy of reports to be tabled at a *General Meeting* must be made available to:
 - (i) *Regional Executives* at least twenty one days prior to the *General Meeting*; and
 - (ii) *Voting Members* and other *members* upon request.

6.6 **Annual General Meeting of the UPA**

- (a) The *Annual General Meeting of the UPA* shall be held on the last Saturday in the month of October in each year or at such other time as determined by the *Board*.

- (b) The Annual General Meeting shall:
- (i) receive and consider Annual Reports of the *Board, Regional Executives* and any *Committees* established by the *Board* including as required by clause 25.2;
 - (ii) provided that sufficient notice has been provided under the *Corporations Act*, consider and determine any amendments to the *Constitution as a Special Resolution*;
 - (iii) elect *Directors* pursuant to clauses 6.6(f) and 6.6(h).
 - (iv) consider any other matters relevant to the *UPA* of which due notice has been given.

For the avoidance of doubt, this does not prevent some or all of these matters being considered at a Special General Meeting (also known as an Extraordinary General Meeting).

- (c) Any *member* who has had a minimum of 12 months' experience as a member of a *Regional Executive* prior to nomination, may be nominated pursuant to clauses 6.6(d) or 12.4. Any *member* who has less than 12 months' experience as a member of a *Regional Executive* prior to nomination must have their nomination approved at the *Annual General Meeting* of the *UPA* by 75% of the votes cast on this issue to be eligible to stand for election.
- (d) Nominations for *President* and Vice President, shall be in writing and received by the General Manager/Secretary by 31st August each year and notified to *Regional Executives* twenty one days prior to the *Annual General Meeting* in each year. Each nomination shall be signed by two *Financial Members* and by the nominated person.
- (e) Nominations for *Regional* representatives under clause 12.4 shall be received by the *General Manager/Secretary* by 30th September each year. Each nomination shall be signed by two financial *members* of the relevant *Region* and by the nominated person.
- (f) All Nominees for the *Board* shall be voted on at the *Annual General Meeting* of the *UPA* by:
 - (i) Any nominee receiving more than 50% of the votes of those present and entitled to vote shall be deemed elected; and
 - (ii) in any other case, a ballot will be conducted. The nominee with the least votes shall be excluded, until only one nominee remains. This nominee shall then be offered for election under paragraph 6.6(f)(i).
- (g) Any nominee shall be entitled to withdraw their nomination by notice in writing to the *General Manager* before election.

(h) The *Annual General Meeting of the UPA* shall elect *members* to the following positions for a term of three years each:

- (i) President,
- (ii) Two Vice Presidents.

(i) A *member* may only hold the office of either the:

- (i) *President*, or
- (ii) Vice President,

for three consecutive terms of three years and after which shall not stand for re-election to that office at the *Annual General Meeting of the UPA* at which the officeholder retires.

(j) At the conclusion of three consecutive terms of three years in a position, the *member* shall not be eligible for re-election to the position of Director unless that person has not held that position for at least 12 months, except the General Manager.

(k) The *Annual General Meeting of the UPA* shall vote on *Directors* representing each *Region* and *Staff* nominated under clauses 6.6(k)(i) and 12.4.

(i) The *Staff* representative *Director* shall be nominated as a result of a ballot of all *Regional* Care and Other Managers. This ballot shall take place in September of the relevant year. A list of staff eligible to be nominated and participate in the ballot shall be submitted by the *General Manager* for approval by the *Board* at the August meeting of the relevant year.

(l) None of the *Directors* elected under clause 6.6(h) shall be members of *Staff* or *Clients* of services.

6.7 **Special General Meetings (also known as an Extraordinary General Meeting)**

Should any business arise between *Annual General Meetings of the UPA*, then such business may be submitted to a special *General Meeting (also known as Extraordinary General Meeting)*.

7. **Board of Directors**

7.1 **Powers of Directors**

(a) The Directors may exercise all of the powers of the *Company* which are not, by the *Corporations Act* or by this Constitution, required to be exercised by the *members* in general meeting or otherwise.

- (b) No delegation by the Board under this clause limits the duties and liability of each *Director* of the *Board*.

7.2 **Directors' Duties**

The *Directors* must comply with their duties under common law and under the *Corporations Act* and *Charities Legislation*.

7.3 **Directors' Role**

- (a) The role of the *Board* is to govern the *UPA*. The *Board* shall be the controlling body between *Annual General Meetings of the UPA* and shall direct, oversee, co-ordinate the work of *UPA*.
- (b) The *Board* shall ensure that the *UPA's* activities and functions advance the objects of the *Company* as set out in this *Constitution* and provide strategic leadership to the *Regions, Regional Executives, Branches* and *Committees*.
- (c) The *Board* will appoint from time to time the *General Manager* of the *UPA* and determine the functions and performance criteria for the *General Manager*.

7.4 **The Board**

The *Board* shall comprise the following:-

- (a) *President*
- (b) Two Vice Presidents
- (c) General Manager;
- (d) Other *Directors* elected pursuant to clause 6.6(k).
- (e) One *Director* elected pursuant to clause 6.6(k)(i).

- 7.5 Each *Director* is elected for a term of three years from the date of appointment, except for the General Manager.

7.6 **Rotation of Directors**

Subject to clause 7.7, there shall be a rotational system so that at each *Annual General Meeting* of the *UPA*, one third of the *Directors* (rounded up to the nearest whole number if necessary) must retire, except for the General Manager.

7.7 **Transitional Board arrangements**

Except for the *General Manager*, the following transitional arrangements will apply:

- (a) at the 2019 *Annual General Meeting of the UPA* the number of *Directors* being one third of the total of the *Board* who are the longest serving *Directors* shall retire and may stand for re-election;
- (b) at the 2020 *Annual General Meeting of the UPA* the number of *Directors* being one third of the total of the *Board* who are the longest serving *Directors* (excluding the *Directors* who retired and were re-elected in 2018) shall retire and may stand for re-election; and
- (c) at the 2021 *Annual General Meeting of the UPA* the number of *Directors* being one third of the total of the *Board* who are the longest serving *Directors* (excluding the *Directors* who retired and were re-elected in the 2019 or 2020 *Annual General Meeting of the UPA*) shall retire and may stand for re-election.
- (d) On and from the 2022 *Annual General Meeting of the UPA* all *Directors* having held the office of *Director* for three consecutive years shall retire and may stand for re-election.

7.8 **President**

The *President* shall be entitled to attend, chair, participate in and vote at all meetings held by the *UPA*. The *President* may delegate this power to a Vice President of the *Board*.

7.9 **Regional Representative**

Where the person nominated by a *Region* pursuant to clause 12.4 is elected to the position of *President* or Vice President, the person appointed as second nominee by the relevant *Region* will become the *Region's* nominee as a *Director*.

7.10 **Board Meetings**

The *Board* shall meet at least bi-monthly (once every two months) to deal with matters of the *UPA*.

7.11 **Convening of Directors' Meetings**

- (a) Subject to clause 7.11(c), a *Director* may at any time, and a *Secretary* must on the requisition of a *Director*, convene a meeting of the *Directors*.
- (b) The *Board* shall meet not less than six times per year, but otherwise as necessary to discharge their duties and functions.
- (c) Notice of each meeting of the *Directors* must be given to each *Director* at least 48 hours before the meeting, or otherwise as determined by resolution of the *Board*, except in the case of a *Director* who is out of Australia or who has been given leave of absence from the *Board*.

- (d) A *Directors'* meeting may be called or held using any technology consented to by all the *Directors*. The consent may be a standing one. A *Director* may only withdraw their consent within a reasonable period before the meeting. The *Directors* may otherwise regulate their meetings as they think fit.
- (e) *Directors* who for any reason are unable to attend or participate in Board meetings or duties of the Board may be represented by a nominee member who is appointed under clause 12.4. The nominee Director shall have no voting rights on any matter or resolutions of the *Board*.

7.12 Board Establishment of Committees, Regions and Regional Executive and Delegation

- (a) The *Board* may establish *Committees* and determine their terms of reference, composition and other relevant matters. Such *Committees* shall conform with any regulations or requirements imposed by the *Board*. Membership of such *Committees* is not restricted to *UPA members*.
- (b) In the exercise of any powers delegated to it, a *Committee* formed by the *Board*:
 - (i) must conform to the directions of the *Board*;
 - (ii) provide such reports as required by the *Board*; and
 - (iii) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution.
- (c) The *Board* may establish *Regions* to direct the *UPA's* activities in a defined area.
- (d) In the exercise of any powers delegated to it, a *Region* formed by the *Board*:
 - (i) must conform to the directions of the *Board*;
 - (ii) provide such reports as required by the *Board*; and
 - (iii) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution.
- (e) The *Board* shall, in conjunction with each *Regional Executive*, make plans and set objectives for the future development of services and facilities, and supportive organisational structures. Such plans and objectives must complement and be consistent with the Objects of the *UPA*.
- (f) The *Board* may, by specific instrument, delegate any of its powers and/or functions (not being duties imposed on the *Board* of the *UPA* by

the *Corporations Act* or the general law) to the *President*, a *Vice President* of the *Board*, the *General Manager*, any *Regional Executive*, or *Regional Manager* until the next *Annual General Meeting of the UPA*.

7.13 **Defect in Appointment**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a *Director*, or
- (b) a person appointed to that position was disqualified,

all acts of the *Directors* before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

7.14 **Casual vacancies-**

- (a) Casual vacancies in the position of *President* or *Vice President* shall be filled by the *Board*.
- (b) Casual vacancies in other positions on the *Board* shall be nominated by the relevant *Regional Executive* or a staff ballot (for the *Staff* appointed *Director*) as appropriate. The *Board* may in its discretion confirm such nomination and so fill the casual vacancy.

7.15 **Independent Directors**

The *Board* may, by resolution, appoint up to two additional *Directors* who are able to bring to the *UPA* specific skills and experience. The term of any such appointments shall be either one, two or three years at the discretion of the *Board*.

7.16 **Resignation and Termination of Director appointment**

The office of a *Director* shall terminate at the point during the next *Annual General Meeting of the UPA* when the result of the election of the relevant *Director's* position is declared, or in the case where the position is not filled, the close of the meeting.

7.17 The office of a *Director* becomes vacant if one or more of the following occur in relation to a *member* - the *member*:

- (a) dies;
- (b) completes a term of appointment;
- (c) becomes bankrupt or takes advantage of the provisions of the *Bankruptcy Act* 1966 (Cth) relating to insolvent debtors;
- (d) becomes prohibited from being a *Director* by reason of any order made under or provision of the *Corporations Act* and/or the *ACNC Act*;

- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (f) resigns office by notice in writing to the *UPA*;
 - (i) is subject to a resolution pursuant to clauses 3.5(c) or 3.5(d);
 - (ii) ceases to be a *member* of the *UPA*;
 - (iii) fails to declare an interest (other than an excluded interest under clause 37) in any contract or proposed contract;
 - (iv) As a *Director*, fails to attend three consecutive *Board* meetings which they are entitled to attend without being granted leave of absence;
 - (v) is required to retire under the rotational system under clauses 7.6 and 7.7; or
 - (vi) fails to meet the requirement of a satisfactory *Police Check*.

8. Company Secretary

- (a) The *Directors* may:
 - (i) appoint, and terminate the appointment of, one or more persons to be a *Secretary*; and
 - (ii) determine their terms and conditions of appointment.
- (b) The *Secretary* shall be the *General Manager* of the *UPA* or such other person as approved by the Board from time to time.
- (c) A *Secretary* shall be responsible to carry out all acts and deeds required by this *Constitution*, the *ACNC Act*, *Corporations Act* or by law to be carried out by the *Secretary* of the *Company*.

9. By-laws and Rules

- 9.1 The Board may, by resolution of the Board, make or adopt by-laws and rules with respect to any matter or thing for the purposes of giving effect to any provision of this *Constitution* or generally for the purposes of carrying out the objects of the *Company*, which by-laws and rules shall be binding on the *members*, provided that to the extent of any inconsistency, this *Constitution* shall prevail over all such by-laws and rules.

10. Regional Structure

10.1 Amalgamation of Regions

The *Board* may amalgamate the administration of any two or more *Regions* where in the *Board's* opinion such arrangements will achieve organisational

and economic efficiencies. In such cases *Regional Executives* shall retain the same level of organisational independence as existed prior to the amalgamation.

10.2 **Regional Committees**

- (a) Two or more *Regional Executives* may with the prior written approval of the Board,
 - (i) Establish *Regional Committees* to facilitate their work;
 - (ii) Determine the terms of reference and powers of the *Committee*; and
 - (iii) Appoint persons to the *Committee*.
- (b) Such *Committees* shall conform to the *Constitution*, including the requirements of the *Regional Executives* involved.
- (c) In the exercise of any powers delegated to it, a *Regional Committee* formed by the *Regional Executive*:
 - (i) must conform to the directions of the *Region Committee*;
 - (ii) provide such reports as required by the *Region Committee*; and
 - (iii) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution.

11. **Region Structure**

A *Region* may be established by resolution of the *Board*.

12. **General Meetings of a Region (including Annual General Meetings)**

12.1 **General meetings of a Region**

- (a) The general meetings of a Region shall be held:
 - (i) annually,
 - (ii) at such further times as deemed necessary by the *Regional Executive*, and/or
 - (iii) upon written request signed by at least ten members of that *Region*. The written request shall be forwarded to the *Regional President* or *Regional Manager* and shall state the purpose of the General Meeting.
- (b) Any meeting requested under clause 12.1(a)(iii) shall be held within two months of receipt of the written request by the *Regional President* or *Regional Manager*.

12.2 Entitled to Vote at Regional General Meetings

Only the following *members* shall be entitled to vote at a Regional General Meeting:

- (a) *Financial Members* of the UPA whose names are recorded on the register of Members for that *Region*;
- (b) The *Regional Manager* for that *Region*;
- (c) The *President*, or if the *President* is unable to attend, a *Vice President*, and
- (d) The General Manager.

12.3 Regional Annual General Meetings

- (a) The Regional Annual General Meeting shall be held in August or September. At least one month's notice is to be provided to members of the relevant Region.
- (b) The Regional Annual General Meeting shall:
 - (i) Receive the annual reports of the *Regional Executive* and any *Committees*;
 - (ii) Elect in accordance with clause 12.4(d) the *Regional President* and *Region Vice President*;
 - (iii) Elect in accordance with clause 12.4(d) five to eight members of the *Regional Executive*;
 - (iv) Appoint up to two members to be the *Region's* first and second nomination for Director pursuant to clause 12.4(d);
 - (v) Elect up to seven voting delegates (and substitutes) to represent the *Region* at the *Annual General Meeting of the UPA* or authorise the *Regional Executive* to elect those delegates (and substitutes). These delegates (and substitutes) need not be members of the *Regional Executive* and shall not include more than two staff members; and
 - (vi) Appoint the Regional Auditor.

12.4 Regional Representative on the Board

- (a) When a position of Regional Representative on the *Board's* is to become available subject to this Constitution:
 - (i) The *Regional Annual General Meeting* should appoint a *member* to be its first nominee for election as a *Director*.

- (ii) The *Regional* Annual General Meeting may appoint another *member* to be its second nominee who may attend directors meetings if the *Region* appointed director is unable to attend but has no right to vote (Region Second Nominee).
- (b) Where the *Region's* first nominee:
 - fails to be elected pursuant to clause 6.6(f) the *Region's* Second Nominee will be nominated for election as a *Director*.
- (c) Where a *Region* fails to appoint a nominee for election as *Director*, the *Region* may by resolution transfer that right to another *Region*. The other *Regional Executive* may then nominate one *member* as *Director*, on behalf of the transferring *Region*.
- (d) All Nominees for the Regional Executive shall be voted on at the Regional Annual General Meeting.
- (e) Any nominee receiving more than 50% of the votes of those present and entitled to vote at the *Regional Annual General Meeting* shall be deemed elected.
- (f) In any other case, the nominee with the largest number of votes shall be elected.

12.5 Appointment of Regional Executive

Appointment to the *Regional Executive* shall be subject to the following:

- (a) No member of Staff shall be elected under clauses 12.3(b)(ii), 12.3(b)(iii) or 12.3(b)(iv).
- (b) Subject to clause 12.5(c), not more than two *Clients* of services may be elected under clause 12.4(d).
- (c) Notwithstanding clause 12.5(b), *members* elected to the *Board*, *Regional Executive* or as Voting Delegates to the *Annual General Meeting* prior to becoming a resident or *Client* may continue in that role and be eligible for re-election.
- (d) All nominations for the *Regional Executive* and *Director* positions shall be in writing and received by the *Regional Manager* at least two weeks before the date of the *Regional Annual General Meeting*. Nominations shall be signed by two *Financial Members* and by the nominated person. Nominations will not be accepted from the floor at the *Regional Annual General Meeting*. Unless approved by the *Regional Annual General Meeting*, nominees must have been *Financial Members* of the *UPA* for at least 12 months.
- (e) Former employees and their partners shall not be eligible for election to the *Regional Executive* until 12 months after they, or their partners, have

left the service of the *UPA*, except with the approval of three quarters of the *members* attending the *Regional Annual General Meeting*.

12.6 **Casual Vacancies in Regional Executive-**

- (a) Subject to clause 12.7, casual vacancies in *Regional Executive* membership may be filled at a meeting of the *Regional Executive*.
- (b) If a casual vacancy is not filled by the *Regional Executive* and the *Board* is of the opinion that it is essential to the operation of that *Regional Executive* to fill the vacancy, the *Board* may fill that vacancy.

12.7 **Conditions of nomination to Regional Executive and Regional Representative on the Board**

All persons nominated as members of the *Regional Executive*, Regional Representative on the *Board* and voting delegates to the AGM of the *UPA* shall be *Financial Members* of the *UPA* and supportive of the objects of the *UPA* as written in the *Constitution* and be able and willing to make a contribution to the work of the *UPA* in the *Region*.

12.8 **Withdrawal of nominations**

Nominations may be withdrawn by notice in writing to the *Regional Manager*, before the election.

12.9 **Notification of Election to Regional Executive and Regional Representative on the Board**

Notification of delegates elected to the *Regional Executive* and Regional Representative on the *Board* (as relevant) shall be sent to the *General Manager/Secretary* by 30th September each year.

13. **Regional Executive**

13.1 **Role of Regional Executive**

The *Regional Executive* shall -

- (a) Govern the *UPA* within a geographic area as approved by the *Board* from time to time;
- (b) Co-ordinate, in co-operation with the *Regional Manager*, the work of the *UPA* within the *Region*;
- (c) Determine policies, plans and programs, including financial plans, to further the objects and policies of the *UPA* within the *Region*; and
- (d) Receive reports and take appropriate action.

13.2 Meetings of Regional Executive

The *Regional Executive* shall meet at least every month except December or January.

13.3 Constitution of Regional Executive

The *Regional Executive* shall consist of

- (a) *Regional President*; and
- (b) Regional Vice President; and
- (c) plus between Five and Eight *members*; and
- (d) the Regional Manager, but in the event of no such person, the *Regional Executive* may appoint an appropriate member of staff; and
- (e) if approved by the *Regional Executive*, up to two additional *UPA members* representing any *Committee* established by the *Regional Executives*. Such additional representative(s) shall not be *Clients* of *UPA Care Service*.

13.4 Region Sub Committees –

- (a) The *Regional Executive* may,
 - (i) Establish *Committees* as considered necessary and appropriate, to facilitate the work of the *Regional Executive*;
 - (ii) Determine the terms of reference of each *Regional Committee*; and
 - (iii) Appoint persons to the *Regional Committee*.
- (b) Such *Regional Committees* shall conform to the requirements of the *Regional Executive* and to the *Constitution* of the *UPA*.
- (c) Membership of such *Committees* is not confined to *UPA members*.

13.5 Regional Treasurer and Regional Secretary

The *Regional Executive* may decide to appoint a *Regional Treasurer* and / or *Regional Secretary* from the elected *members* or appoint a suitable staff member to perform these duties. Any staff member so appointed shall not be entitled to vote.

13.6 Advisory Committees

- (a) For each identified function/service and/or program, the *Regional Executive* may:

- (i) Establish *Committees* as considered necessary and appropriate, to facilitate the work of the *Regional Executive*;
 - (ii) Determine the terms of reference of each *Committee*; and
 - (iii) Appoint persons to the *Committee*.
- (b) Such *Committees* shall conform to the requirements of the *Regional Executive* and to the *Constitution* of the *UPA*.
- (c) Membership of such *Committees* is not confined to *UPA members*.

13.7 **Regional Executive Reporting to Regional Annual General Meeting**

The *Regional Executive* shall present all reports of its activities to the *Regional Annual General Meeting*.

13.8 **Termination of appointment to Regional Executive**

- (a) The office of a *Regional Executive* member shall terminate at the point during the next Regional Annual General Meeting when the result of the election of the relevant Regional Executive Member position is declared, or in the case where the position is not filled, at the close of the meeting.
- (b) The office of a member of the *Regional Executive* becomes vacant if one of more of the following occur in relation to a *member* - the *member*:
- (i) dies;
 - (ii) completes a term of appointment;
 - (iii) becomes bankrupt or takes advantage of the provisions of the *Bankruptcy Act 1966 (Cth)* relating to insolvent debtors;
 - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (v) resigns office by notice in writing to the *UPA Secretary/General Manager*;
 - (vi) is subject to a resolution pursuant to clauses 3.5(c) or 3.5(d);
 - (vii) ceases to be a *member* of the *UPA*;
 - (viii) fails to declare an interest (other than an excluded interest pursuant to clause 37) in any contract or proposed contract;
 - (ix) fails to attend three consecutive *Regional Executive* meetings without being granted leave of absence; or
 - (x) fails to meet the requirement of a satisfactory *Police Check*.

14. Branches

14.1 Establishment of Branches

- (a) The *Board* may by resolution establish a *Branch* consisting of *UPA members*.
- (b) A *Branch* may be established:
 - (i) Outside a *Region*, or
 - (ii) Within a *Region*, following consultation with the relevant *Regional Executive*.
- (c) In the exercise of any powers delegated to it, a *Branch* formed by the *Board*:
 - (i) must conform to the directions of the *Board*;
 - (ii) provide such reports as required by the *Board*; and
 - (iii) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution.
- (d) The *Branch* shall facilitate, in cooperation with the *Board* or relevant *Regional Executive* the work of *UPA* in a defined area.
- (e) The first *Branch Committee* shall be appointed by the *Board*. Thereafter, the *Branch Committee* shall be elected by members of the *Branch* annually.
- (f) The rules applicable to the functioning of a *Branch* shall be the same as those of a *Region*, as far as they can be applied subject to any express rules to the contrary.

14.2 Branch Committees

Unless determined otherwise by the *Board*;

- (a) The *Branch Committee* shall meet at least every month except December or January.
- (b) The *Branch Committee* shall consist of;
 - (i) Five persons initially appointed by the *Board*, and thereafter elected by the *Branch* members;
 - (ii) the *Regional Manager*; and
 - (iii) Where appointed, the *Manager* of any function, service or program associated with the *Branch*.

- (c) The *Branch Committee* shall elect from its members the *Branch President, Branch Secretary and Branch Treasurer*.
- (d) The *Branch Committee* shall report monthly to the *Board or Regional Executive* as the case may be.
- (e) Casual vacancies shall be filled by the *Branch Committee* at the next meeting. If the casual vacancy is not filled at that meeting, the *Board or Regional Executive* may fill the vacancy.

14.3 Termination of Appointment to Branch Committee

The office of a member of the *Branch Committee* becomes vacant if one or more of the following occur in relation to a *member* - the *member*:

- (a) dies;
- (b) completes a term of appointment;
- (c) becomes bankrupt or takes advantage of the provisions of the *Bankruptcy Act 1966 (Cth)* relating to insolvent debtors;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns office by notice in writing to the *UPA Secretary/General Manager*;
- (f) is subject to a resolution pursuant to membership under clauses 3.5(c) or 3.5(d);
- (g) ceases to be a *member* of the *UPA*;
- (h) fails to declare an interest (other than an excluded interest pursuant to clause 37) in any contract or proposed contract;
- (i) fails to attend three consecutive *Branch Committee* meetings without being granted leave of absence; or
- (j) fails to meet the requirement of a satisfactory *Police Check*.

15. Auxiliaries

- (a) The *Board or Regional Executive* may establish an Auxiliary consisting of *members* and/or non members.
- (b) Written authority shall be provided to the Auxiliary by the *Board or Regional Executive* listing applicable terms of reference that apply to them. Auxiliaries may function as a support group and/or for fund-raising activities.

- (c) Auxiliaries must submit regular reports to the *Board* or *Regional Executive* as the case may be including particulars of income and expenditure during the reporting period.

16. Communication of Decisions

16.1 The following matters shall remain confidential to the *Board*, *General Manager*, *Regional Executives*, Branches and Regional Managers:-

- (a) Personal details of:
 - (i) *Staff* and volunteers,
 - (ii) Children presently in care and formerly in care, and
 - (iii) Present and former residents or *Clients* of services,
- (b) Matters that are commercial in confidence.

17. Dissolution of *Region*, *Branch* or *Auxiliary*

- (a) Should a *Region* cease to function, the whole of its assets shall come under the control of the *Board*.
- (b) Should a *Branch* or *Auxiliary* cease to function the whole of its assets shall come under the control of the *Board* or with the approval of the *Board*, the *Regional Executive* in whose area the *Branch* or *Auxiliary* functions.
- (c) The *Board*, after consultation with interested parties, may dissolve or amalgamate any *Region*, *Branch*, and/or *Auxiliary*.

18. Disbandment of *Region*, *Branch* or *Auxiliary*

18.1 A *Region*, *Branch*, or *Auxiliary* which in the opinion of the *Board* has persistently refused to comply with the *Constitution* and/or relevant laws may be disbanded by resolution of the *Board* whereupon all of its assets shall be delivered to the *Board*.

18.2 Any *Region*, *Branch*, or *Auxiliary* disbanded under clause 18.1 shall have the right to appeal to a *General Meeting* of the *UPA* by written notice to the *Secretary/General Manager*. The notice of appeal must be provided within two months of the date of the resolution to disband.

19. Meeting Procedures

19.1 Notice of Meetings

- (a) The *following* persons shall be entitled to notice of meetings:
 - (i) *General Meetings* of the *UPA* – All *Regional Executives*, *Voting members* and other *members*.

- (ii) *Board Meetings – All Directors.*
 - (iii) *Regional General Meetings – All members in the relevant Region.*
 - (iv) *Regional Executive meetings – All Regional Executive members of the relevant Region.*
 - (v) *Advisory Committee meetings- All Advisory Committee members of the relevant Advisory Committee.*
 - (vi) *Branches – All members of the relevant Branch.*
- (b) The auditors shall be sent notices of such meetings as may be required by the *Corporations Act*.
- (c) A notice convening a meeting must:
- (i) specify the place, date and time of the meeting;
 - (ii) state the general nature of the business to be transacted at the meeting;
 - (iii) comply with any requirements of the *Corporations Act*
- (d) An accidental omission to send a notice of a meeting or the postponement of a meeting to any *member* or non receipt of a notice by a *member* does not invalidate the proceedings at or any resolution passed at the meeting.

19.2 Quorum

- (a) No business may be transacted at a meeting unless a quorum of *members* is present when the meeting proceeds to business.
- (b) A quorum for a meeting shall be:-
- (i) *General Meeting of the UPA-*
 Forty voting delegates who shall include-
 (A) Representatives from a majority of *Regions*
 - (ii) *Regional General Meeting-*
 Ten *members*, including at least two *Regional Executive* members and not more than three staff.
 - (iii) *Board-*
 A majority of *Directors*. A quorum is not to include more than one staff member.

- (iv) *Regional Executive* –
A majority of the elected *members*.
 - (v) *Branches and Branch Committees* –
Five members or a majority of members, whichever is less.
 - (vi) *Auxiliaries*-
Five members or a majority of members, whichever is less.
 - (vii) *All other Committees*-
Five members or a majority of members, whichever is less.
- (c) If a quorum is not present within 30 minutes after the time appointed for a meeting:
- (i) if the meeting was convened by or on requisition of members it is automatically dissolved and therefore proceeds no further; or
 - (ii) in any other case:
 - (A) it will stand adjourned to the same time and place seven days after the meeting, and
 - (B) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, two members will be a quorum, or for a *Directors* meeting, two Directors.

19.3 **Voting on Show of Hands**

- (a) All resolutions put to the vote of a meeting must be decided on a show of hands unless a poll is demanded in accordance with clause 19.4.
- (b) On a show of hands, every person entitled to vote at the meeting present in person has one vote.
- (c) On a show of hands, a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

19.4 **Demand for a poll**

- (a) At any General Meeting of *members* or a meeting of a *Region* or a Branch a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded on any resolution (other than on the

election of the chairman of a meeting or the adjournment of a meeting) by:

- (i) at least a majority of *members* present entitled to vote on the resolution; or
 - (ii) *members* present (having the right to vote at the meeting) with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chairman.
- (b) A poll may be demanded:
- (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (c) A poll may be conducted by an electronic polling system.

19.5 **Objections to Voter Qualification**

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the Chairman, whose decision is final.
- (c) A vote not disallowed according to an objection as provided in this *Constitution* is valid for all purposes.

19.6 **Mode of Meeting**

A meeting may be called or held using any technology consented to by all the persons entitled to vote at that meeting. The consent may be a standing one. A person entitled to vote a meeting may only withdraw their consent within a reasonable period before the meeting.

19.7 **Written Resolutions**

The persons entitled to vote at a meeting other than a General Meeting may pass a resolution in writing without holding a meeting if the following conditions are met:

- (a) The resolution is set out in a document or documents indicating that all of the persons entitled to vote at a meeting are in favour of it.

- (b) All persons who are entitled to vote on the resolution (excluding those persons who have been given leave of absence) sign the document or documents or identical copies of it or them.

19.8 **Form of Resolution in Writing**

- (a) A resolution of a meeting other than a General Meeting in writing may consist of several documents in like form, each signed by one or more persons entitled to vote at a meeting and if so signed it takes effect on the latest date on which a person entitled to vote at a meeting signs one of the documents.
- (b) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of a person entitled to vote at a meeting is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

19.9 **Meeting Records**

- (a) The *Board, Regional Executives, Committees, Branches* and Auxiliaries shall cause minutes to be made of their proceedings, including-
 - (i) all appointments of office-bearers and members; and
 - (ii) the names of members present at all meetings.
- (b) Minutes shall be signed by the person chairing that or the next meeting.

19.10 **Minutes of Annual General Meetings**

- (a) Within one month of the *Annual General Meeting of the UPA*, the Chairman is to review and sign the minutes of that *Annual General Meeting of the UPA*
- (b) Following the meeting, the minutes of the relevant *Annual General Meeting of the UPA* must be submitted to the appropriate *Regional Executive or Board* and *members* advised with the notice of meeting that copies are available.
- (c) The *Regional Executive or Board* is to submit the minutes to the *members* at the following appropriate *Annual General Meeting* for consideration.

PART FIVE: STAFFING

20. General Manager

- 20.1 The *Board* shall appoint a *General Manager* who shall be accountable to the *Board*. The *General Manager*, at the direction of the *Board*, shall exercise supervision over all the activities of the *UPA* and ensure to the best of his/her ability that the *Constitution* is complied with.
- 20.2 The *General Manager*, at the direction of the *Board*, shall officially constitute all new *Regions*.
- 20.3 The *General Manager* shall be entitled to attend, participate in and vote at all meetings held by the *UPA*.
- 20.4 Subject to clause 8 the *General Manager* shall be and carry out the duties of the *Secretary* to the *UPA* and/or Public Officer of the *UPA*.
- 20.5 The *General Manager* shall conduct regular meetings (namely, a minimum of one and no more than four times per annum unless required by at least 50% of the *Regional Managers*) of *Regional Managers*, *Care Managers* and other *Managers*. All such *Regional Managers*, *Care Managers* and other *Managers* should attend the organised Annual Conference.

21. Regional Managers

- 21.1 *Regional Managers* are appointed by the *Board* after considering the recommendations of the *General Manager* and the *Regional Executive*.
- 21.2 The *Regional Manager* is responsible to the *General Manager* and *Regional Executive* for the effective and efficient management of the *UPA's* activities, services and facilities in the relevant *Region*.

22. Employment Of Staff

- 22.1 Employment of all staff shall be in accordance with the guidelines and policies determined by the *Board*.
- 22.2 The employment of staff must be consistent with *UPA's* objectives.
- 22.3 The determination of all salaries and conditions relating to *UPA* staff shall be under the supervision of the *Board*.
- 22.4 *UPA* is committed to Equal Opportunity of Employment.

23. Discipline Of Staff

The discipline of staff shall be undertaken in accordance with applicable laws and accepted industrial standards and guidelines.

PART SIX: FINANCE AND OPERATIONS

24. Finance and Reporting

24.1 The financial year shall commence on 1st July in each year.

24.2 Reporting-

- (a) Unless the *Board* directs otherwise, each *Regional Executive* shall submit a monthly report, including financial statements, of all programs and activities under its control, together with the appropriate levies as determined by the *Board* from time to time. Such reports and levies shall be forwarded by the Regional Manager to the General Manager.
- (b) Unless the *Board* directs otherwise, each *Branch Committee* shall submit a monthly report, including financial statements, of all programs and activities under its control, together with the appropriate levies as determined by the *Board* from time to time. Such reports and levies shall be forwarded by the Regional Manager;
 - (i) if constituted under 14.1(b)(i), to the *Board*
 - (ii) if constituted under 14.1(b)(ii), to the relevant *Regional Executive*.

24.3 **Control of Funds-**

(a) Bank accounts:

The *Board* and *Regional Executives* must establish bank accounts for the control of funds. These accounts must be held with an authorised deposit-taking institution, as defined in the *Banking Act 1959 (Cth)*.

(b) Cheque Signatories:

Signatories for Cheque, Credit Card account payments and Electronic Funds Transfers made externally to *UPA*;

All cheques, credit card account payments, Electronic Funds Transfers made externally to *UPA*, must be signed by any two people authorised by the *Board* or *Regional Executive* as the case may be.

(c) Investment policy:

Funds of *UPA* must be invested in accordance with the investment policy set by the *Board* from time to time.

24.4 Transactions requiring Board or member Consent

No loan, mortgage guarantee or overdraft other than trade credit or security is to be negotiated and/or agreed by UPA without the prior consent of the *Board* or *General Meeting* of the UPA.

25. Accounts

25.1 The Board must cause proper accounting and other records to be kept in accordance with the *Corporations Act* and *Charities Legislation* and must comply with the requirements of the *Corporations Act* and *Charities Legislation* in respect of reporting and the provision of accounts to *members*.

25.2 The *Board* shall cause to be produced to each *Annual General Meeting of the UPA* an income and expenditure report and balance sheet made up to 30th June annually (including every document required by law to be attached) accompanied by a copy of the Auditor's report.

25.3 The *Board* shall from time to time determine at what times and places and under what conditions or regulations the accounting and other records of the UPA shall be open to the inspection of *members*.

26. Audit

26.1 A registered *Company* auditor must be appointed if required by law.

26.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with law.

26.3 The *Board* must arrange for the accounts for the last financial year to be audited in accordance with requirements of the *Corporations Act* and *Charities Legislation* before being submitted to the *Annual General Meeting of the UPA*.

27. Auditors

All Auditors shall be practising members of the Chartered Accountants Australia and New Zealand (formerly known as the Institute of Chartered Accountants), CPA Australia (formerly known as the Australian Society of Certified Practising Accountants), or the Institute of Public Accountants (formerly known as the National Institute of Accountants). Auditors must not be members of the *Board*, *Regional Executive*, *Branch* or *Auxiliary* with which their appointment as auditors is associated, nor shall an auditor be closely related to a member of the *Board*, *Regional Executive*, *Branch* or *Auxiliary*.

28. Charitable Activities

(a) The *Company* must comply and the *Board* must ensure that the *Company* complies with all requirements (whether financial or otherwise) that apply to the *Company* under the *Charities Legislation* and all related legislation as commenced and amended from time to time.

- (b) Unless the *Board* directs otherwise and subject to this *Constitution* and the law, the *Board* delegates to the *Regional Executives* all charitable activities established under the auspices of the *UPA* in relation to activities carried on by the *Region*. The *Board* shall control any such activities outside the jurisdiction of a defined *Region*.

29. Alterations To Properties

- (a) No structural alterations and/or improvements which require the approval of a local government authority can be carried out on any *UPA* property until all plans, specifications and details have been presented and approved by the *Board*.
- (b) No tender shall be accepted for any new building or alterations until the written approval of all relevant authorities has been obtained.
- (c) Any sale or purchase of real estate must be approved by the *Board*.

30. Joint Ventures

The *UPA* may enter into arrangements with another organisation or individual to establish a Care Facility or Program provided the objects of the *UPA* as set out in this *Constitution* are advanced. The *UPA* must have voting rights on any body or Management Committee. Such arrangements require prior approval of the *Board*.

31. Seals and Execution of documents

- (a) If the *Company* has one, the *Board* must provide for the safe custody of the Seal.
- (b) The *Company* may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
 - (i) two *Directors*;
 - (ii) a *Director* and the *Secretary*; or
 - (iii) a *Director* and some other person appointed by the *Directors* for the purpose.
- (c) The *Company* may execute a document without the use of a seal if the document is signed by:
 - (i) two *Directors*;
 - (ii) a *Director* and a *Secretary*; or
 - (iii) any other manner permitted by the *Corporations Act*.

32. Notice

32.1 Any notice to be given to any *member* shall be given by hand delivery or by sending it by post to them at their registered address or transmitted by electronic means. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected on the third day after the date of its posting. Where notice is transmitted by electronic means, service of notice shall be deemed to be effected by properly addressing and sending and to have been effected on day of its sending, or if after 5pm, on the next business day.

33. Indemnity

- (a) Every *member* of the *UPA*, all employees and volunteers may be indemnified by the *UPA* against a claim, loss, cost, liability or expense reasonably and properly incurred by that person if arising out of any deed, action or inaction done in good faith and as part of the execution of his or her duties for the *UPA* by that person.
- (b) The onus for proving that the deed, action or inaction giving rise to the liability was done in good faith shall be borne by the *member*, employee or volunteer. Approval of any payment shall be at the discretion of the relevant *Regional Executive* or *Board*.
- (c) The *Company* may pay the premium on a contract insuring a person who is or has been an officer of the *Company* against:
 - (i) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
 - (ii) other liability incurred by the person as an officer of the *Company* except a liability which arises from conduct that involves a wilful breach of duty in relation to the *Company* or a contravention of sections 182, 183 or 184(2) or (3) of the *Corporations Act*.
- (d) *UPA* shall be required to institute and maintain such insurance policies as are necessary, reasonable and appropriate to properly protect itself, its *members*, employees and volunteers against such liability as shall be reasonably foreseen. Such insurance shall be maintained for the period its *members*, employees and volunteers continue to be engaged in activities on behalf of *UPA* and shall continue for the period of legal liability following the cessation of engagement on employment by or in the activities of *UPA* or its *members*, employees and volunteers.
- (e) Exempted from this indemnity shall be any *member*, employee or volunteer found guilty of any criminal act whether such act arose out of the execution of his or her duties for the *UPA* or not.

34. Political Affiliation

The *UPA* is non-party political.

35. Religious Affiliation

The *UPA* is a non-denominational Christian organisation.

36. Amendments to the *Constitution*

36.1 The *Constitution* shall be amended only by a Special Resolution by those present and entitled to vote at a *General Meeting* of the *UPA*.

36.2 Prior to making any alteration, the *General Meeting* of the *UPA* shall consider the provisions of:

- (a) *Corporations Act*;
- (b) *Charities Legislation*;
- (c) *Charitable Fundraising Act 1991* (NSW);
- (d) *Aged Care Act 1997* (Cth);
- (e) Any Funding Agreements to which *UPA* is a party;
- (f) *Income Tax Assessment Act 1997* (Cth) and *Income Tax Assessment Act 1936* (Cth); and
- (g) Any other relevant laws.

37. Conflict Of Interest

37.1 In this clause;

- (a) An “excluded interest” shall mean an interest in any publicly listed corporation in which the *member* holds less than 1% in value of the capital.
- (b) “member” shall include staff members.

37.2 All *members* shall immediately disclose if they or any business, corporation, society or association in which they have an interest (other than an excluded interest) are directly or indirectly interested in any tender lodged with the *UPA* or any contract which the *UPA* proposes to make.

37.3 Where goods or services are provided by a *member*, office bearer or employee of the *UPA* or any business, corporation, society or association in which such *member*, office bearer or employee may have an interest (other than an excluded interest), a proper tendering process shall be established which shall include the requirement to obtain at least three (3) competitive quotations. If the value of the goods or service is less than \$5,000 within any twelve month period the provisions of this clause shall not apply.

- 37.4 A *member* shall not be in attendance at any part of a meeting of the *UPA* which discusses any proposed contract, contract or tender in which the *member* has an interest or in which any business, corporation, society or association in which they have an interest (other than an excluded interest) has any interest. Any *member* of the *UPA* shall not vote on any resolution of the *UPA* which involves any proposed contract, contract or tender in which the *member* has an interest or in which any business, corporation, society or association of which they have an interest (other than an excluded interest) has any interest.
- 37.5 In the event that a *member* having an interest (other than an excluded interest) does vote on any resolution referred to in clause 37.4 then such vote shall be declared null and void.
- 37.6 In the event that a *Director* or a business, corporation, society or association in which they have an interest (other than an excluded interest) enters into a contract with the *UPA* then the details of such contract, conditions of such contract and remuneration payable pursuant to such contract shall be ratified by a *General Meeting* of the *UPA*.
- 37.7 In the event that a *member* of the *Regional Executive* or a business, corporation, society or association in which they have an interest (other than an excluded interest) enters into a contract with the *UPA* then the details of such contract, conditions of such contract and remuneration payable, pursuant to such contract shall be ratified by a *Region General Meeting*.
- 37.8 Details of all contracts entered into by the *UPA* in which a *member* of the *UPA* has an interest or in which any business, corporation, society or association in which they have an interest (other than an excluded interest) shall be recorded in the minutes of the relevant *UPA Branch Committee*, *Regional Executive* or *Board*.
- 37.9 The appointment, conditions of service, remuneration of, and the supply of goods and services by a *Director* are to be ratified at the *UPA Annual General Meeting* and must be disclosed in the annual accounts and minutes of the *Annual General Meeting of the UPA*.
- 37.10 The appointment, conditions of service, remuneration of, and the supply of goods and services by a member of a *Regional Executive* are to be ratified at a meeting of the *Region General Meeting* and must be disclosed in the annual accounts and minutes of the *Region General Meeting*.

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38. GIFT FUND REQUIREMENTS

38.1 Company to Maintain a Gift Fund

The *Company* may maintain a Gift Fund in accordance with this clause 38 for so long as it seeks or has obtained endorsement as a *DGR* from the Australian Taxation Office, or the *Company* is named as a *DGR* in ITAA 97.

38.2 Rules Applying to the Gift Fund

The following rules apply to any Gift Fund established and maintained by the *Company*:

- (a) The Gift Fund must have a name.
- (b) The *Company* must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.
- (c) The *Company* must maintain a separate bank account for the Gift Fund.
- (d) The following must be credited to the Gift Fund:
 - (i) All gifts of money or property to the *Company* for the Principal Purpose.
 - (ii) All money or property received by the *Company* because of those gifts.
- (e) No other money or property may be credited to the Gift Fund.
- (f) The *Company* must use any gifts, money or property of the kind referred to in clause 38.2(d) only for the Principal Purpose.
- (g) The public will be invited to contribute to the Gift Fund.
- (h) The Gift Fund is managed by the *Board* of Directors, a majority of whom have a degree of responsibility to the general community, unless delegated pursuant to the provisions contained in this Constitution.
- (i) The Gift Fund is controlled and administered by the *Board* of Directors which only include persons or institutions which have a degree of responsibility to the community as a whole, unless delegated pursuant to the provisions contained in this *Constitution*.

38.3 Winding Up of Gift Fund

Despite clause 38.2 if the Gift Fund or the *Company* is wound up or ceases to be a *DGR* for any reason, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made. For the avoidance of doubt, if a Gift Fund operated by the *Company* is wound up but the *Company* remains a *DGR* and operates any other gift fund in accordance

with this clause 38, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the *Company*.

38.4 **Definitions**

In this clause 38 the following definitions apply:

- (a) **DGR** means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.
- (b) **Gift Fund** means a fund that is maintained for the Principal Purpose.
- (c) **ITAA 97** means Income Tax Assessment Act 1997 (Cth).
- (d) **Principal Purpose** means the purposes of the *Company* as reflected in the objects of the *Company* specified in clause 2.6 or any of those purposes.

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