

A PLEBISCITE TO APPROVE A CONVERSION OF ORDER OF MALTA HOSPICE
HOME CARE (VIC) INCORPORATED (OMHHC)

EXPLANATORY MEMORANDUM FOR MEMBERS OF THE VICTORIAN BRANCH OF
THE ORDER OF MALTA (VICTORIAN BRANCH)

PART A. BACKGROUND

1. The purpose of this memorandum is to outline the proposal seeking the approval of the Victorian Branch to the conversion of OMHHC into a public company limited by guarantee (**CLG**) that is a wholly owned subsidiary of the Australian Association of the Order of Malta Limited (**AAOML**) sought by the Executive Council in its Explanatory Memorandum issued 7 December 2020 (**AA Memorandum**).
2. The process for OMHHC converting into a CLG, and the impact of that conversion on the activities of the Victorian Branch and OMHHC, are set out in this memorandum.
3. The Constitution proposed for AAOML has the effect of replacing the Victorian Branch with the South Eastern Region (**SER**) and creating the office of Regional Hospitaller (formerly a Vice-President), who together with elected members, constitute a Regional Council (SER Regional Council) to administer the SER.
4. The AA Memorandum indicates that once converted into a CLG, OMHHC will continue to co-venture the Eastern Palliative Care Association Inc. (EPC) [and hold an occupation licence from St Vincent's Hospital]. The proposed AAOML constitution will provide that:
 - (a) following the adoption of the AAOML Constitution, the South Eastern Region may convert OMHHC into a public company limited by guarantee of which the sole member is AAOML (without any prior direction of the Executive Council); and
 - (b) the conversion in paragraph (a) is conditional on the Executive Council retaining control over OMHHC's activities (to the extent permitted by law) and OMHHC having an appointed board of directors which comprises AAOML's members (being the elected Regional Council of the Region) or such others nominated by the Executive Council,

and the OMHHC Constitution has been drafted on the basis of this. Therefore, once OMHHC converts into a CLG, the status quo of the activities of the Branch, as the SER, will be maintained.

PART B. CONVERSION OF OMHHC TO A COMPANY

5. OMHHC is an incorporated association formed in accordance with the Statutes of the Australian Association to provide home care and other assistance to persons suffering serious illness and to carry on like charitable services. Its members are the members of the Executive Council, the members of the Branch and such others appointed by its Board or the Executive Council, not exceeding one third of its membership. The Executive Council appoints the Board of OMHHC. If the Executive Council chooses not to appoint the Board of OMHHC, the Board of OMHHC is elected by OMHHC's members.

6. The conversion of OMHHC into a CLG, as proposed in the AA Memorandum can be achieved by the making of an application under Part 8 of the *Associations Incorporation Reform Act 2012* (Vic) (**Associations Act**) and seeking that it be registered as a public company limited by guarantee under Part 5B.1 of the *Corporations Act 2001*(Cth) (**Corporations Act**). The effect of converting OMHHC into a CLG is summarised as follows (and set out in more detail in s.601BM of the Corporations Act and s.115 of the Associations Act):

- (a) the conversion will not create a new legal entity;
- (b) the conversion does not affect OMHHC's existing property, rights or obligations (except as against its members in their capacity as members); and
- (c) the conversion does not render defective any legal proceedings by or against OMHHC or its members.

7. Upon conversion into a CLG as proposed, OMHHC will become a wholly owned subsidiary and be subject to the control of AAOML. Prior to the application for OMHHC to convert into a CLG being lodged, certain conditions will need to be satisfied, including (broadly and among other things):

- (a) AAOML consenting to be a member of OMHHC (with effect from OMHHC's conversion into a CLG);

- (b) the proposed AAOML constitution being adopted by the members of AAOML (this will occur concurrently with the Australian Association being wound up);
- (c) OMHHC's members passing the required resolutions approving an application being made to convert OMHHC into a CLG, including the form of the new constitution that will apply from conversion (which constitution will outline OMHHC's subsidiary status and control mechanisms exercisable by AAOML as OMHHC's parent company); and
- (d) OMHHC's members resigning from their membership, with effect from OMHHC's conversion into a CLG.

8. The Executive Council proposes that:

- (a) a meeting of OMHHC's board be convened to approve (with effect from the winding up of the unincorporated Australian Association):
 - (i) the proposal to convert OMHHC into a CLG; and
 - (ii) the form of the conversion application; and
- (b) a meeting of OMHHC's members be held to consider and if thought fit, resolve (with effect from AAO's dissolution) by special resolution to approve:

OMHHC's application for conversion to a CLG in accordance with s.110(1) of the Associations Act including the name, and form of constitution, that OMHHC will adopt on conversion, subject to receipt of resignations of OMHHC's existing members and AAOML's consent to be a member.

PART C. A CONSTITUTION FOR OMHHC

9. Attached is the Constitution that is proposed for OMHHC upon its conversion to a public company limited by guarantee (**OMHHC Constitution**), to be submitted to ASIC along with the conversion application and adopted with effect from conversion.

10. The OMHHC Constitution adopts a shorter form than the Proposed AAOML Constitution. This is because it does not need to contain provisions

that will govern a broader membership and as a wholly owned subsidiary of AAOML it has been formed for a specific purpose, here to represent the Order as a co-venturer of EPC and hold property occupation rights. In all other respects it presents as a not-for profit company registered as a Charity with the ACNC with the following salient features:

- (a) a Preamble that gives context to its origin and a rationale for its objects (cl. 1);
- (b) objects that are aligned with the objects of AAOML but focused on the SER (cl. 3);
- (c) recognition that there only be one member and that membership is not transferrable (cl. 4); and
- (d) a Board of Directors who will be the members of the SER Council, unless otherwise determined by the Executive Council (cl. 6; Schedule 2) with the initial Board being the current members of the Board of OMHHC [who shall serve for the terms nominated for them in Schedule C of the OMHHC Constitution].

PART D. OTHER MATTERS

11. Bank Accounts of the Branch that were previously operated by OMHHC will following the reconstitution be operated by the SER Council under the proprietorship of AAOML. This change will be effected following receipt of the Grand Master's approval of the AAOML Proposed Constitution and will assist in the consolidation of the accounts of the Australian Association and their annual audit.

12. The application to convert OMHHC will be made following the adoption of the Proposed Constitution of AAOML. Subject to and with effect from the acceptance of the conversion application:

- (a) the SER Regional Council, being the existing members of OMHHC, will resign their memberships;
- (b) AAOML's consent to be the sole member of OMHHC will take effect (and the register of members of OMHHC will accordingly be updated); and

- (c) the OMHHC Constitution will become the constitution of OMHHC.

13. Minter Ellison have been engaged to attend to all applications and registrations required to affect the reconstitution of OMHHC and, as with AAOML, have offered generously to significantly reduce its fees for this work.