

APPENDIX 27

INSTRUMENT OF DELEGATION UNDER THE SUPPORTED RESIDENTIAL FACILITIES ACT 1992

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

Sub-delegation

In exercise of the power provided to me by the Council on the 21 February 2017 as above, I, Colin John Davies, Chief Executive Officer on this Twenty-First day of February 2017 hereby sub-delegate the following powers to the officer or officers of the Council as indicated in the column marked "Subdelegate" (including any person appointed to act in any such position).

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

	SUB-DELEGATE
1. Appointment of Authorised Officers	
1.1 The power pursuant to Section 21(1) of the Supported Residential Facilities Act 1992 ("the Act") to appoint a person to be an authorised officer under the Act;	
1.2 The duty pursuant to Section 21(2) of the Act to issue to an authorised officer an identity card; and	
1.3 The power pursuant to Section 21(4) of the Act by notice in writing served on an authorised officer, to revoke the appointment as an authorised officer.	
2. Application for a Licence	
2.1 The power pursuant to Section 24(3) of the Act by notice in writing not later than two months after a licence application has been made, to require the	

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	applicant to furnish specified information;	
2.2	The power pursuant to Section 24(5) of the Act to require any information included in an application or required by a notice to be verified by statutory declaration;	
2.3	The power pursuant to Section 24(9) of the Act subject to such conditions as the Delegate thinks fit, to conditionally approve the issue of a licence in respect of proposed premises and the duty where satisfied that the premises have been established in substantial compliance with those conditions (and within such a period, if any as the Delegate may have determined), to grant a licence; and	
2.4	Where an application for a licence is refused, the duty pursuant to Section 24(10) of the Act notify the applicant in writing of the refusal, the reasons for the refusal, and any appeal rights that the applicant has under the Act.	
2.5	The duty, pursuant to Section 25(1) of the Act in considering an application for a licence in respect of the use of premises as a supported residential facility, to take into account those matters specified in this Section and such other matters as the Delegate thinks fit;	
2.6	The duty pursuant to Section 25(2) of the Act in determining whether or not an applicant is suitable to be granted a licence, to have regard to those matters specified in this Section and to such other matters as the Delegate thinks fit;	
2.7	The duty pursuant to Section 25(3) of the Act in determining whether or not premises are suitable to be used as a supported residential facility, to have regard to those matters specified in Section 25(3) of the Act and to such other matters as the Delegate thinks fit;	
2.8	The duty pursuant to Section 25(4) of the Act not to grant a licence where it appears that the facility would not be administered in accordance with the principles prescribed in Part 2 of the Act.	
3.	Renewal of Licence	

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<p>3.1 The power pursuant to Section 27(3) of the Act at the Delegate's discretion, to determine a late application for renewal provided that the applicant pays the prescribed late application fee;</p>	
<p>3.2 The duty pursuant to Section 27(4) of the Act by notice in writing served on the applicant, to give a decision on an application for the renewal of a licence before the date of expiry of the licence and where the Delegate decides to refuse an application for renewal of a licence, the duty to state in the notice of refusal the reasons for the refusal and the appeal rights that the applicant may have under the Act.</p>	
<p>3.3 The power pursuant to Section 28 of the Act to refuse to renew a licence on any ground on which a licence may be cancelled.</p>	
<p>4. Licence Conditions</p>	
<p>4.1 The power pursuant to Section 29(2) of the Act to impose licence conditions with respect to such matters as are contemplated by the Act or as the Delegate considers necessary or expedient for the purposes of the Act;</p>	
<p>4.2 Pursuant to Section 29(3) of the Act where conditions are imposed by the Delegate:</p>	
<p>4.2.1 if imposed at the time of grant or renewal of the licence – the duty to include them in the licence itself;</p>	
<p>4.2.2 if imposed during the currency of the licence – the duty to impose them by notice in writing served on the holder of the licence;</p>	
<p>4.2.3 the power to vary or revoke conditions at any time by notice in writing served on the holder of the licence;</p>	
<p>4.3</p>	
<p>5. Transfer of Licence</p>	
<p>5.1 The duty pursuant to Section 30(4) of the Act, upon due application under Section 30 of the Act and payment of the prescribed fee, to transfer the licence to the proposed transferee if satisfied that the</p>	

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<p>proposed transferee would be a suitable person to be granted a licence under the Act.</p>	
<p>6. Cancellation of Licence</p>	
<p>6.1 The power pursuant to Section 31(1) of the Act, to cancel a licence, on reasonable grounds, where satisfied that any of the matters specified in this Section are applicable;</p>	
<p>6.2 The duty pursuant to Section 31(2) of the Act before acting under this Section, to notify the holder of the licence in writing of the proposed cancellation of the licence and allow the holder of the licence at least 28 days within which to make submissions in relation to the proposed action;</p>	
<p>6.3 The power pursuant to Section 31(3) of the Act pending the cancellation (or possible cancellation) of a licence under this Section, to impose conditions to protect the interests of the residents of the facility; and</p>	
<p>6.4 The power pursuant to Section 31(4) of the Act, to appoint an administrator of the facility and to take such other steps as may be reasonable to secure the proper care of the residents of the facility.</p>	
<p>7. Appeals</p>	
<p>7.1 The power pursuant to Section 32(5) of the Act where the Delegate is satisfied that an applicant for renewal of a licence has instituted or intends to institute an appeal, to order that the licence remain in force until the determination of the appeal; and to impose such conditions as the Delegate thinks fit.</p>	
<p>7.2 The power pursuant to Section 32(7) of the Act if a person contravenes, or fails to comply with, a condition imposed under Section 32(5) of the Act to revoke any order to which the condition relates.</p>	
<p>7.3 The duty pursuant to Section 33(1) of the Act, and subject to Section 33(2), where application is made for a licence in respect of a facility that was in operation during the period of three (3) months immediately preceding the commencement of the Section, to upon payment of the prescribed fee, grant a licence in accordance with the Act for a term of one</p>	

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year.	
8. Appointment of Manager	
8.1 The power pursuant to Section 34(1) of the Act where the proprietor of a facility is not directly involved in the management of the facility or the proprietor of a facility is a body corporate, to approve a natural person for the purpose of managing the facility under that person's personal supervision.	
8.2 The power pursuant to Section 34(2) of the Act to extend the period of management without supervision.	
9. Death of Licensee	
9.1 The power pursuant to Section 35 of the Act, where the holder of a licence dies, to approve the personal representative or some other person to be taken to be the holder of the licence (on the same conditions as applicable to the former holder of the licence) as from the date of death until the expiration of six months from that date or until such later date as may be fixed by the Delegate.	
10. Recision of Resident Contract by Proprietor	
10.1 The power pursuant to Section 39(2)(b) of the Act to approve the method of providing a termination notice subject to this Section.	
11. Disputes	
11.1 The power pursuant to Section 43(2) of the Act on an application made in relation to any of the matters specified in Section 43(1) of the Act, to explore any possible avenue of achieving conciliation between the parties and for these purposes, the Delegate, may as he/she thinks fit, take any action in accordance with Section 43(3) of the Act;	
11.2 The power pursuant to Section 43(6) of the Act, to require an applicant, to furnish such further information in relation to the subject matter of the application as the Delegate thinks necessary, and to verify any information by statutory declaration;	
11.3 The duty pursuant to Section 43(7) of the Act to give the applicant and the respondent reasonable notice	

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	of the time and place of any hearing of the application;	
11.4	The power pursuant to Section 43(9) of the Act where satisfied that an interim order is justified by the urgent circumstances of the case, to make an interim order pending final resolution of the matter.	
11.5	The power pursuant to Section 43(11) of the Act to vary or revoke an order made under Section 43 of the Act;	
11.6	The power, pursuant to Section 43(12) of the Act -	
	11.6.1 to decline to proceed with an application under this Section until satisfied that reasonable steps have been taken to resolve the dispute pursuant to other procedures specified by the Delegate;	
	11.6.2 to decline to proceed with an application under this Section if the Delegate considers that it would be more appropriate for proceedings to be taken in a court or tribunal constituted by law; or	
	11.6.3 to decline to proceed (or further proceed) with an application under this Section if proceedings related to the subject matter of the application have been commenced in a court or tribunal constituted by law; and	
11.7	The duty pursuant to Section 43(13) of the Act in determining any application under this Section, to act with as much expedition as is reasonably practicable in the circumstances.	
12.	Attendance by Health Service Providers etc.	
12.1	The power pursuant to Section 47(1) of the Act to approve a health service provider, social worker, or any person, for the purposes of Section 47.	
13.	Complaints	
13.1	The power pursuant to Section 49(1) of the Act to receive a complaint about the management of a supported residential facility or any residential-only premises or about the conduct of a resident of a supported residential facility or any residential-only	

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premises.	
13.2 The power pursuant to Section 49(2) of the Act to require a complaint to be reduced to writing.	
13.3 The power pursuant to Section 49(3) of the Act to take such action as the Delegate thinks fit in view of the complaint.	
13.4 The power pursuant to Section 49(4) of the Act to appoint an authorised officer to carry out an investigation into the circumstances surrounding the complaint and to attempt to resolve the matter as expeditiously as possible.	
14. Pursuant to Sections 57(5) and (6) of the Act where the proprietor of a facility who holds a licence under the Act applies to the Council for an exemption from a regulation that applies to the facility and the Delegate is satisfied -	
14.1 that the Delegate can grant the exemption without seriously affecting the interests of a resident of the facility; and	
14.2 that it is appropriate for the Delegate to grant the exemption in the circumstances of the particular case, the power to, by notice in writing to the proprietor, exempt the proprietor from the regulation to which the application relates, on such conditions as the Delegate thinks fit.	

DELEGATIONS UNDER THE SUPPORTED RESIDENTIAL FACILITIES REGULATIONS 2009	
15. The duty pursuant to Regulation 4(1) of the Supported Residential Facilities Regulations 2009 (“the Regulations”) to decide an application for a licence under Section 24 of the Act within eight weeks of the application being made.	
16. The duty pursuant to Regulation 4(2) of the Regulations, in considering an application for a licence in respect of the use of premises (or proposed premises) as a supported residential facility, to take into account the extent to which the premises (or proposed premises) accord with the standards prescribed by or under the Building Code of Australia.	

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<p>17. The power pursuant to Regulation 5(2) of the Regulations to receive a copy of a prospectus, or a copy of an alteration to a prospectus, and a copy of the written statement required to accompany the prospectus or alteration to the prospectus pursuant to Regulation 5(2)(b) of the Regulations.</p>	
<p>18. The power pursuant to Regulation 14(1)(b) of the Regulations to receive information of any untoward medical event that occurs in relation to a resident of a facility.</p>	
<p>19. The power pursuant to Regulation 17(2) of the Regulations to approve an acting manager for the purpose of appointment to or otherwise assuming the duties of the office of manager of a facility if, for a period exceeding seven days, a manager is absent from the duties of office, or the position of manager is temporarily vacant and a resident of the facility is in need of personal care services.</p>	
<p>20. The power pursuant to Regulation 18(1) of the Regulations to approve a registered nurse as being a person who has appropriate qualifications, skills and experience to oversee the provision of nursing care at a facility.</p>	

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<p>21. The power pursuant to Regulation 18(2) of the Regulations, if there is a change in the type or level of services provided at a nursing home, to revoke, by notice in writing to the proprietor, an approval under Regulation 18(1) of the Regulations and require that a new appointment be made to ensure that the person who oversees the provision of nursing care at the facility has the qualifications, skills and experience appropriate to the facility.</p>	
<p>22. The power pursuant to Regulation 21(1)(b) of the Regulations to approve a kitchen at a facility otherwise than in accordance with the requirements of Regulation 21(1)(b) of the Regulations.</p>	
<p>23. The power pursuant to Regulation 21(3)(e) of the Regulations to require the fitting of handrails, ramps and, for a multi-storey building, lifts.</p>	
<p>24. The power pursuant to Regulation 24(1) of the Regulations to direct the proprietor of a facility to install a communication system at the facility.</p>	
<p>25. The duty pursuant to Regulation 26(2) of the Regulations to remit amounts payable to the indemnity fund under Section 56(4) of the Act to the fund manager within 28 days after the end of the financial year in which they are received by the Council.</p>	

