

# **A PLEBISCITE TO APPROVE GOVERNING STATUTES FOR THE AUSTRALIAN ASSOCIATION OF THE ORDER OF MALTA**

## **EXPLANATORY MEMORANDUM FOR MEMBERS**

### **PART A. BACKGROUND**

1. On 23 March 2019 the Grand Master of the Order of Malta, with the consent of the Sovereign Council, decreed that the Australian Association of the Order elect an Executive Council to be responsible for the running of the Association and arrange for the approval of new governing statutes.

2. Following its election in August 2019, the new Executive Council determined that the now obsolete governing statutes of the Order, together with those submitted to and accepted by the membership in a plebiscite held in 2017, be reviewed and, where appropriate, amended. The objective was to establish a national governance structure based on the members being segregated into semi-governing regions for the conduct of their activities, overseen by the Executive Council and otherwise operating in conformity with the universal Constitutional Charter and Code of the Order. When settled, this structure was to be framed in a constitution that would be put to the members for their consideration in another plebiscite and if accepted, referred for adoption at a later National Assembly.

3. Although the preferred form of governance was a company limited by guarantee, the 2017 plebiscite accepted that governance of the Australian Association be, for some time, by two entities acting interdependently, and being the existing unincorporated association represented by the National Statutes, as amended, and the Australian Association of the Order of Malta Ltd (AAOML), its trustee and service provider, with an amended Constitution. This was because potentially, some bequests to the Order may have been made to the unincorporated Australian Association. Also, this was necessary to ensure that Order of Malta Hospice Home Care (VIC) Inc (OMHHC), an unincorporated association, remain a body ultimately under the control of the Executive Council and, finally, to secure all charitable registrations.

4. It is now proposed that AAOML solely represent and govern the Australian Association, which will involve (among other things) the unincorporated Australian Association being wound up (and its assets and liabilities transferred to AAOML) and AAOML adopting a new constitution. The restructure would be undertaken in a manner such that:

- a) the continuing entitlement of AAOML and OMHHC to their current ACNC registration or ATO tax concessions should not be affected, although the changes to the Constitutions can be expected to be reviewed and assessed by the ACNC as part of its normal regulatory activities;
- b) bequests to the Order made to the wound-up Australian Association should be secured for the benefit of the Order; and
- c) AAOML would become the sole member of OMHHC.

5. MinterEllison has provided advice in respect of these matters.

## **PART B. A CONSTITUTION FOR AAOML**

6. Attached is the Constitution that is proposed for AAOML (**Proposed Constitution**) prepared as a consequence of that advice, which is submitted to the membership for comment. If it is accepted by a majority of them, it will again be put to the membership, together with all other matters necessary for its adoption, at the National Assembly proposed to be held in 2021.

7. The text of the Proposed Constitution predominantly follows that of the Constitution submitted to the 2017 plebiscite. Changes of significance from that document are that:

(a) the Proposed Constitution will be put to AAOML's members for approval by a special resolution intended to take effect from the date of the dissolution of the unincorporated Australian Association (which takes effect upon Grand Master and Sovereign Approval). This Grand Master approval will be sought subject to and following a relevant resolution of the members of the unincorporated Australian Association approving the dissolution, which is proposed to be put to the members at the 2021 Assembly. Therefore, the Proposed Constitution's application needs to be projected forward to that event and this timing is reflected in the Preamble (**Art. 1**);

(b) the objects of AAOML are, consistent with the objects of the Australian Association, to propagate the Christian virtues of charity and brotherhood in the performance of works of mercy, particularly by aiding the sick, migrants, refugees and exiles, abandoned children and the poor and generally to exercise the charisms of the Order in the performance of such works of mercy (**Art. 3**);

(c) certain references to the Constitutional Charter and Code have been removed as they relate to matters that are ultimately only exercisable by the Grand Master or at his direction;

(d) all references to the current National Statutes of the Australian Association have been omitted as it is proposed that the Proposed Constitution will be adopted upon the dissolution of the unincorporated Australian Association;

(e) to comply with the Grand Master's above decree, at the date of AAOML's adoption of the Proposed Constitution, the Executive Council, whose members currently exist as the members and directors of AAOML, will constitute AAOML's Board of Directors with each continuing to hold the office to which they are currently elected for the term specified in Schedule A to the Proposed Constitution (to facilitate the staggering of these terms implied by **Art. 27.4** and **Art. 27.6**);

(f) to enable the Executive Council to manage the risks of the company and to gauge the suitability of candidates for office, Art 45.11 permits the establishment of committees to be dedicated to attend to these matters among others;

(g) the standard form of the Regional Statutes, referred to in Art. 58, defined in Art. 74 and appearing as **Schedule B**, have been amended. Amendments include the addition of a purpose of a Region, the identity of its members, the inclusion on a Council of elected members, their terms of office, the omission of the office of Regional Treasurer, a process for the endorsement of Regional Chaplains and the conduct of elections;

(h) references to OMHHC have been omitted from the Proposed Constitution, except that Art. 59.4 recites the intention for the South Eastern Region to convert OMHHC into a company limited by guarantee provided that the Executive Council retains control over its activities (to the extent permitted by law) and is able to appoint its board of directors. OMHHC was duly established as a subordinate body of the Australian Association in 1974. See the following PART C for its control mechanism;

(i) as the Code reserves to the Grand Master disciplinary measures, references to such measures, other than to the establishment of a Disciplinary Commission constituted by the President (Art. 60), have been omitted; and

(j) the amended Regional Statutes provide for the appointment of a Regional Returning Officer to conduct elections to elect elected members of the Regions to the Regional Council (Regional Statutes Art. 10).

## **PART C. OMHHC**

8. It is proposed that AAOML will retain control of OMHHC by becoming its sole member upon OMHHC's conversion to a public company limited by guarantee. Further, upon conversion, all of the rights and entitlements of OMHHC should be preserved to the public company limited by guarantee including all of its charitable registrations.

9. It is proposed that the membership of OMHHC, being the members of the Order in the South Eastern Region (SER), resolve that an application to convert OMHHC to a public company limited by guarantee be made once the unincorporated Australian Association has been dissolved and AAOML's new constitution adopted (which steps are subject to approval by the AAOML's members and the National Assembly in 2021, as provided in Part D. below).

10. The proposed conversion application would include a new constitution for OMHHC, to take effect from conversion to a public company limited by guarantee. The new constitution provides that OMHHC's board is subject to direction of AAOML (as OMHHC's member) and that governance of OMHHC be by a Board of Directors comprising the members of the SER Regional Council from time to time or as otherwise determined by AAOML as member. The objects of OMHHC under the new constitution mirror the objects of AAOML under the Proposed Constitution, within the South Eastern Region.

## **PART D. THE NATIONAL ASSEMBLY OF 2021**

11. A National Assembly of the Order will be conducted in Melbourne between the 25th and the 27th days of June 2021 in accordance with the National Statutes and, subject to the result of this plebiscite, the agenda of which will seek that the assembly consider, and if thought fit, transact business to the following effect:

(a) that the Australian Association acknowledges and accepts that the members and Directors of AAOML have resolved to adopt the Proposed Constitution as the Constitution of AAOML with effect from dissolution of the unincorporated Australian Association and will register as

members of AAOML from that date all members of the Australian Association who have applied for membership;

(b) the Australian Association resolving that the Australian Association, as defined by the National Statutes, be wound-up and that AAOML be its successor in every respect, subject to ratification by the Grand Master and the Sovereign Council, noting the intention that that the property of the Australian Association be transferred to AAOML (which disposition of property is a matter for the Grand Master and Sovereign Council to determine under the National Statutes);

(c) that the Australian Association acknowledges that OMHHC intends to convert itself into a public company limited by guarantee that is a wholly owned subsidiary of AAOML and that is administered by a Board of Directors determined by, and subjected to the oversight of, AAOML, noting that the conversion application will be lodged only once (i) the Australian Association has been wound up and AAOML's Proposed Constitution takes effect; and (ii) OMHHC has received a consent to be a member from AAOML and resignations from members from OMHHC's existing members.

12. The Notice to the membership convening this Assembly will include an application for membership in AAOML and (for members of the Victorian Branch) a resignation from OMHHC (expressed to be effective upon conversion), to be completed and returned together with a completed application to attend the Assembly as well as payment of the annual subscription. In accordance with the National Statutes, only financial members will be permitted to cast a vote at the Assembly and votes will be accepted by a proxy.

## **PART E. OTHER MATTERS**

13. The combination of the inclusion of a Preamble and the adoption of the Objects in the revoked Statutes in the Proposed AAMOL Constitution gives weight to AAOML being the successor of the Australian Association following its reconstitution and will be helpful in proceedings commenced to claim an entitlement to testamentary benefactions made in favour of the former entity. To provide further support, should it be needed, the record of the matters transacted by the membership at the 2021 Assembly will be secured in the archives of the Australian Association and will be available as further evidence of this succession.

14. Adoption of the Proposed Constitution and the winding-up of the unincorporated Australian Association will mean existing State Branches of the Australian Association will be replaced by operating Regions under the Proposed Constitution, administered by the Regional Hospitaller supported by a Regional Council. The intention being that the Regions will be responsible for the continuance of the charitable works and pious activities of the Order in the Regions as successors to State Branches.

15. Following the adoption of the Proposed Constitution, the Executive Council will apply for AAOML to become a juridical body and will make regulations as may be appropriate for ensuring compliance with the Constitutional Charter and Code (as it is permitted to do under Art. 35-33.3(e) of the Proposed Constitution).

16. In the SER, the reconstituted OMHHC will continue to co-venture Eastern Palliative Care Association Inc, nominating members of that Region as personnel for its governance to ensure that the delivery of its wide range of palliative services are provided according to the mission of the Order and that its members and volunteers can act in the provision of those services. OMHHC will also continue to hold occupation rights to premises occupied by the Region.

17. Article 5 of the Regional Statutes, appearing in Schedule B of the Proposed Constitution, provides that a Region be administered by a Regional Council with certain elected members and Article 10 of the Regional Statutes provides how elections of them are to be conducted. Following ratification of the unincorporated Australian Association's dissolution by the Grand Master and the Sovereign Council, the Executive Council will determine when elections will be conducted for all Regions excepting the South Eastern Region. The inaugural Council of the South Eastern Region will comprise the existing Board of Management of OMHHC which is composed of the Regional Hospitaller and 8 members of that Region. Following the conversion of OMHHC to a public company limited by guarantee, this Board will be the Regional Council of the South Eastern Region.

18. As the Corporations Act requires a Regional Hospitaller be elected by the total membership of AAOML, the Executive Council has determined that, upon the adoption of the Proposed Constitution, it will establish a Nominations Committee pursuant to Art. 45.11 to seek to identify well qualified candidates for positions on the Executive Council. In addition, it has also determined to establish a formal protocol that will permit a Region to nominate a preferred candidate to fill a vacant Regional Hospitaller candidacy, which, when identified, is to be made known to the membership by the Nominations Committee as being the preferred candidate for that role. By this means it

intends to preserve, to the extent possible, the existing convention under the National Statutes that enables a Branch to nominate a member from its State for the Office of Vice-President. This proposal is not intended, however, to prevent other nominations for the relevant positions being made.

19. The engagement of Minter Ellison has been extended to attend to and transact all matters requiring attention consequential on the resolutions made by the Assembly, following the receipt of the approval of the Grand Master. Minter Ellison have also offered generously to significantly reduce its fee for all work attended to.

20. In the hopefully, unlikely, event that a National Assembly cannot be held in June 2021, arrangements will be made for the transaction of the business referred to in Part D, to be conducted by technological means.