

# Constitution 2019



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## 1 NAME

The name of the association shall be Shelter WA Inc., hereinafter referred to as Shelter WA.

## 2 DEFINITIONS

The following definitions apply in this Constitution, unless the contrary intention appears.

- 2.1 "Act" means the *Associations Incorporation Act 2015 (WA)*.
- 2.2 "Additional Board Member" has the meaning given in Clause 13.9.
- 2.3 "Annual General Meeting" means the annual general meeting of Members, as contemplated by Clause 14.8 and required under section 50 of the Act.
- 2.4 "Board Member" mean persons appointed to the Shelter WA Board in accordance with Clauses 10 and 11.
- 2.5 "Chief Executive Officer" means the senior staff member of Shelter WA appointed in accordance with this Constitution.
- 2.6 "Constitution" means this constitution, as amended from time to time.
- 2.7 "Deductible Gift Recipient" has the meaning given in the *Income Tax Assessment Act 1997 (Cth)*.
- 2.8 "Financial Year" means the year that starts on 1 July and ends on the next 30 June.
- 2.9 "General Meeting" means a General Meeting, Annual General Meeting or Special General Meeting of Members under this Constitution.
- 2.10 "Member" means a member of Shelter WA, as defined in Clause 7.3.
- 2.11 "Office Holder" has the meaning given in Clause 9.2.
- 2.12 "Ordinary Board Member" means a member of the Shelter WA Board who is not an Office Holder.
- 2.13 "Shelter WA Board" means the governing committee of Shelter WA established under, and referred to in, Clause 9.
- 2.14 "Special General Meeting" means a meeting of Members other than the Annual General Meeting, including any Requisitioned Meeting.
- 2.15 "Special Resolution" means a resolution passed by a majority of not less than three-fourths of the Voting Members present at a meeting of Shelter WA, of which notice specifying the intention to propose the resolution as a Special Resolution was given in accordance with this Constitution, who are entitled under this Constitution to vote and vote in person or by proxy.
- 2.16 "Requisitioned Meeting" has the meaning given in Clause 14.10.
- 2.17 "Returning Officer" has the meaning given in Clause 10.5.
- 2.18 A "Voting Member" means a Member who:
- i) has paid the membership fee in respect of that relevant year (if applicable); and

ii) is entitled to vote at General Meetings, as prescribed in Clause 7.3.

2.19 "Working Group" has the meaning given in Clause 9.6.

### **3 INCONSISTENCY BETWEEN THE CONSTITUTION AND THE ACT**

If there is any inconsistency between this Constitution and the Act, the Act prevails.

### **4 OBJECTIVES**

Shelter WA is formed with the principal object of assisting disadvantaged and marginalised people in Western Australia to obtain affordable housing by:

- 4.1 promoting appropriate, accessible, affordable and secure housing options for vulnerable and disadvantaged West Australians, including people experiencing homelessness;
- 4.2 undertaking or sponsoring research and providing education to address housing related poverty and the elimination of homelessness;
- 4.3 participating in the development of national, state and local Government housing policies to promote an increase in the supply of secure, appropriate and affordable housing, including an expanded and improved housing system which is accessible to vulnerable and disadvantaged individuals and groups;
- 4.4 providing services for Members to improve the delivery of affordable housing and homelessness services;
- 4.5 promoting the needs and ongoing sustainability of the affordable housing and support services sectors;
- 4.6 assisting Members to alleviate housing related poverty in Western Australia through the provision of affordable housing and adequate support services;
- 4.7 assisting vulnerable and disadvantaged housing consumers to participate in the formulation of national, state and local Government housing policies and develop networks to facilitate this process;
- 4.8 supporting and promoting initiatives which increase the capacity of individuals and groups to attain secure, appropriate and affordable housing of their choice, including providing a referral service free of charge;
- 4.9 providing education to housing workers and consumers on housing and housing related issues, and in particular the publication, promotion and circulation of reports, periodicals and other documents for the furtherance of these objects;
- 4.10 exploring opportunities to strengthen Shelter WA's response to the need for a greater supply of affordable housing for low income and otherwise vulnerable and disadvantaged consumers;
- 4.11 engaging key stakeholders, relevant government agencies, local government, and private

industry, and working with other community organisations to further these objectives and influence housing policy decision makers.

## **5 APPLICATION OF INCOME AND PROPERTY**

- 5.1 The income and property of Shelter WA shall be applied solely towards the promotion of the objects of Shelter WA. No portion of the income or property of Shelter WA shall be paid, transferred or distributed directly or indirectly to the Members provided that nothing shall prevent the payment in good faith of reasonable remuneration to any officer or employee of Shelter WA or to any person or group other than a Member in return for services rendered to Shelter WA acting for the purposes of Shelter WA.
- 5.2 Notwithstanding Clause 5.1 of this Constitution, Members incurring reasonable expenses in carrying out Shelter WA business may be reimbursed from time to time with the approval of the Shelter WA Board.

## **6 POWERS OF SHELTER WA**

Shelter WA has all powers necessary to pursue or secure its objectives, including those set out in section 14 of the Act. In particular, Shelter WA may :

- 6.1 purchase, lease, exchange, hire or otherwise acquire any real or personal property or any rights or privileges;
- 6.2 borrow and raise money, or otherwise obtain financial assistance in such manner and on such terms and securities as may be determined to meet the objectives of Shelter WA;
- 6.3 invest Shelter WA funds;
- 6.4 sell, exchange, mortgage, lease, hire, dispose of or turn to account or otherwise deal with all or any part of the real personal property of Shelter WA;
- 6.5 affiliate with bodies where it is seen as beneficial to furthering the objects of Shelter WA;
- 6.6 employ paid staff or outside consultants, and co-opt services and skills of volunteers and students on placement;
- 6.7 establish and support, or aid in the establishment or support of any other not-for-profit association whose objectives are similar to those of Shelter WA;
- 6.8 distribute any lawfully acquired monies or other resources to other not-for-profit organisations for the purpose of furthering the objects of Shelter WA in such manner as Shelter WA sees fit;
- 6.9 make known and promote the objectives of Shelter WA in any form judged likely to further the interests of Shelter WA; and do all such other lawful things as are incidental or conducive to the attainment of the basic objectives of Shelter WA;
- 6.10 do all other things that are necessary or conducive to:

- i) the attainment or furtherance of the objectives of Shelter WA; or
- ii) the exercise of these powers.

## 7 MEMBERSHIP

### *Eligibility and membership classes*

- 7.1 Any person who supports the objectives or purposes of Shelter WA is eligible to apply to become a Member.
- 7.2 An individual who has not reached the age of fifteen years is not eligible to apply for a class of membership that confers full voting rights.
- 7.3 Shelter WA has the following classes of Member:
- i) "**Organisational Member**" (full voting Member – each such Member having one vote);
  - ii) "**Individual Member**" (full voting Member – each such Member having one vote);
  - iii) "**Reciprocal Members**" (non-voting Member);
  - iv) "**Associate Member**" (non-voting Member);
  - v) "**Life Member**" (full-voting Member – each such Member having one vote);
  - vi) "**Patron**" (full voting Member – each such Member having one vote),
- (together, these are "**Members**").

### *Organisational Members*

- 7.4 Organisational Members must be incorporated not-for-profit organisations with an interest in housing or associated issues, who have applied in writing to Shelter WA to become a Member, who have paid the prescribed membership fee for the relevant year and subscribe to the objectives of Shelter WA.
- 7.5 Each Organisational Member will be entitled to one vote at General Meetings. In addition:
- i) an Organisational Member may appoint from its members one representative who may speak and vote on its behalf;
  - ii) appointment of such representatives must be notified to Shelter WA in writing, in advance of any General Meeting at which the applicable representative votes on behalf of the Organisation Member;
  - iii) an Organisational Member may at any time terminate the appointment of its representative and nominate another person as representative in their place, for general membership;
  - iv) a representative of an Organisational Member is eligible for election to any position of office within the Shelter WA Board, provided they meet at least one of the following criteria:
    - (a) that, at the time of nomination, the organisation has been a member of Shelter

- WA for at least one full Financial Year; or
- (b) the organisation submits a nomination that includes two signatories of two other current members of Shelter WA,
- subject at all times to the requirements set out in Clauses 10 and 11.

#### ***Individual Members***

- 7.6 Individual Members must be persons with an interest in affordable housing or associated issues, who have applied in writing to Shelter WA to become a Member, who have paid the prescribed membership fee (if applicable) and subscribe to the objects of Shelter WA. Each Individual Member will be entitled to one vote at General Meetings.
- 7.7 An Individual Member is eligible for election to any position of office within the Shelter WA Board, provided they meet at least one of the following criteria:
- i) that, at the time of nomination, the Individual Member has been a Member for at least one full Financial Year; or
  - ii) the Individual Member submits a nomination that includes two signatories of two other current members of Shelter WA.
- 7.8 An Individual Member may nominate another Member as a proxy to speak and vote on their behalf at General Meetings. Nomination of any such proxy must be notified to Shelter WA in writing, in advance of a relevant General Meeting at which the applicable proxy is to speak and vote, where such nomination must specify the proxy's name.

#### ***Reciprocal Members***

- 7.9 Reciprocal Members are Members who are housing sector peak bodies or community services peak bodies.
- i) Reciprocal Members are not entitled to nominate or to vote at any General Meeting (and, to avoid doubt, the reciprocal membership class does not carry any voting rights) and are not entitled to nominate another Member to vote (as proxy, representative or otherwise).
  - ii) Reciprocal Members are not eligible for nomination to the Shelter WA Board, must not stand for election to the Shelter WA Board and may not be appointed or co-opted to the Shelter WA Board.

#### ***Associate Members***

- 7.10 Associate Members include Government agencies, statutory authorities including local councils, and for-profit companies, with an interest in affordable housing or associated issues who have applied in writing to Shelter WA to become a Member, who have paid the prescribed membership fee, and subscribe to the objects of Shelter WA.

**7.11 Associate Members:**

- i) are not entitled to vote at any General Meeting (to avoid doubt, the associate membership class does not carry any voting rights) and are not entitled to nominate another Member to vote (as proxy, representative or otherwise);
- ii) are not eligible for nomination to the Shelter WA Board, must not stand for election to the Shelter WA Board and may not be appointed or co-opted to the Shelter WA Board; and
- iii) may participate in debate at General Meetings and shall receive all publications and correspondence distributed to Members.

***Life Members***

7.12 A Life Member is a special category of honorary membership for persons who have given outstanding service to Shelter WA. Life Members shall be proposed by the Shelter WA Board and approved by a resolution of the Annual General Meeting. Upon appointment, Life Members are not required to pay any membership fees. Each Life Member will be entitled to one vote at General Meetings.

***Patrons***

7.13 The Patron is an industry leader in housing and/or development who is appointed by the Shelter WA Board to act in a representative capacity on behalf of Shelter WA at public functions and in the community. The Patron may be appointed by the Shelter WA Board at any time, except during a General Meeting. Any Patron so appointed must have their appointment as Patron approved by a resolution of the next Annual General Meeting. The Patron shall be appointed for a three-year term and, at the conclusion of that term, can be re-appointed for one further three-year term on appointment by the Shelter WA Board, the Patron (if not already a Member) will become an Individual Member, with voting rights. The Patron is not required to pay any membership fees.

***Cessation of membership***

7.14 A person ceases to be a Member when any of the following takes place:

- i) for an Individual Member, that individual dies;
- ii) for a member who is a body corporate, the body corporate is wound up;
- iii) the person resigns from Shelter WA with written notice; or
- iv) the person is expelled from Shelter WA, or membership is otherwise cancelled, terminated or revoked in accordance with this Constitution.

***Other rules applying to Members and applications for membership***

7.15 In the case of Organisational Members (or any other class of membership where the Member is



- not an individual), any such organisation can constitute only one voting Member (to avoid doubt, this applies notwithstanding any ability for an organisation to appoint any proxy, agent or representative).
- 7.16 The Shelter WA Board shall have the right to refuse membership to any organisation or individual, where such a right may be exercised in the Shelter WA Board's absolute discretion. Any applicant who is refused membership may, on not less than two weeks' written notice, require their application to be reconsidered at one subsequent General Meeting.
- 7.17 The Shelter WA Board must determine the membership fee to be paid for membership of Shelter WA. The fees determined under Clause 7.17 may be different for different classes of membership.
- 7.18 A Member must pay the membership fee to the Treasurer, or another person authorised by the Shelter WA Board to accept payments, within one month of nomination or renewal of membership. If membership fees are not paid by any Member within one calendar month of nomination or renewal of membership, that Member shall be deemed "non-financial" and may be removed from the register of Members.
- 7.19 Membership may be suspended or terminated by not less than a two-thirds majority vote at a Shelter WA Board meeting, and on any conditions the Shelter WA Board considers appropriate. Where a decision to suspend membership of a Member is made, the affected Member will be notified in writing by Shelter WA.
- 7.20 Any suspended or terminated Member may give Shelter WA written notice (such notice to be given not less than two weeks after being notified of the Shelter WA Board's decision to suspend membership), that requires the suspension to be reconsidered at a subsequent General Meeting.
- 7.21 At the General Meeting the Members, by a majority vote, shall decide whether such a termination or suspension of membership shall be confirmed or lifted and may impose such conditions as they consider appropriate on the relevant Members as a condition of the reversal of the decision of the Shelter WA Board to suspend or terminate membership.
- 7.22 Shelter WA is not required to accept the renewal of membership of a suspended Member or Member organisation when renewal next falls due.
- 7.23 Without limiting any provision in this Clause 7, if a person who has ceased to be a Member for a failure to pay any membership fees, as required under this Constitution, subsequently pays the required membership fee:
- i) the Shelter WA Board may, in its absolute discretion, accept that payment; and
  - ii) if the payment is accepted, that person's membership is reinstated from the date the payment is accepted.

## **8 REGISTER OF MEMBERS**

- 8.1 Shelter WA must maintain a register of Members that includes each Member's:
- i) name;
  - ii) residential or postal address;
  - iii) type of membership (for example, Organisational Member, Individual Member, Reciprocal Member or Associate Member); and
  - iv) the date on which the person became a Member.
- 8.2 Subject to Clause 28, any Member is able to inspect the register free of charge, at such time and place as is mutually convenient to Shelter WA and the Member. The Member may make a copy of details from the register but has no right to remove the register for that purpose.
- 8.3 The Shelter WA Board may require a Member who requests a copy of the register to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of Shelter WA. Shelter WA may also charge a reasonable fee to the Member for providing a copy of the register, to be determined by the Shelter Board from time to time in its absolute discretion.
- 8.4 Neither Shelter WA nor any Member may use or disclose the information contained in the register of Members:
- i) to gain access to information that a Member has deliberately denied them;
  - ii) to contact or send advertising material to Shelter WA or a Member, unless the information is approved by the Shelter WA Board;
  - iii) for any other purpose that is not directly connected with the affairs of Shelter WA, or otherwise contrary to any applicable laws or regulations.

## 9 SHELTER WA BOARD

### *Powers and composition*

- 9.1 Responsibility for the governance and oversight of the management functions of Shelter WA are vested in the Shelter WA Board.
- 9.2 The Shelter WA Board must comprise not less than seven and no more than ten members, who are elected from the Members and comprising:
- i) Chair;
  - ii) Vice-Chair;
  - iii) Secretary;
  - iv) Treasurer; and
  - v) not less than three nor more than six general Shelter WA Board Members
- where the Chair, Vice-Chair, Secretary, Treasurer and Chief Executive Officer are collectively the "Office Holders".
- 9.3 To the extent practicable and subject to Clause 7.5(iv), after an incorporated not-for-profit organisation becomes an Organisational Member, at least 50% of the Shelter WA Board Members must be representatives of Organisational Members at any given time.

### *General responsibilities of the Shelter WA Board*

- 9.4 The Shelter WA Board is the governing body of Shelter WA and is responsible for:
- i) attaining or furthering the objects of Shelter WA;
  - ii) the formulation and determination of policy;
  - iii) determining the general organisation and direction of Shelter WA;
  - iv) representing the interests of the Members;
  - v) monitoring and maintaining the financial, cultural and organisational health of Shelter WA; and
  - vi) supporting and promoting the business and positive profile of Shelter WA, provided that its primary function is to determine matters in relation to Clauses i) to vi), and not to take part in matters of detailed day to day management of Shelter WA.
- 9.5 The Shelter WA Board may enact, amend and rescind the Shelter WA "Policy and Procedures Manual" as it sees fit.
- 9.6 The Shelter WA Board may appoint working groups of Members for specific purposes, and may delegate to them such powers and duties as the Shelter WA Board may determine appropriate (each a "Working Group"). Any Working Group, in turn, should appoint persons of relevant skills for the matters at hand (having regard to the scope of powers and duties delegated to it by the Shelter WA Board), shall meet as they see fit and report to the Shelter WA Board. There must be at least one Shelter WA Board member on any Working Group. The Working Groups of

Shelter WA may involve Members and non-Members of Shelter WA to their Working Groups, as required.

9.7 Records must be kept and proper entries made therein of all business attended to by any Working Group (where appropriate) at every meeting of the Board.

***Payments to Board Members***

9.8 Subject to Clause 5, a Board Member is entitled to be paid out of the funds of Shelter WA for any out-of-pocket expenses for travel and accommodation properly incurred:

- i) in attending a meeting of the Shelter WA Board; or
- ii) in attending a General Meeting; or
- iii) otherwise in connection with Shelter WA's business,

where:

- i) Board Member includes a member of any subcommittee or Working Group established by the Shelter WA Board; and
- ii) Meeting of the Shelter WA Board includes a meeting of a subcommittee or Working Group established by the Shelter WA Board.

**10 NOMINATION AND ELECTION OF ORDINARY BOARD MEMBERS**

10.1 This Clause 10 applies only in respect to nomination and election of Ordinary Board Members.

***Call for nominations***

10.2 No less than 42 days prior to the date of an Annual General Meeting, the Secretary or Chief Executive Officer will send written notice to all Members:

- i) calling for nominations for election to the Shelter WA Board; and
- ii) stating the date by which any nominations must be received by the Secretary or Chief Executive Officer, in order to comply with Clause 10.3.

10.3 All nominations must be received in writing by the Secretary or Chief Executive Officer no less than 28 calendar days prior to the date of the Annual General Meeting.

10.4 All nominations made under this clause 10 must:

- i) be in a form prescribed by the Secretary or Chief Executive Officer;
- ii) include the consent of the nominee; and
- iii) include the signature of at least two Members other than the nominee who support the applicable nomination.

***Election of Ordinary Board Members***

10.5 If more nominations are received than Shelter WA Board positions vacant, the Shelter WA Board must appoint, by ordinary resolution of the Shelter WA Board by no less than 21 days prior to the date of the Annual General Meeting, one returning officer ("Returning Officer") to conduct

an election of the Shelter WA Board in accordance with Clauses 10.6 to 10.11 (inclusive).

10.6 Where an election is required under Clause 10.5, the Returning Officer must conduct a poll using the "first past the post" system.

10.7 For the purpose of holding an election all candidates will be presented together on a ballot paper, prepared by the Returning Officer and approved by the Secretary or Chief Executive Officer.

10.8 Voting packs including:

- i) names of nominees;
- ii) short biographies of the nominees; and
- iii) a ballot paper,

will be included in the notice of the Annual General Meeting provided to Members. Members must complete ballot papers and return them to Shelter WA in accordance with relevant instructions. Completed ballot papers must be received by the Returning Officer no less than seven days prior to the Annual General Meeting in order to be valid votes, unless the Secretary or Chief Executive Officer determine otherwise.

10.9 Candidates nominated for election are entitled to vote in the same manner as any other Member. That is, a Member who has nominated for the position of Shelter WA Board Member may vote for himself or herself in their capacity as Member.

10.10 The Returning Officer must count all votes received in respect of valid ballot papers and report to the Members at the Annual General Meeting with the outcome of the election.

10.11 For the avoidance of doubt:

- i) if there is no valid nomination in respect of any Shelter WA Board position received in accordance with Clauses 10.2 to 10.4, the Chair at the applicable Annual General Meeting may call for nominations from eligible Members at the Annual General Meeting itself; and
- ii) if only one valid nomination in respect of any Shelter WA Board position received in accordance with Clauses 10.2 to 10.4, the Chair must declare that Member elected to that position.

## **11 NOMINATION AND ELECTION OF OFFICE HOLDERS**

11.1 All Office Holders must be nominated and appointed by the Shelter WA Board from time to time, by a Shelter WA Board resolution.

11.2 Any nomination and appointment of Office Holders made under this Clause 11 must be announced at the next Annual General Meeting.

## **12 SHELTER WA BOARD TERM AND RETIREMENT**

- 12.1 Subject to Clause 12.2, Board Members are be eligible to serve for a term of two years from the date of their appointment. Each Director must retire from office at the Annual General Meeting being two years after the Annual General Meeting at which they were last elected or re-elected to office, and each retiring Director will be eligible for election or re-election in accordance this Constitution (including the requirements under Clause 12.5).
- 12.2 Without limiting clause 12.1, at least one Director must retire from office at every Annual General Meeting. If no Director vacates office, whether under clause 12.1 or otherwise, at an Annual General Meeting, the Director to retire is the Director who has been longest in office since his or her election or appointment. Directors elected or appointed on the same day may agree among themselves or determine by lot which of them must retire.
- 12.3 The Chair and Vice Chair must hold office for a period of two years from their respective dates of appointment. If the positions of Chair and Vice Chair are to become vacant simultaneously, then:
- i) The Chair and Vice Chair may agree among themselves which of them will retire first or which of them will remain in office pending the appointment of a replacement. If they do not agree, then the Shelter WA Board must, as soon as practicable after it becomes apparent that the positions are to become vacant simultaneously, by resolution nominate and appoint replacement Office Holders for each position; and
  - ii) If the Chair and Vice Chair agree among themselves as to who will retire first and who will remain in office pending the appointment of a replacement, the person who did not retire under Clause 12.3(i) may remain an Office Holder until the earlier of:
    - (a) the Shelter WA Board nominating and appointing a replacement Office Holder for the person who retired under Clause 12.3(i);
    - (b) the date that is one year following the other Office Holder's retirement under Clause 12.3; and
    - (c) any other date determined by the Shelter WA Board.
- 12.4 Any vacancy occurring in any position of the Shelter WA Board between General Meetings may be filled by the Shelter WA Board from eligible persons, and that Board Member appointment to fill that vacancy will hold office for the remainder of his or her predecessor's term of office.
- 12.5 Board Members retiring at conclusion of their initial two year term are be eligible to renominate for a further two terms; but for no more than three terms consecutively.

## **13 SHELTER WA BOARD PROCEEDINGS**

- 13.1 The Shelter WA Board must meet as often as may be required to conduct the business of Shelter WA, but not less than six times in each calendar year, which may include General Meetings (and to avoid doubt, the Annual General Meeting).

- 13.2 Quorum for meetings of the Shelter WA Board is six or, in the event of temporary vacancies on the Shelter WA Board, no fewer than half of the remaining Board Members with a minimum of five Board Members.
- 13.3 The Shelter WA Board must use reasonable endeavours to hold face-to-face meetings wherever possible, but it may meet via teleconference or videoconference if required. Participation via teleconference or videoconference is valid. Where possible the Chief Executive Officer must be present at all meetings of the Shelter WA Board.
- 13.4 Any of the Chair, Treasurer or Secretary, or two other Board Members, have the power to call a meeting of the Shelter WA Board. Notice of meetings of the Shelter WA Board must be given:
- i) at the previous meeting;
  - ii) by seven days' written notice distributed to all Board Members; or
  - iii) in an emergency, by such other notice as may be ratified by the Shelter WA Board.
- 13.5 A Board Member will cease to hold office if that person:
- i) dies or otherwise ceases to be a Member;
  - ii) resigns from the Shelter WA Board by giving written notice to the Secretary or Chief Executive Officer, or is otherwise removed in accordance with this Clause 13;
  - iii) becomes permanently unable to act as a Board Member because of a mental or physical disability;
  - iv) fails to support the aims or objectives of Shelter WA, as determined by the Shelter WA Board;
  - v) conducts or has conducted themselves in a manner considered to be injurious or prejudicial to the character or interests of Shelter WA or the Shelter WA Board;
  - vi) becomes ineligible to accept an appointment or act as a Board Member under section 39 of the Act;
  - vii) fails to attend 3 consecutive Shelter WA Board meetings, of which the person has been given notice, without explanation acceptable to the Shelter WA Board.
- 13.6 When removal of a Board Member is being considered, the Board Member concerned shall be given a full and fair opportunity to present the Board Member's case to the Board after notification in writing of the grounds for expulsion. The Board shall instruct the Chief Executive Officer to advise the Board Member in writing of the decision.
- 13.7 A Board Member whose membership has been terminated may, on not less than two weeks' written notice from notice of termination, request the suspension to be reconsidered at a subsequent General Meeting. The process described in Clauses 7.19 to 7.21 apply equally to membership of a Board Member.
- 13.8 Outgoing Board Members (that is, Board Members who cease to be a Board Member in

accordance with this Constitution) are responsible for transferring all relevant assets and records of Shelter WA to the new Board Members (or another existing Board Member) within days of ceasing to be a Board Member.

13.9 In addition to the Board Members specified in Clause 9.2 and elected in accordance with Clauses 10 and 11, the Shelter WA Board may appoint up to two additional Board Members (each an "Additional Board Member") provided that each of the Additional Board Members must:

- i) have particular skills or expertise that are required by the Shelter WA Board;
- ii) be appointed for a term not exceeding twelve months or until the next Annual General meeting, whichever event occurs first; and
- iii) not be appointed within one month following the declaration of the outcome of the Board election under Clause 10 and Clause 11.

## **14 GENERAL MEETINGS**

14.1 Notice of at least 14 days and not more than 28 days of any General Meetings must be distributed to all Members and displayed at any premises occupied by Shelter WA.

14.2 The notice of General Meeting must:

- i) specify the date, time and place of the General Meeting;
- ii) indicate the general nature of each item of business to be considered at the General Meeting;
- iii) if the General Meeting is the Annual General Meeting, include the names of the Members who have nominated for election to the Shelter WA Board in accordance with this Constitution; and
- iv) if a Special Resolution is proposed:
  - (a) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
  - (b) state that the resolution is intended to be proposed as a Special Resolution.

14.3 Each voting Member is entitled to one vote at any General Meeting at which they are present. Each voting Organisational Member is entitled to one vote which must be cast by their representative or appointed proxy, appointed and notified to Shelter WA in accordance with Clause 7.5.

14.4 A quorum at any General Meeting shall be ten Members or one-half of the Members, whichever is less. Such quorum must include at least two Shelter WA Board members.

14.5 If at any General Meeting there is no quorum within thirty minutes of the time appointed for the General Meeting, then a majority of the Members present at that time may determine to adjourn the General Meeting for a period not exceeding fourteen days. The quorum for such



- adjourned meeting shall be reduced to five, failing which the Meeting will lapse altogether.
- 14.6 A Special General Meeting must be called by the Chief Executive Officer within twenty-eight days of receipt of a directive of the Shelter WA Board or a written request of:
- i) three Board Members; or
  - ii) at least 20 per cent of the total number of Members specifying the business to be conducted at the meeting.
- 14.7 Any Members and/or resource persons with special interests or knowledge relevant to Shelter WA may be invited to attend any meeting and to speak at the discretion of the Chair, having given the required notice for inclusion on the Agenda to speak at a meeting.
- 14.8 The Annual General Meeting should be held at least once in each calendar year and not more than six months after the close of the Financial Year.
- 14.9 The business of the Annual General Meeting shall be:
- i) to receive the Chair's report for the previous Financial Year;
  - ii) to receive the Treasurer's report and the audited financial statements for the previous Financial Year;
  - iii) to nominate the auditor for the next Financial Year;
  - iv) to accept nominations to the Board, or if an election has been held for Board positions under this Constitution, to accept the results of that election; and
  - v) to conduct any other business placed on the agenda, so long as such business is given in writing to the Chief Executive Officer at least fourteen days prior to the commencement of the meeting.
- 14.10 Without limiting any other provision of the Constitution the Shelter WA Board must convene a Special General Meeting if at least 20% of the Members require a Special General Meeting to be convened (a "**Requisitioned Meeting**").
- 14.11 The Members requiring a Requisitioned Meeting to be convened must:
- i) make the requirement by written notice given to the Secretary or Chief Executive Officer; and
  - ii) state in the notice the business to be considered at the Requisitioned Meeting; and
  - iii) each sign the notice.
- 14.12 The Requisitioned Meeting must be convened within 28 days after notice is given under Clause 14.11.
- 14.13 If the Shelter WA Board does not convene a Requisitioned Meeting within that 28 day period, the Members making the requirement (or any of them) may convene the s Requisitioned Meeting.
- 14.14 A Requisitioned Meeting convened by members under clause 14.13:

- i) must be held within three months after the date the original requirement was made under Clause 14.11; and
- ii) may only consider the business stated in the notice by which the requirement was made under Clause 14.11.

## **15 VOTING**

15.1 Except in respect of any matter:

- i) prescribed by the Act; or
  - ii) set out in this Constitution; or
  - iii) requiring approval by Special Resolution,
- voting at all General Meetings must be by consensus.

15.2 A consensus vote is achieved when all Members present at a meeting and entitled to vote are in agreement, or where those in disagreement on an issue concede not to object.

- iii) For all General Meetings except the Annual General Meeting, if consensus cannot be achieved at the meeting where an issue is raised then the issue must be referred to the next General Meeting. If after discussion at that subsequent General Meeting the Chair determines that consensus is still not possible, the issue must, unless otherwise provided herein, be put in the form of a resolution and be decided by a majority vote of the Members entitled to vote.
- iv) For the Annual General Meeting, if after discussion the Chair determines that consensus cannot be achieved, the issue must, unless otherwise provided herein, be put in the form of a resolution and be decided by a majority of the Members present at the Annual General Meeting and entitled to vote.

15.3 Each Member who has voting rights is entitled to one vote at any General Meeting.

15.4 The Chief Executive Officer has a right to attend any General Meeting and be heard subject to the directions of the Chair of that meeting, but is not entitled to vote at any General Meeting in his or her capacity as CEO.

## **16 DISCLOSURES, CONFLICTS AND PECUNIARY INTERESTS**

16.1 A member of the Shelter WA Board who has any direct or indirect pecuniary interest in any matter, made by, or in the contemplation of, the Shelter WA Board, must disclose that interest to the Shelter WA Board and shall not take part in any deliberations or decision of the Shelter WA Board with respect to that matter.

16.2 Clause 16.1 does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the Board Member is a member of a class of persons for whose benefit Shelter WA is

established.

16.3 Where a Board Member discloses a pecuniary interest in a matter under Clause 16.1, or his or her interest is not such as need be disclosed under Clause 16.1:

- i) the matter is not liable to be avoided by Shelter WA on any ground arising from the fiduciary relationship between the Board Member and Shelter WA; and
- ii) the Board Member is not liable to account for profits derived from the matter.

16.4 Shelter WA shall cause every disclosure made under Clause 16.1 to be recorded in the minutes of the meeting of the Shelter WA Board at which it is made.

16.5 Shelter WA must not employ or otherwise engage a Board Member to perform services for Shelter WA. A Board Member may only be employed or otherwise engaged by the Shelter WA if the person resigns as a Board Member before being employed or otherwise engaged by Shelter WA.

16.6 Disclosure of conflicts and pecuniary interests is to be a standing agenda item for consideration at each and every meeting of the Shelter WA Board.

## **17 CHIEF EXECUTIVE OFFICER**

17.1 The Shelter WA Board must appoint a Chief Executive Officer. The Chief Executive Officer will be invited to attend all meetings of the Shelter WA Board, but is not a Director and will not be entitled to vote at any meetings of the Shelter WA Board. The Chief Executive Officer is employed by Shelter WA and is empowered by the Shelter WA Board to undertake, oversee and manage the day to day operations of Shelter WA and duties as imposed by this Constitution.

## **18 CHAIR AND VICE-CHAIR**

18.1 The Chair must preside at all General Meetings and meetings of the Shelter WA Board.

18.2 If the Chair is absent from any such meeting, the Vice Chair must preside at that meeting.

18.3 If the Chair and the Vice Chair are both absent, the presiding Member for that General Meeting or meeting of the Shelter WA Board (as the context requires) must be a Member elected by:

- i) the other Members present if it is a General Meeting; or
- ii) a Board Member elected by the other Shelter WA Board members present if it is a meeting of the Shelter WA Board.

18.4 Where a ballot occurs, the Chair at any General Meeting shall have a deliberative vote but not a casting vote.

18.5 The Chair and the Chief Executive Officer must prepare the agenda for any meeting of the Shelter WA Board and General Meetings.

18.6 The Chair must encourage full balanced participation in meetings by all Members and must decide on matters of order.

- 18.7 The Chair, Vice Chair or the Chief Executive Officer shall act as spokesperson unless an alternative spokesperson has been appointed by the Shelter WA Board or General Meeting. The spokesperson must make statements in accordance with previously agreed policy, or in an emergency following consultation with at least two members of the Shelter WA Board.
- 18.8 The Chair will be responsible for ensuring regular performance target settings and performance reviews for the Chief Executive Officer.
- 18.9 The Chair acts in response to the Shelter WA Board, Members and staff concerns.

## **19 TREASURER**

- 19.1 The Treasurer or the Chief Executive Officer must cause monies received to be paid into an account authorised by the Shelter WA Board in the name of Shelter WA. Payments shall be as electronic funds transfer, credit/debit card authorisation, and petty cash or by cheque signed by two authorised signatories of whom there shall be no more than five appointed by the Shelter WA Board. Major or unusual expenditures shall be authorised in advance by the Shelter WA Board or at a General Meeting.
- 19.2 The Treasurer and the Chief Executive Officer shall cause to be prepared financial budgets and statements and shall submit a report on the finances to each meeting of the Shelter WA Board.
- 19.3 The Treasurer shall present audited accounts to the Annual General Meeting.

## **20 SECRETARY**

- 20.1 The Secretary, the Chief Executive Officer, Chair or Vice-Chair shall call meetings in accordance with the provisions of this Constitution.
- 20.2 The Secretary or the Chief Executive Officer shall cause records to be kept of the business of Shelter WA including the Constitution and policies, records of Members, a register of minutes of meetings and of notices, a file of correspondence, and records of submissions or reports made by or on behalf of Shelter WA.
- 20.3 In the absence of the Secretary another Member shall be elected as minutes Secretary. The Chief Executive Officer is also authorised to record minutes of meetings as required by the Shelter WA Board.

## **21 CONSTITUTION**

- 21.1 This Constitution binds every Member and Shelter WA and each Member agrees to comply with this Constitution. Shelter WA must provide, free of charge, a current copy of this Constitution to each person who becomes a Member. Shelter WA must keep a current copy of this Constitution.

21.2 This Constitution may be repealed, altered or amended by Special Resolution, of which not less than fourteen days' written notice including notice of the proposed repeal, alteration or amendment has been distributed to all Members.

## **22 AUDITOR**

22.1 An auditor, who must not be a Member of Shelter WA or a Board Member, must be appointed annually at the Annual General Meeting.

22.2 The auditor must have access to the books, accounts and vouchers of Shelter WA and may require from the Office Holders of Shelter WA any information and explanation that may be necessary for the performance of their duties as an auditor.

22.3 Notwithstanding Clause 22.1, an alternative auditor may be appointed, by Special Resolution, of which not less than fourteen days' written notice, including notice of the proposed motion, has been distributed to all Members.

## **23 DISPUTES AND MEDIATION**

23.1 The procedure set out in this Clause 23 applies to disputes:

- i) between a Member and another Member;
- ii) between a Member and Shelter WA; or
- iii) if Shelter WA provides services to persons who are not Members, those non-Members who receive services from Shelter WA, and Shelter WA.

23.2 The parties to a dispute must meet and discuss the matter in dispute and attempt to resolve the dispute between themselves within fourteen days after the dispute has come to the attention of all parties.

23.3 If the parties to a dispute are unable to resolve the dispute between themselves at the meeting within the time required by Clause 23.2, or if any party fails to attend that meeting, then the parties must, within ten days, hold a meeting in the presence of a mediator.

23.4 The mediator must be:

- i) a person chosen by agreement between the parties; or
- ii) in the absence of agreement:
  - (a) in the case of a dispute between a Member and another Member, a person appointed by the Shelter WA Board; or
  - (b) in the case of a dispute between a Member or relevant person who is not a Member and Shelter WA, a person who is an accredited mediator appointed to, or employed with, a not-for-profit organisation.

23.5 A Member of Shelter WA can be a mediator.

- 23.6 The mediator cannot be a Member who is a party to the dispute.
- 23.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 23.8 The mediator, in conducting the mediation, must;
- i) give the parties to the mediation process every opportunity to be heard;
  - ii) allow due consideration by all parties of any written statement submitted by any party; and
  - iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 23.9 The mediator must not determine the dispute.
- 23.10 The mediation must be confidential and without prejudice.
- 23.11 The costs of the mediation are to be paid by the party or parties to the mediation.
- 23.12 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **24 DISSOLUTION**

- 24.1 Shelter WA may be wound up, or its incorporation cancelled or dissolved, voluntarily by a Special Resolution passed at a General Meeting whenever at least twenty-one days' written notice of such a resolution has been given to all Members and all members of the Shelter WA Board.
- 24.2 Subject to Clause 25 (if applicable at the time) surplus property, in relation to Shelter WA, means property remaining after satisfaction of:
- i) the debts and liabilities of Shelter WA; and
  - ii) the costs, charges and expenses of winding up or cancelling the incorporation of Shelter WA,
- but does not include books or historical records relating to the management of Shelter WA.
- 24.3 On the cancellation of the incorporation or the winding up of Shelter WA, its surplus property must be distributed as determined by Special Resolution by reference to the persons mentioned in section 24(1) of the Act.

## **25 SURPLUS GIFTS**

- 25.1 This Clause 25 only applies if Shelter WA is endorsed as a Deductible Gift Recipient by the Commissioner of Taxation.
- 25.2 Subject to the Act and any other applicable law, and any court order, any surplus assets (including "gift funds" as defined in Clause 25.5) that remain after Shelter WA is wound up must be distributed to one or more charities:
- i) with charitable purpose(s) at law similar to, or inclusive of, the purpose(s) in Clause 4;

- ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as Shelter WA; and
- iii) that is or are Deductible Gift Recipients.

25.3 The decision as to the charity or charities to be given the surplus assets must be made by the Members passing a Special Resolution at or before the time of winding up. If the Members do not make this decision, the association may apply to the Supreme Court to make this decision.

25.4 If Shelter WA's Deductible Gift Recipient endorsement is revoked (whether or not Shelter WA is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of Clause 25.2, as decided by the Shelter WA Board.

25.5 For the purpose of this Clause 25 "gift funds" means:

- i) gifts of money or property for the principal purpose of the association;
- ii) contributions made in relation to a fundraising event held for the principal purpose of the association; and
- iii) money received by the association because of such gifts and contributions.

"contributions" and "fundraising" event have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

## 26 COMMON SEAL

26.1 The common seal of Shelter WA engraved with the name of Shelter WA (Inc.) in legible characters must be kept in the care of the Chief Executive Officer.

26.2 The seal may only be affixed by:

- i) resolution of the Board; or
- ii) resolution of a General Meeting, and in the presence of two Board Members including at least one Office Holder.

26.3 The Secretary or Chief Executive Officer must make a written record of each use of the common seal.

## 27 NOTICES

27.1 A notice required to be given under this Constitution must be in writing and deemed to be served on the person to whom it is to be given, by either giving it personally to them, sending it through the post in a pre-paid letter to the address of that person last notified to Shelter WA, electronically by email to the email address last notified to Shelter WA, by facsimile or in an emergency by such other notice as shall be ratified by the Board.

27.2 Any notice served:

- iii) by post will be deemed to have been served at the time that the notice would be delivered in the ordinary course of post, and in proving such service it shall be sufficient

to prove that the envelope containing the notice was properly addressed, pre-paid and posted; and

- iv) Electronically by email or by facsimile:
  - (a) by 5.00pm (local time in the place from which it is sent or given) on a business day - on that day; or
  - (b) after 5.00pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day - on the next business day,and proof of notice that has been transmitted electronically by email or by facsimile can be requested by a Member or Board Member within 30 days of the date of the transmission.

## **28 INSPECTION OF DOCUMENTS AND RECORDS**

- 28.1 Subject to the requirements of the Act, the Shelter WA Board may decide whether or not to allow a Member to inspect the documents and records of Shelter WA.

July 2019.