

## ECH INC

### RULES

#### 1. Name

The name of the incorporated association is **ECH Inc.**

#### 2. Definitions and Interpretation

##### 2.1 In these Rules, unless an alternate intention appears:

"**Act**" means the *Associations Incorporation Act, 1985*;

"**Association**" means ECH Inc;

"**Board**" means the Board of Directors of the Association, which constitutes the committee of management for the purposes of the Act;

"**Chief Executive**" means the person engaged as the senior executive of the Association;

"**Director**" means a member of the Board;

"**Disqualified Individual**" means a person who is disqualified from holding, or otherwise not permitted to hold, office as a Director by the Act, the *Aged Care Act 1997* (Cth) or the *Corporations Act 2001* (Cth) or act as a responsible entity for the purposes of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

"**Special Majority Vote**" means a vote or resolution passed:

- (a) in the case of Rules 5.4(b), 5.6(a)(ii), 5.6(a)(iv), 5.7 and 5.10(b), by not less than three quarters of the Directors (excluding the Director who is the subject of the vote or resolution); and
- (b) in any other case, by not less than three quarters of the Directors who, being entitled to do so, attend and vote at the meeting at which the vote or resolution is put;

"**Tax Act**" means the *Income Tax Assessment Act 1997* (Cth).

2.2 In these Rules, a reference to any legislation or any provision of any legislation includes all regulations, orders and instruments issued under the legislation or provision, and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision.

2.3 The Board will be the sole authority for the interpretation of these Rules. The decision of the Board on any question of interpretation or any matter affecting the Association and not provided for by these Rules will be final.

### 3. Objectives and Powers

3.1 The objectives of the Association are:

- (a) to establish and operate facilities to provide care for people who, because of their age, ill health or disability, are unable to adequately care for themselves;
- (b) to deliver a range of care and support services which address the needs of aged, frail or disabled people, or otherwise support or enhance their lifestyle;
- (c) to provide a range of accommodation and services which assist older people to live independently and maintain community involvement and connection.

3.2 For the purpose of carrying out its objectives, the Association:

- (a) will have all the powers conferred by the Act;
- (b) without limiting Rule 3.2(a), will have power to give any indemnity and any security for any such indemnity over all or any part of the assets of the Association; and
- (c) can do anything else that may be conducive to achieving the objectives.

### 4. Membership

There will be no members of the Association.

### 5. Board of Directors

5.1 The Board:

- (a) will direct and control the business and affairs of the Association;
- (b) may, subject to these Rules and the Act, exercise all powers and functions that the Association can exercise; and
- (c) subject to these Rules and the Act, has the power to perform all acts and things that appear to be necessary or desirable for the proper management of the affairs of the Association.

5.2 The Board will be made up of at least 5, but not more than 9, Directors.

5.3 Subject to Rules 5.4, 5.6 and 7, a Director will hold office for a period not exceeding 4 years, as the Board determines at the date of that Director's appointment (**Initial Term**).

5.4 If, at or before the expiry of the Initial Term, or any further approved term under this Rule:

- (a) a Director offers to continue in office as a Director; and
- (b) the Board, by Special Majority Vote, approves that Director continuing in office,

then that Director will continue to hold office, for any further period (from the expiry of the then current term) as the Board, determines at that time, but not exceeding 4 years on any occasion and subject always to the maximum continuous period in office under Rule 5.5.

5.5 A person will not be entitled to hold office as a Director for a continuous period of more than 12 years

5.6 The office of a Director becomes vacant if:

- (a) in any case, the Director:
  - (i) resigns from office as a Director by written notice given to the Chairperson;
  - (ii) is removed from office by a Special Majority Vote;
  - (iii) becomes a Disqualified Individual; or
  - (iv) without the prior approval of the Board, is absent from, or does not participate in accordance with Rule 6.7 in 3 consecutive meetings of the Board (unless the Board resolves to the contrary by Special Majority Vote);

5.7 On:

- (a) the expiry of the term of office of a Director; or
  - (b) the office of a Director becoming vacant under Rule 5.6,
- the Board, by Special Majority Vote:
- (c) must, where the Board would then comprise less than 5 Directors; and
  - (d) may, where the Board would then comprise 5 or more, but less than 9, Directors,

appoint a new Director in line with Board policies.

5.8 If, at any time, the Board has less than 9 Directors, it may, by Special Majority Vote, appoint additional Directors provided the maximum number of Directors referred to in Rule 5.2 is not exceeded.

5.9 The Board will appoint a Chairperson from amongst its number in line with Board policies.

- 5.10 The position of Chairperson will become vacant in line with Board policies or if the relevant Director:
- (a) resigns from that position by written notice given to the Board;
  - (b) is removed from that position by a Special Majority Vote; or
  - (c) ceases to be a Director.

## 6. **Proceedings of the Board**

- 6.1 The Board will meet to conduct its business at least 10 times in each calendar year and, subject to these Rules, will determine its own procedures.
- 6.2 The Chairperson or any 3 Directors may call a meeting of the Board at any time.
- 6.3 All Directors are to receive written notice of all Board meetings specifying the general nature of the business to be conducted at the meeting.
- 6.4 Notice of Board meetings may be:
- (a) personally delivered to the Director;
  - (b) sent by pre-paid post to the Director's usual business or home address;
  - (c) sent by facsimile to the number notified for that purpose by the Director; or
  - (d) sent by email to the email address notified for that purpose by the Director,
- at least 5 days before the date of the proposed meeting.
- 6.5 A quorum of the Board will be a majority of the Directors present. If within half an hour after the time set for the meeting a quorum is not present, the meeting will be adjourned to a time determined by the Directors.
- 6.6 Meetings of the Board will be chaired by the Chairperson. If the Chairperson is absent from any meeting of the Board, the Deputy Chairperson (if one has been appointed), or in the absence of the Deputy Chairperson a Director appointed by the Directors then present, will occupy the chair.
- 6.7 A Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors do not need to be physically present for a meeting to be held.

A Director who participates in a meeting in this manner is taken to be present and entitled to vote at the meeting.

- 6.8 At all meetings of the Board, each Director present will have one vote on all motions submitted, except that the chairperson of the meeting will, in the case of equal votes, have a second or casting vote.
- 6.9 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of, or opposed to, or abstain from, a resolution in terms set out in the document, and a majority of those Directors (as required by these Rules) indicate they are in favour of that resolution, then the resolution will be taken to have been passed at a Board meeting held on the day that the document was last signed by a Director. For the purposes of this Rule 6.9, two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents. Any document referred to in this Rule 6.9 may be in the form of a facsimile transmission.
- 6.10 To the extent permitted by law, all actions undertaken at a Board meeting or by a person acting as a Director will, even if it is subsequently found:
- (a) that there had been an error made in the appointment of any Director; or
  - (b) that a Director had become a Disqualified Individual at that time,
- be as valid as if every person was duly appointed and holding office.
- 6.11 Provided there is a quorum, the Board may act to fulfil its obligations under Rule 5.7(c), regardless of any vacancy in the office of Director.
- 6.12 Minutes of the business conducted at any meeting of the Board will be:
- (a) entered in a Minute Book within 1 month after the relevant meeting;
  - (b) confirmed at the next meeting and signed by the chairperson of that meeting; and
  - (c) when so confirmed, conclusive evidence of the matters set out in those minutes.

## **7. Chief Executive**

- 7.1 The Chief Executive will be appointed by the Board and, subject to the provisions of any contract between the Chief Executive and the Association, will hold that position:
- (a) in accordance with the terms and conditions set by the Board; or

- (b) until removed from that position by a Special Majority Vote of the Board (excluding the Chief Executive if the person is a Director).

7.2 The Chief Executive will have the overall responsibility for the executive operation of the Association in accordance with the policies set by the Board.

7.3 All employees of the Association will be under the control of the Chief Executive.

## 8. **Other Officers**

8.1 The Board may appoint a Deputy Chairperson and any other officers it thinks are necessary, and may rescind such appointments and set the duties of any officers.

8.2 The Board must appoint a Public Officer as required by the Act.

8.3 If the Association has a Chief Executive, then that person may be appointed as the Public Officer.

8.4 The Board may appoint a Secretary at any point.

## 9. **Finance**

9.1 The income and property of the Association will be used to conduct the affairs of the Association, to carry out its objectives and purposes, and to execute its rights and privileges according to these Rules.

9.2 None of the income or assets of the Association may be transferred, either directly or indirectly, to any Director except by way of payment for bona fide services provided to, or expenses incurred on behalf of, the Association.

9.3 The funds of the Association must not be spent except as authorised by the Board.

9.4 Accounts must be kept and prepared of all funds received and spent by the Association, in a manner that complies with the Act.

9.5 The financial year of the Association will end on 30 June in every year.

## 10. **Audit**

10.1 An auditor will be appointed by the Board.

10.2 Any auditor so appointed will hold office for such period as the Board determines.

10.3 An auditor has the rights and duties prescribed by the Act.

**11. Delegation of Power**

The Board may delegate all or any of its powers to a committee or committees consisting of such number of Directors and other people as it thinks fit, and may revoke all or any of the powers delegated. Any such committee must, in executing its delegated powers, conform to any requirements imposed on it by the Board.

**12. Seal**

The Association will have a common seal on which its corporate name will appear in legible characters. The seal must not be used without the authority of the Board, and every document to which the common seal is applied must be signed by a Director and be countersigned by another Director or an employee of the Association appointed by the Board for that purpose.

**13. Winding Up**

The Association may be wound up in the manner provided for in the Act.

**14. Application of Surplus Assets**

If, on the winding up of the Association and after the payment and discharge of all its debts and liabilities, there remains any surplus assets (as defined in the Act), those assets will be paid to one or more funds, authorities or institutions, gifts to which can deducted under Division 30 of the Tax Act, as determined by the Board.

**15. Indemnity and Insurance**

15.1 Each past, present and future Director and any other past, present and future officer of the Association will be indemnified out of the assets of the Association against any liability incurred by them in their capacity as a Director or other officer, in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which they are acquitted.

15.2 The Association may take out and maintain a directors and officers insurance policy for the benefit of past, present and future Directors and any other past, present and future officers of the Association, and pay the premiums associated with that policy.

**16. Alteration of Rules**

These Rules may be amended, rescinded or added to at any time by the Board by a Special Majority Vote.