

**CONSTITUTION**

**OF**

**WESTMONT AGED CARE SERVICES LIMITED**

**ACN 112 051 457**

**INCORPORATED ON**

**2 DECEMBER 2004**

**REGISTERED UNDER THE CORPORATIONS ACT 2001**

# CORPORATIONS ACT 2001

## A Public Company Limited by Guarantee

### CONSTITUTION

of

## WESTMONT AGED CARE SERVICES LIMITED

ACN 112 051 457

### 1. Name of Westmont

1.1 The name of Westmont is Westmont Aged Care Services Limited.

### 2. Type of Company

2.1 Westmont is a public company limited by guarantee.

2.2 The liability of the Members is limited.

### 3. Limitations

3.1 The objects for which Westmont is established are:

- (1) to operate, manage and maintain on an honorary basis Aged Care Services in the Wodonga and regional areas;
- (2) to comply with the provisions of the *Aged Care Act 1997*, Aged Care Principles, and the *Retirement Villages Act (Victoria) 1986* and any regulations and standards applicable thereto as amended from time to time (except to the extent that an exemption applies);
- (3) to comply with the requirements of the Commonwealth Department of Health;
- (4) consistent with care outcomes required by the Department of Health, to provide a secure, comfortable and caring environment for residents to ensure they are able to lead an active, dignified and respected lifestyle in which self esteem and independence are given every encouragement;
- (5) to pursue this charitable cause and to determine the specific needs of the aged requiring aged care services and/or quality accommodation and support services;
- (6) to provide a secure, comfortable and caring environment for residents in accordance with the legislated Accreditation and Residential Care Standards and Quality of Principles, and industry best practice;
- (7) to operate and maintain the Aged Care Services within the financial and budgetary constraints imposed by available revenues;
- (8) to select and train management and staff for the provision of the special needs of the aged;
- (9) to provide staff with security, a harmonious working environment, opportunities for advancement with pay and conditions consistent with budgetary constraints;
- (10) to be seen as a good citizen by the community, the Federal Government and those organisations and individuals whose generous contributions enabled Westlands Hostel Inc. and Vermont Court Elderly People's Home Incorporated to be established;
- (11) solely for the purpose of furthering the purposes set out above Westmont shall have power:

- a. to indemnify any person for any loss or damage incurred as a result of having on behalf of those incorporated associations referred to in paragraph 11(a) become liable to pay any amount by way of damages or otherwise;
- b. to buy, sell and deal in all kinds of articles, commodities and provisions for the benefit of residents or persons frequenting Westmont's facilities;
- c. to purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal, and any rights or privileges which may be requisite for the objects of, or capable of being conveniently used in connection with, any of the objects of Westmont;
- d. to enter into any arrangement with any government or authority that are incidental or conducive to the attainment of the objects and the exercise of the powers of Westmont; to obtain from any such Government or authority any rights, privileges and concessions which Westmont may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- e. to appoint, employ, remove or suspend such employees and other persons as may be necessary or convenient for the purposes of Westmont carrying out its objects;
- f. to construct, improve, maintain, develop, work, manage, carry out, alter or control any buildings, grounds, works or conveniences which may seem desirable directly or indirectly to advance Westmont's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- g. to invest and deal with the money of Westmont not immediately required for Westmont's objects in such manner as may from time to time be thought fit provided Westmont has regard to the matters referred to in *Section 8 Trustee Act 1958*;
- h. to take or otherwise acquire and hold shares, debentures or other securities of any company or body corporate;
- i. to give credit to any person or body corporate; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or body corporate;
- j. to borrow or raise money either alone or jointly with any other person or legal entity in such manner as may be thought proper and whether upon fluctuating advance account or overdraft or otherwise, to represent or secure any moneys and further advances borrowed or to be borrowed alone or with others as aforesaid by notes secured or unsecured, debentures or debenture stock perpetual or otherwise, or by mortgage, charges, lien or other security upon the whole or any part of Westmont's property or assets present or future and to purchase, redeem or pay off any such securities;
- k. to draw, make, accept, endorse, discount, execute and issue cheques;
- l. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of Westmont;
- m. to take or hold mortgages, liens or charges, to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of Westmont's property of whatsoever kind sold by Westmont, or any money due to Westmont from purchasers and others;
- n. to take any gift of property whether subject to any special trust or not, for any one or more of the objects of Westmont;

- o. to take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of Westmont, in the form of donations, annual subscriptions or otherwise;
- p. to print and publish any newspapers, periodicals, books or leaflets that Westmont may think desirable for the promotion of its objects;
- q. to amalgamate with any one or more incorporated Associations or Companies having objects similar to those of Westmont and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon Westmont by virtue of this Constitution;
- r. to purchase or otherwise acquire and take all or any part of the property, assets, liabilities and engagements of any one or more of the incorporated associations or companies with which Westmont is authorised to amalgamate;
- s. to transfer all or any part of the property, assets, liabilities and engagements of Westmont to any one or more of the incorporated associations or companies with which Westmont is authorised to amalgamate;
- t. to make donations for patriotic, charitable or community purposes but limited to an amount in any year of not more than 1% of Westmont's annual budget;
- u. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of Westmont.

3.2 Westmont can only exercise the powers in Section 124(1) of the Act to:

- (1) carry out the objects of Westmont set out in Clause 3.1; and
- (2) do all things incidental or convenient in relation to the exercise of power under Clause 3.2(1).

3.3 The income and property of Westmont will only be applied towards the promotion of the objects of Westmont set out in Clause 3.1.

3.4 No income or property of Westmont will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to any Member of Westmont. However nothing in this Constitution will prevent payment in good faith to a Member:

- (1) in return for any services rendered or goods supplied in the ordinary and usual course of business to Westmont;
- (2) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to Westmont;
- (3) of reasonable and proper rent for premises leased by any Member to Westmont; or
- (4) in accordance with Clause 3.5.

3.5 No payment shall be made to any Director other than the payment:

- (1) in accordance with Clause 28A;
- (2) in accordance with Clause 45.3; and
- (3) relating to an indemnity in favour of the Director and permitted by Section 149A of the Act as a contract or insurance permitted by Section 199B of the Act.

3.6 Westmont is intended to operate on behalf of its Members on an independent basis that is free from political association.

## DEFINITIONS AND INTERPRETATION

### 4. Definitions and Interpretation

4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

“**Act**” means the Corporations Act 2001 or any statutory modification or re-enactment of, or statutory provisions substituted for, such Act,

“**Aged Care Services**” means and includes the provision of the services of community care, carer support and respite, independent living, semi-independent living, transitional care and residential care,

“**Board**” means the Board of Directors,

“**Chairperson**” and “**Vice Chairperson**” means the persons elected to those offices pursuant to Clause 38,

“**Committee**” means a committee of Directors established in accordance with Clause 45,

“**Constitution**” means this Constitution as amended or supplemented from time to time,

“**Company**” means Westmont referred to in Clause 1.1,

“**Director**” means any person holding the position of a director of Westmont and “**Directors**” means the directors for the time being of Westmont or as the context permits such number of them as have authority to act for Westmont,

“**Honorary Life Governors**” means a person or persons named as or appointed an Honorary Life Governor of Westmont pursuant to Clause 5A of the Constitution,

“**Member**” means a member of Westmont pursuant to Clause 5,

“**Member Present**” means in connection with a meeting of Members, a Member being present in person or by proxy or attorney or, in the case of a corporation, by a Representative, or by teleconference or video link,

“**Office**” means the registered office for the time being of Westmont,

“**Officer**” has the same meaning as given to that term in Section 241(4) of the Act,

“**Register**” means the register of Members to be kept pursuant to the Act,

“**Secretary**” means the person appointed as the secretary of Westmont and includes any assistant or acting secretary.

4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (1) the singular includes the plural and vice versa;
- (2) each gender includes the other;
- (3) the word “person” means a natural person and any partnership, association, body or entity whether incorporated or not;
- (4) the words “writing” and “written” include any other mode of representing or reproducing works, figures, drawings or symbols in a visible form;

- (5) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - (6) a reference to any Clause or Schedule is to a Clause or Schedule of this Constitution;
  - (7) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any Clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 4.4 The provisions of this Constitution displace the replaceable rules (but not replaceable rules which mandatorily apply to a public company) contained in the Act.
- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

## **MEMBERSHIP**

### **5. Admission to Membership**

- 5.1 *The Members of Westmont (hereinafter called "the Members") shall be:-*
- 5.1.1 The Honorary Life Governors.
  - 5.1.2 The Honorary Life Members.
  - 5.1.3 Such other persons as may from time to time be approved as members by the Board.
- 5.2 The rights and privileges of every Member are personal to each Member and are not transferable by a Member's own act or by operation of law.

### **5A. Honorary Life Governors**

- 5A.1 A person who has been a financial member of Westlands, Vermont Court or Westmont for a continuous period of at least 5 years or a financial member who has rendered conspicuous and meritorious service to Westlands, Vermont Court or Westmont may be made an Honorary Life Governor of Westmont.
- 5A.2 An Honorary Life Governor shall be relieved of the payment of all further subscriptions, but shall be subject to all the other obligations and shall enjoy all the other rights of ordinary membership.
- 5A.3 A candidate for Honorary Life Governorship of Westmont shall be proposed by majority vote of the Board and ratified by Special Resolution at any Extraordinary or General Meeting of Westmont.

### **5B. Honorary Life Members**

- 5B.1 A person who is or has been a volunteer of Westmont or a person who has been but is no longer an employee of Westmont for a continuous period of at least seven years who has rendered conspicuous and meritorious service to Westmont may be made an Honorary Life Member.
- 5B.2 A Honorary Life Member shall be relieved of the payment of all further subscriptions but shall be subject to all other obligations and shall enjoy all the other rights of Ordinary Membership, other than the right to vote at any Annual General Meeting of Westmont.
- 5B.3 A candidate for Honorary Life Membership of Westmont shall be proposed by majority vote of the Board and ratified by special resolution at any Extraordinary or General Meeting of Westmont.

## **6. Entrance Fee and Subscription**

- 6.1 The entrance fee and annual subscription payable by Members shall be such amount as Westmont in general meeting shall from time to time prescribe, however until Westmont shall otherwise resolve the entrance fee shall be \$10.00 and the annual subscription shall be \$10.00.
- 6.2 All annual subscriptions shall become due and payable in advance on 1st January in every year.

## **7. Cessation of Membership**

- 7.1 If a Member does not pay an annual subscription within 2 months of its due date then:
- (1) the Board will give the Member written notice of that fact; and
  - (2) if the full amount due is not paid by the Member within 30 days of the date of the notice the Board may declare the Member's membership forfeited. However, the Board may reinstate the Member's membership on payment of all arrears if the Board thinks fit to do so.
- 7.2 A Member's membership in Westmont will cease if the Member gives the Secretary written notice of resignation and the membership will cease from the date of receipt of that notice by the Secretary.
- 7.3 A Member's membership shall cease if the Member is not eligible to be a Member under the provisions of Clause 5.1 hereof.
- 7.4 The Board shall have power by resolution to censure, fine, suspend or expel any Member from Westmont who wilfully refuses or neglects to comply with the provisions of the Constitution, or who is found by the Board to be guilty of any conduct which, in the reasonable opinion of the Board, is unbecoming of a Member or prejudicial to the interests of Westmont. The Board must not make such a resolution unless at least one week before the meeting of the Board at which such a resolution is to be considered the Member is given notice of such meeting, of the allegations made against him or her and of the intended resolution. The Member shall, at such meeting and before the passing of such resolution, be given the opportunity of giving orally or in writing, any explanation or defence he or she may think fit. The Member may, by written notice lodged with the Secretary at least twenty-four hours before the appointed time for the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with Westmont in general meeting. In that event a general meeting of Westmont must be called for that purpose and if at the meeting such a resolution is passed by a majority of two-thirds of those present and voting (such a vote to be taken by ballot), the Member concerned may be censured, fined, suspended or expelled accordingly. Every such meeting of the Board or Westmont must be conducted in accordance with the principles of natural justice.
- 7.5 Any Member ceasing to be a Member:
- (1) will not be entitled to any refund (or part refund) of any annual subscription paid;
  - (2) will continue to be liable for any annual subscription and all arrears due and unpaid at the date of their resignation or ceasing to be a Member and for all other monies due by them to Westmont and in addition for any sum not exceeding \$100.00 for which they are liable as a Member of Westmont under Clause 5.1.

## **GENERAL MEETINGS**

### **8. Convening of General Meetings**

- 8.1 The Board may whenever it thinks fit convene a general meeting of Westmont.
- 8.2 A Member or Members shall be entitled to convene a general meeting in accordance with the provisions of the Act.

8.3 A general meeting of Westmont may be convened at two or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

## **9. Notice of General Meeting**

9.1 Subject to consent to shorter notice being given in accordance with the Act, at least 21 days notice of any general meeting must be given specifying:

- (1) the place, day and hour of the meeting;
- (2) the general nature of any business to be transacted at the meeting;
- (3) if a special resolution is to be proposed, the details of and intention to propose it;
- (4) if the meeting is to be held in two or more places the technology that will be used to facilitate this;
- (5) any other information required by the Act.

9.2 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

## **10. Cancellation or Postponement of General Meeting**

10.1 Subject to the provisions of the Act and this Constitution the Directors may cancel a general meeting of Westmont:

- (1) convened by the Directors; or
- (2) which has been convened by a Member or Members pursuant to the Act upon receipt by Westmont of a written notice withdrawing the requisition signed by that Member or those Members;

10.2 The Directors may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.

10.3 Where any general meeting is cancelled or postponed or the venue for the same is changed;

- (1) the Directors must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (2) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

### **11. Quorum**

11.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.

11.2 7 Members present and entitled to vote constitute a quorum for all general meetings.

11.3 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:



- (1) the meeting, if convened upon the requisition of Members shall be dissolved; and
- (2) in any other case;
  - (a) will stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors may by notice to the Members appoint; and
  - (b) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting the meeting shall be dissolved.

## **12. Chairperson**

12.1 The Chairperson shall be entitled to preside as Chairperson at every general meeting.

12.2 Where a general meeting is held and:

- (1) there is no Chairperson; or
- (2) the Chairperson is not present within 30 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chairperson of the meeting,

the Vice Chairperson shall preside as Chairperson of the meeting or, if the Vice Chairperson is not present or is unwilling to act then the other Directors present may choose another Director as Chairperson of the meeting. If no Director is so chosen or if all the Directors present decline to take the chair the Members Present may choose one of their number to be Chairperson of the meeting.

12.3 The rulings of the Chairperson of a general meeting on all matters relating to the order of business procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

## **13. Adjournments**

13.1 The Chairperson of a general meeting at which a quorum is present:

- (1) may adjourn a meeting with the consent of the meeting; and
- (2) must adjourn the meeting if the meeting so directs to a time and place as determined.

13.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

13.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

13.4 If it is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

## **14. Determination of Questions**

14.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:

- (1) the Chairperson of the meeting;
- (2) at least 4 Members present and entitled to vote on the resolution; or
- (3) by a Member present or Members present who represent at least 7 of the votes that may be cast on the resolution on a poll.

- 14.2 Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 14.3 A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of Westmont which has been signed by the Chairperson of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **15. Polls**

- 15.1 A poll may be demanded:
- (1) before a vote on a resolution is taken;
  - (2) before the voting results on a show of hands is declared; or
  - (3) immediately after the voting results on a show of hands is declared.
- 15.2 If a poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs subject to Clause 15.5.
- 15.3 The result of a poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 15.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 15.5 A poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- 15.6 The demand for a poll may be withdrawn.

## **16. Voting Rights**

A member entitled to vote has one vote, both on a show of hands and a poll.

## **17. Voting Disqualification**

A Member is not entitled to be present or to vote at any general meeting if any amount payable by the Member in respect of his membership is more than one month in arrears at the date of the meeting.

## **18. Objection to Qualification to Vote**

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson whose decision shall be final and conclusive and a vote allowed by the Chairperson shall be valid for all purposes.

## **19. Persons of Unsound Mind and Minors**

- 19.1 A Member of unsound mind and whose person or estate is liable to be dealt with in any way under the law relating to mental health or who is a minor may vote whether on a show of hands or on a poll by their committee or by such other person as properly has the management or guardianship of their estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.
- 19.2 No person having the right of management or guardianship of the person or estate in respect of a Member as referred to in Clause 19.1 must exercise any of the rights conferred under that Clause unless and until the person has provided to the Directors satisfactory evidence of the appointment of the person accordingly.

## **20. Chairperson's Casting Vote**

In the case of an equality of votes whether on a show of hands or on a poll the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to his vote as a Member.

## **21. Right of Non-Members to Attend General Meeting**

21.1 The Chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.

21.2 Any auditor of Westmont shall be entitled to attend and address a general meeting.

## **PROXIES**

### **22. Right to Appoint Proxies**

22.1 A Member who is entitled to attend and vote at a general meeting of Westmont may appoint the Chairperson of the meeting, or any other person, as the Member's proxy to attend and vote for the Member, at the meeting and such person need not be a Member.

22.2 If a Member appoints a proxy the proxy is entitled to vote on a show of hands and on a poll.

### **23. Appointing a Proxy**

23.1 The instrument appointing a proxy must be in writing signed by the appointer or the appointed attorney duly authorised in writing or if the appointer is a corporation signed by an authorised officer or attorney of the corporation.

23.2 The instrument of proxy is valid if it contains the information required at any time by the Act (which at the date of this Constitution is the following):

- (1) the name and address of the Member;
- (2) the name of Westmont;
- (3) the proxy's name or the name of the office of the proxy; and
- (4) the meetings at which the instrument of proxy may be used).

23.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and for any postponement or adjournment of that meeting.

23.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by Clause 23.2 provided that it substantially provides information deemed acceptable by the Chairperson of the meeting.

### **24. Lodgment of Proxies**

24.1 An instrument appointing;

- (1) a proxy, and the power of attorney or other authority (if any) under which it is signed or executed, or a certified copy of that power or authority; or
- (2) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney;

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Directors may allow) before the time appointed for the holding of the meeting or adjourned

meeting as the case maybe at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

24.2 For the purposes of this Clause it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile or electronically at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile or electronic transmission was received at that place.

## **25. Validity of Proxies**

25.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (1) the death or unsoundness of mind of the Member;
- (2) the bankruptcy or liquidation of the Member;
- (3) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if Westmont has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Directors may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

25.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

## **26. Rights of Proxies and Attorneys**

26.1 The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.

26.2 Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.

26.3 A proxy will not be revoked by the appointer attending and taking part in any general meeting but if the appointer votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointer shall not be entitled to vote in that capacity in respect of the resolution.

26.4 The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity he may be excluded from voting either upon a show of hands or upon a poll.

## **DIRECTORS**

### **27. Number and Appointment of Directors**

27.1 The affairs of Westmont shall be managed by a Board constituted as provided in Clause 28.

27.2 The Board

- (1) shall oversee and see to the management of the business and affairs of Westmont;
- (2) shall at each meeting receive reports on the operation of Westmont;

- (3) may, subject to this Constitution and the Act, exercise all such powers and functions as may be exercised by Westmont other than those powers and functions that are required by this Constitution to be exercised by general meetings of the Members of Westmont;
- (4) subject to this Constitution and the Act, has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of Westmont;
- (5) shall, at its first meeting after the annual general meeting, elect a Chairperson, Vice-Chairperson and Secretary from its Members but no Member who is an employee of Westmont shall be eligible to be so elected;
- (6) shall, at its first meeting after the annual general meeting, elect and appoint an auditor for that financial year;
- (7) may enter into and carry out any contract or agreement for or on behalf of Westmont whether relating to the purchase, sale, lease of or alteration or addition or to construction or demolition or repair of any property real or personal belonging to or used or to be used for the purpose of Westmont or otherwise;
- (8) may provide for payment of interest or loans and for payment or reduction of any such loans and from time to time borrow money for the purpose of Westmont;
- (9) may from time to time create and fill any vacancy in the office of Chief Executive Officer or similar managerial position of Westmont upon such terms and conditions in all respects as the Board shall consider desirable;
- (10) may establish superannuation and/or endowment funds for such employees of the as the Board thinks fit or otherwise to assist any such employees or their dependents;
- (11) may as considered necessary frame by-laws or regulations for the business of the Board;
- (12) may in addition to the particular powers therein conferred upon it exercise all such powers of Westmont and do all such acts, matters and things as are not by the Act or this Constitution for the time being of Westmont required to be exercised by Westmont in general meeting subject nevertheless to such Constitution and the provisions of the said Act;
- (13) The Board may determine to suspend, reduce or postpone payment of any remuneration under Clauses 28A.1, 28A.2 and 28A.3 if it thinks fit.

27.3 Directors of the Board are entitled to be indemnified from the assets of Westmont to meet authorised expenses properly incurred by them in the conduct of their office.

## **28. Constitution of the Board**

28.1 Subject to Clause 28.2 and 28.3, the Board shall consist of a maximum of 9 Directors.

28.2 All Directors elected at the 2015 Annual General Meeting or at each Annual General Meeting thereafter shall be elected to serve for a term which shall expire at the third Annual General Meeting from the date of his or her election and, subject to Clause 28.4, shall be eligible for re-election thereafter.

28.3 Clause 28.2 does not alter the term of service of Directors elected at the 2013 and 2014 Annual General Meetings.

28.4 Subject to Clause 28.5, no Director may serve more than three terms and no Director may serve as a Director for more than nine years in total.

28.5 In the case of a person appointed as a Director under Clause 29.2 to fill a casual vacancy, the period between the appointment of that person as a Director and the next Annual General

Meeting after that appointment will not be counted as a term or part of a term and will not be included in determining whether a Director has served three terms or has served as a Director for more than nine years in total, for the purposes of Clause 28.4.

- 28.6 The Chief Executive Officer shall not be eligible to become a member of the Board but shall be entitled to and may attend meetings of the Board and its Committees in a consultative capacity and speak on all matters raised or considered at any meeting of the Board.
- 28.7 No employee of Westmont in whatever capacity is eligible to become a member of the Board.
- 28.8 Each Director shall be a member of Westmont and no member shall be eligible for election as a director unless he or she is prepared to submit application to probity or similar checks as may be usual and necessary and will not, nor will his or her election as a director prejudice the holding by Westmont of any governmental licence, consent or authority necessary or proper for the conduct of any of Westmont's objects.
- 28.9 No member who;(a) holds an elected state, federal or local government position or office or (b) is a candidate for an elected state, federal or local government position or office shall be eligible for election or appointment as a director or continue to serve as a director.
- 28.10 Subject to Clause 28.4, a retiring Director shall be eligible for re-election without nomination provided that prior to closing of nomination he or she shall have lodged with the secretary, a signed form that he or she seeks re-election.

## **28A. Remuneration of Directors**

- 28A.1 All Directors may be paid for their services rendered to Westmont in their capacity as Director, Chairperson and/or Vice Chairperson, where the amount payable is commercially reasonable.
- 28A.2 Any remuneration for services to be paid under Clause 28A.1 is to be paid out of the funds of Westmont. Subject to Clause 28A.3, each Director (in their capacity as Director, Chairperson and/or Vice Chairperson (as the case may be)) may be paid an annual sum (accruing from day to day) determined by Special Resolution at the Annual General Meeting of Westmont immediately preceding the calendar year in which the remuneration is to be paid. The expression "remuneration" in this Clause does not include any amount that may be paid by Westmont under any of Clauses 28A.4, 28A.5, 45.3 and 51.
- 28A.3 For the 2019 calendar year only, each Director may be paid an annual sum (accruing from day to day) determined by Special Resolution of Westmont in the 2018 calendar year.
- 28A.4 A Director is also entitled to be paid or reimbursed for all out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Directors.
- 28A.5 A Director is also are entitled to be paid for any service rendered to Westmont by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which would be commercially reasonable for the service.

## **29 General Right to Appoint and remove Directors**

- 29.1 Subject to the Act, Westmont may by resolution passed in general meeting:
- (1) remove any Director; or
  - (2) appoint a person as a Director (whether or not as a replacement for a Director who has been removed or otherwise ceased to be a Director).
- 29.2 Subject to the Act, the Directors may at any time appoint any person as a Director either to fill a casual vacancy or as an addition to their number. Any Director so appointed shall only hold office until the next annual general meeting of Westmont after the appointment is made.

29.3 Any Director may appoint any other Director as his proxy to attend any Board meeting and in such case the proxy appointed shall be entitled to cast two votes, one personally and one as proxy for the absent Director. Evidence of appointment of the proxy must be to the satisfaction of the Chairperson of the meeting, who shall have unfettered discretion to accept or reject the appointment of the proxy for any meeting.

29.4 The Directors may act despite any vacancy in their body but if the number falls below the minimum fixed (if any) the Directors may act for the purpose of increasing the number of Directors to the minimum or of convening a general meeting or in emergencies but for no other purpose.

### **30. Vacation of Office**

30.1 Any Director may retire from office on giving written notice to Westmont at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to Westmont).

30.2 In addition to other circumstances in which the office of a Director becomes vacant as provided in this Constitution, the office of a Director shall automatically be vacated if the Director:

- (1) is prohibited from being or ceases to be or is removed as a Director pursuant to the provisions of the Act or by reason of any order made under the Act;
- (2) becomes an insolvent under administration or makes any composition or arrangement with his creditors or any class of his creditors;
- (3) 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;
- (4) is absent from meetings of the Directors during a period of 6 consecutive months without special leave of absence from the Directors and the Directors as a result declare his office to be vacant;
- (5) ceases to be a Member;
- (6) holds any office of profit under Westmont; or
- (7) is directly or indirectly interested in any contract or proposed contract with Westmont and fails to declare the nature of the interest as required by the Act.

## **POWERS AND DUTIES OF DIRECTORS**

### **31. Powers of Directors**

31.1 Subject to the Act and this Constitution, the oversight of the business and affairs of Westmont shall be vested in the Directors who may exercise all powers of Westmont which are not by the Act or this Constitution required to be exercised by Westmont in general meeting.

31.2 No resolution passed by Westmont in general meeting shall have the effect of invalidating any prior act of the Directors which would have been valid if the resolution had not been passed.

### **32. Borrowing Powers**

32.1 The Directors may exercise all the powers of Westmont to:

- (1) raise or borrow any sum or sums of money for the purposes of Westmont; and
- (2) secure the payment or repayment of any amount payable by Westmont and any other obligation or liability in such manner and on such terms and conditions as they think fit

whether upon the security of any mortgage or charged upon all or any of the property, undertaking and assets of Westmont both present and future.

### **33. Negotiable Instruments**

33.1 All cheques, promissory notes, drafts, bills-of-exchange and other negotiable instruments and all receipts for money paid to Westmont must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by the persons and in the manner determined from time to time by the Directors and failing such determination by any two Directors.

### **34. Conferment of Powers**

34.1 The Directors may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Directors as they may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as they think expedient.

34.2 Powers conferred under this Clause may be exercised concurrently with the powers of the Directors in that regard and the Directors may from time to time withdraw, revoke or vary all or any of such powers.

## **DIRECTORS' DISCLOSURE OF INTEREST**

### **35. Contracts with Directors**

35.1 A Director and any firm, body or entity in which a Director has a direct or indirect material interest may in any capacity:

- (1) enter into any contract or arrangement with Westmont;
- (2) hold any office or place of profit, other than as auditor, in Westmont; and
- (3) act in a professional capacity, other than as auditor, for Westmont and any Director or firm, body or entity so contracting or being so interested is not liable to account to Westmont for any profit realised by any such contract or arrangement by reason only of the Director holding that office or of the fiduciary relationship established by the Director holding that office.

35.2 A Director must disclose his interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.

35.3 The Board shall, at its absolute discretion, determine whether the interest of a Director is material.

35.4 Where such interest is material no payment or benefit shall be paid by Westmont for such services other than for the recovery of fair and reasonable out of pocket expenses, unless the Board gives specific approval for such additional payments or benefits.

35.5 A Director's failure to make disclosure under this Clause does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

35.6 No Director shall vote as a Director in respect of any contract or arrangement in which they have a material interest and if it does purport to vote, their vote shall not be counted.

35.7 A Director may not attest the affixing of the common seal to any document relating to a contract or arrangement or proposed contract or arrangement in which the Director has an interest.

35.8 A general notice given to the Board by a Director that the Director is an officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving



Westmont and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Directors than was stated in the notice.

## **PROCEEDINGS OF DIRECTORS**

### **36. Meetings of Directors**

- 36.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- 36.2 A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of Directors by giving at least 24 hours notice of the meeting to all Directors except a Director who the person convening the meeting reasonably believes to be outside Australia.
- 36.3 Notice of a meeting of Directors need not be in writing.
- 36.4 Without limiting the discretion of the Directors to regulate their meetings under this Clause, a meeting of the Directors may with the consent of all Directors consist of a conference between Directors some or all of whom are in different places if each Director who participates is able:
- (1) to hear each of the other participating Directors addressing the meeting; and
  - (2) if he so wishes, to address each of the other participating Directors simultaneously whether directly, by conference telephone, video conferencing facility or any other form of communications equipment or by a combination of such methods. A meeting held in this way will be taken for the purposes of this Constitution to be held at the place where the largest group of participating Directors is assembled or, if no such group is readily identifiable, at the place where the Chairperson of the meeting participates. Any Director may, by prior notice to the Secretary, indicate that he wishes to participate in a meeting in such manner. In this event, the Directors, if they all consent to the meeting being held in the manner referred to in this Clause shall procure that an appropriate conference facility is arranged at the expense of Westmont. A Director who has consented to a meeting being held in the manner referred to in this Clause may only withdraw his consent within a reasonable period before the meeting.
- 36.5 No Director may leave a conference held in accordance with Clause 40.4 by disconnecting his means of communication unless he has previously obtained the express consent of the Chairperson of the meeting. A Director will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he has previously obtained the express consent of the Chairperson to leave the conference.
- 36.6 All resolutions of the Directors passed at a meeting of Directors where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

### **37. Quorum**

Until the Directors resolve to the contrary, 5 Directors personally present (or in conference in accordance with Clause 40.4) form a quorum and a quorum must be present at all times during the meeting. A Director who is disqualified from voting on a matter pursuant to Clause 39 shall be counted in the quorum despite that disqualification.

### **38. Chairperson**

- 38.1 The Chairperson shall, if present, preside as Chairperson of every meeting of the Directors.

38.2 If a meeting of Directors is held and the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or, if the Vice Chairperson is not present or is unwilling to act then the other Directors present must elect one of their number to be Chairperson of the meeting.

### **39. Voting**

39.1 A resolution of the Directors must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Directors.

39.2 Each Director shall have one vote.

39.3 In case of an equality of votes at a meeting of Directors, the Chairperson has a casting vote in addition to his deliberative vote.

### **40. Circular Resolutions by Directors**

40.1 A resolution in writing signed by a majority of the Directors for the time being entitled to vote in relation to the resolution (not being less than a quorum) and stating that the signatories are in favour of the resolution will be as valid and effectual from the time it is signed by the last Director as if it had been passed at a duly convened meeting of Directors provided each Director has received 24 hours notice of the resolution.

40.2 A resolution in writing may consist of several documents in like form each signed by one or more Directors.

40.3 Every such resolution shall be deemed to have been passed on the day and at the time at which the document was last signed by a Director.

40.4 A facsimile or electronic transmission which is received by Westmont and which purports to have been signed by a Director shall for the purposes of this Clause be taken to be in writing and signed by that Director at the time of the receipt of the facsimile or electronic transmission by Westmont in legible form.

### **41. Committee of Directors**

41.1 The Directors may form and delegate any of their powers to a Committee consisting of such Directors as they think fit and may from time to time revoke such delegation.

41.2 A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Directors. Any power exercised by a Committee shall be taken to have been exercised by the Directors.

41.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Directors contained in this Constitution.

41.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Act and this Constitution to be made entered and signed.

### **42. Validation of Acts of Directors**

42.1 All acts done:

- (1) at any meeting of the Directors; or
- (2) by a Committee; or
- (3) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person, or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

## **MINUTES**

### **43. Minutes**

43.1 The Directors must cause minutes to be kept in accordance with the Act for the purposes of recording:

- (1) the names of the Directors present at each meeting of the Directors and of Directors present at each meeting of any Committee;
- (2) all orders, resolutions and proceedings of general meetings and of meetings of Directors and of Committees;
- (3) such matters as are required by the Act to be recorded in the record books of Westmont including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

43.2 Such minutes shall be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

## **SECRETARY**

### **44. Appointment and Tenure**

44.1 There must be at least one Secretary appointed by the Directors for a term and at remuneration and on conditions determined by Special Resolution at the most recent Annual General Meeting of Westmont. Such Secretary may be an honorary Secretary.

44.2 Any Secretary so appointed may be removed by the Directors.

## **GENERAL COMMITTEES**

### **45. General Committees**

45.1 The Board may appoint committees, consisting of such persons as it shall determine, to consider any matters delegated to them by the Board for the purposes of advising the Board.

45.2 The Board will appoint a Chairperson for each such committee.

45.3 The Board may determine that a chairperson appointed under Clause 45.2 be paid for services rendered to Westmont in his or her capacity as the chairperson of a committee, where the amount payable is commercially reasonable and does not exceed the amount determined by Special Resolution at the most recent Annual General Meeting of Westmont.

45.4 Each committee shall be appointed at the first meeting of the Board in each financial year.

45.5 The Chairperson shall be an ex officio member of all committees.

45.6 The Board shall also appoint a minimum of one other Board Member to each committee that it appoints.

45.7 The Board may delegate such powers to each committee as it thinks fit.

45.8 The Board may disband any committee at any time or remove any person from a committee as it thinks fit.

## **EXECUTION OF DOCUMENTS**

### **46. Execution of Documents**

46.1 Without limiting the manner in which Westmont may execute any contract, including as permitted under the Act, Westmont may execute any agreement, deed or other document by:

- (1) two Directors signing the same; or
- (2) one Director and one Secretary signing the same.

46.2 Nothing in this Constitution requires Westmont to execute any agreement, deed or other document under common seal for the same to be effectively executed by Westmont.

## **ACCOUNTS AND INSPECTION OF RECORDS**

### **47. Accounts and Inspections**

The Directors shall cause proper financial records to be kept and must distribute copies of the financial reports of Westmont and a Director's report in accordance with the requirements of the Act and also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of Westmont or any of them will be open to the inspection of Members not being Directors.

## **NOTICES**

### **48. Service of Notices**

48.1 A notice may be given by Westmont to any Member by:

- (1) serving it on the Member personally;
- (2) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to Westmont for the giving of notices;
- (3) facsimile to the facsimile number supplied by the Member to Westmont for the giving of notices; or
- (4) sending it to the electronic address supplied by the Member to Westmont for the giving of notices.

48.2 Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.

48.3 Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.

48.4 Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.

- 48.5 A notice may be given by Westmont to the persons entitled to a share in consequence of the death, cognitive impairment or bankruptcy of a Member by:
- (1) service on the Member personally;
  - (2) sending it by post addressed to the person by name or by the title of the representative of the deceased or cognitively impaired person or the assignee of the bankrupt or by any like description at the address, if any, within Australia supplied for the purpose by the person claiming to be entitled;
  - (3) by giving the notice in any manner in which the same might have been given if the death, cognitive impairment or bankruptcy had not occurred.
- 48.6 Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of Westmont to that effect shall be conclusive evidence of service.

#### **49. Notices of General Meeting**

- 49.1 Subject to Clause 52.2, notice of every general meeting must be given in any manner authorised by this Constitution to:
- (1) every Member; and
  - (2) the auditor (if any) for the time being of Westmont.

#### **WINDING UP**

#### **50. Winding Up**

- 50.1 If Westmont is wound up:
- (1) each Member; and
  - (2) each person who ceased to be a Member in the preceding year, undertakes to contribute to the property of Westmont for the:
    - (a) payment of the debts and liabilities of Westmont (but in relation to those persons referred to in paragraph (2) above, only those contracted before the person ceased to be a Member) and payment of the costs, charges and expenses of winding up; and
    - (b) adjustment of the rights of the contributories amongst themselves such amount as may be required but not exceeding \$100.00.
  - (3) This clause 50.1 shall not apply to any member who is made an honorary Life Governor under Clause 5A.
- 50.2 If any surplus remains following the winding up of Westmont, the surplus will not be paid to or distributed among Members, but will be given or transferred to another institution or corporation which has:
- (1) Objects which are similar to the objects of Westmont as set out in Clause 3.1;
  - (2) A Constitution which requires its income and property to be applied in promoting its objects; and
  - (3) A Constitution which prohibits it from paying or distributing its income and property among its members to an extent at least as great as imposed on Westmont by Clause 3.4. The identity of the corporation or institution is to be determined by the Members at or before

the time of dissolution, and failing such determination being made, by application to the Supreme Court for determination.

## **INDEMNITY**

### **51. Indemnity**

51.1 To the extent permitted by law every Officer (and former Officer) of Westmont shall be indemnified out of the funds of Westmont against all costs, expenses and liabilities incurred by such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of Westmont under this Clause unless:

- (1) it is in respect of a liability to another person (other than Westmont or a related body corporate to Westmont) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (2) it is in respect of a liability for costs and expenses incurred :
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
  - (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer (or former Officer) under the Act.

### **52. Payment of Indemnity Policy Premium**

52.1 To the extent permitted by Act Westmont may at the discretion of the Directors enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of Westmont against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (1) a liability arising out of conduct involving a wilful breach of duty in relation to Westmont; or
- (2) a contravention of Sections 232(5) or (6) of the Act.

The Directors shall have the discretion to approve the terms and conditions of any such policy of insurance.

52.2 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then Westmont shall not be required to indemnify the Officer under Clause 51 except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

### **53. Indemnity to Continue**

53.1 The indemnity granted by Westmont contained in Clause 51 shall continue in full force and effect notwithstanding the deletion or modification of that Clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

### **54. Maintaining a Gift Fund**

**Westmont will maintain a Gift Fund which shall be called Westmont Aged Care Services Limited Gift Fund.**

- (a) *to which gifts of money or property for that purpose are to be made;*
- (b) *to which money received by Westmont because of those gifts is to be credited; and*
- (c) *that does not receive any other money or property.*

### **55. Limits on use of Gift Fund**

**Westmont must use the following for the Principal Purpose of Westmont:**

- (a) *gifts made to the Gift Fund;*
- (b) *any money received because of those gifts.*

**56. Winding up of the Gift Fund**

*If the Gift Fund is wound up, or if the endorsement (if any) of Westmont as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made under Subdivision 30-B of the Income Tax Assessment Act 1997.*

**57. Bank Account**

*Westmont must maintain a separate bank account for the Gift Fund.*

**58. Gift Fund forms part of Westmont**

*It is declared the Gift Fund forms part of Westmont's assets.*