



**SAVE THE CHILDREN AUSTRALIA**

**CONSTITUTION**

**Updated to 17th May 2017**

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Corporations Act 2001 (Cth)

## Constitution

of

## SAVE THE CHILDREN AUSTRALIA

ACN 008 610 035

A Company Limited by Guarantee

### 1 Preliminary

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#### Definitions

- 1.1 The following words have these meanings in this Constitution unless the contrary intention appears.

**Alternate Director** means a person appointed as an Alternate Director under Article 7.6.

**Annual Membership Fee** means the fee which is prescribed by the Company which may be varied from time to time.

**Article** means an Article of this Constitution.

**ASIC** means the Australian Securities and Investments Commission.

**Board** means the Board of Directors that is to take full formal responsibility for the Company.

**Board Audit Committee** has the meaning given in Article 7.17B.

**Board Nomination Committee** has the meaning given in Article 7.17A.

**Company** means Save the Children Australia (ACN 008 610 035).

**Constitution** means this Constitution as amended from time to time, and a reference to a particular Article has a corresponding meaning.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Life Member** means a person admitted as, or converted to, a Life Member by the Directors pursuant to Article 2.4, or who is a Life Member by virtue of Article 2.4A.

**Member** means a person admitted as a member under Article 2.

**Ordinary Member** means a Member who is not a Life Member.

**Part** means a Part of this Constitution.

**Register** means the register of Members of the Company under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under Article 8.1 as Secretary of the Company; and where appropriate includes an Acting Secretary and a person appointed by the Directors to perform all or any of the duties of a Secretary of the Company.

**Section** means a section of the Corporations Act.

**State** means each of New South Wales (which, for the purposes of Articles 1.7, 1.11, 2, 5 and 10, and the definition of State Council, shall be deemed to include the Australian Capital Territory), Queensland, South Australia (which, for the purposes of Articles 1.7, 1.11, 2, 5 and 10, and the definition of State Council, shall be deemed to include the Northern Territory), Tasmania, Victoria and Western Australia.

**State Council** means a committee established in accordance with Article 10 and responsible to the Board.

**State Council Member** means a person appointed by the Board to a State Council in accordance with Article 10.

## Interpretation

- 1.2 In this Constitution unless the contrary intention appears -
- (a) words importing any gender include all other genders;
  - (b) the word “person” includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
  - (c) the singular includes the plural and vice versa;
  - (d) a reference to a law includes regulations and instruments made under the law;
  - (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
  - (f) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time.

- 1.3 Unless the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- 1.4 Headings are inserted for convenience and are not to affect the interpretation of this Constitution.
- 1.5 This Constitution is divided into Parts as indicated by its index.

### **Replaceable Rules Not to Apply**

- 1.6 The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company unless specifically incorporated by a provision of this Constitution.

### **Changes to Constitution**

- 1.7 All alterations to the Constitution shall comply with the Corporations Act. The provisions of Articles 1.7, 1.11, 5.1, 5.5, 5.5B, 5.6, 5.7, 5.8, 6.3, 7.17A(b) and 10 shall not be altered without the approval of a simple majority of the Members in each of the States affected by the proposed alteration and voting on such alterations.

### **Objects and Powers**

- 1.8 The objects of the Company are -
  - (a) to ensure that children in Australia and overseas irrespective of race, colour or creed, have the means of survival, receive protection and have access to nutrition, health and education;
  - (b) to work in accordance with the Rights of the Child first advocated in 1919 by the Save the Children founder Eglantyne Jebb and as expressed today in the United Nations Convention on the Rights of the Child for the welfare of children;
  - (c) to promote the well being of children everywhere and to address the issues which make children disadvantaged both at home and abroad;
  - (d) to advocate the rights of children in accordance and consistent with the United Nations Convention on the Rights of the Child, and to seek to extend and improve the rights set out in that Convention;
  - (e) to operate in a manner so that Save the Children in Australia complies with the ACFID (Australian Council For International Development) Code of Conduct, and subsequent codes of conduct and codes of ethical outcomes as approved by the Board;
  - (f) to pursue the objectives of paragraph (a) through the cooperation with Members, the international Save the Children Association and its members;

- (g) to act as the Australian link to, and in a manner consistent with the objectives of the international Save the Children Association;
- (h) to protect the name and logo of “Save the Children”;
- (i) to do all things as are incidental or conducive to the attainment of the above objects or any of them;
- (j) to extend and maintain the Company’s presence and influence throughout Australia.

### **Use of Income and Property**

- 1.9 All income and property of the Company must be applied in promotion of the objects of the Company and not be distributed among Members, and no dividends shall be paid to Members

### **Deductible Gift Recipient (DGR) Status**

- 1.10 A Public Fund Committee will be established to administer the Save the Children Fund Overseas Relief Funds. The purpose of the fund is to solicit and receive donations towards the carrying out of the objects of the Save the Children Australia to the extent that they are solely for the relief of persons in developing countries as declared by the Minister of Foreign Affairs for the purposes of Overseas Aid Gift Deduction Scheme.

If the Company ceases to be a DGR in respect of the operation of the Save the Children Fund Overseas Relief Fund under item 9.1.1 of the table in section 30-80 of ITAA 97, any surplus amounts in the Overseas Relief Fund must be transferred to a fund, authority or institution:

- (1) which is charitable at law; and
- (2) gifts to which are deductible on the basis of item 9.1.1 of the table in section 30-80.

### **DGR as a Public Benevolent Institution**

- 1.10A (a) This article only applies if the Company is endorsed as a DGR as a public benevolent institution under item 4.1.1 of the table in section 30-45 of the Income Tax Assessment Act 1997 (ITAA 97).
- (b) Deductible Contributions have the meaning given in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event.
  - (c) The Company must maintain a management account (Gift Account):
    - (1) to identify and record gifts and Deductible Contributions;
    - (2) to identify and record any money received by the Company because of those gifts and Deductible Contributions; and
    - (3) that does not record any other money or property.

- (d) Gifts and Deductible Contributions to the Company will be recorded in the Gift Account and not accounted for in the Save the Children Fund Overseas Relief Fund, unless the Directors otherwise decide or the gift is specifically made to the Overseas Relief Fund.
- (e) The Company must use the Gift Account only for its principal purposes.
- (f) Upon the Company ceasing to be DGR under item 4.1.1 of the table in section 30-45 ITAA 97, any surplus amounts in the Gift Account must be transferred to a fund, authority or institution:
  - (1) which is charitable at law;
  - (2) whose constitution prohibits distributions or payments to its members; and
  - (3) gifts to which are deductible on the basis that it is characterised as a public benevolent institution in item 4.1.1 of the table in section 30 45.

### **Board Composition**

- 1.11 A fundamental objective of the Company is that there be at least one resident of each State represented on the Board as a Director.

## **2 Membership**

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### **Becoming a Member**

- 2.1 There shall be two classes of membership – Ordinary Members and Life Members. Each Member shall have one vote and the same rights and obligations save that Life Members shall not be required to pay Annual Membership Fees.
- 2.2 [Repealed]
- 2.3 The Directors may admit any person as an Ordinary Member on that person -
  - (a) paying the Annual Membership Fee; and
  - (b) agreeing to be bound by this Constitution.
- 2.4 The Directors may admit any person they consider appropriate as a Life Member, and may convert an Ordinary Member to a Life Member.
- 2.4A Every person who is a Life Member at the time of adoption of this Constitution shall continue to be a Life Member.
- 2.5 The Directors may refuse membership to any person and are not obliged to give reasons for refusing membership.

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## Ceasing to be a Member

- 2.6 A Member ceases to be a Member on -
- (a) resignation;
  - (b) death;
  - (c) failure to pay the Annual Membership Fee within three months after the expiry of the previous year's membership;
  - (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to guardianship or mental health;
  - (e) if a corporation, being dissolved or otherwise ceasing to exist having a liquidator or provisional liquidator appointed to it, or being unable to pay its debts;
  - (f) the Directors terminating the person's membership in accordance with Article 2.7.

## Termination

- 2.7 The Board may terminate the membership of a Member if that Member is guilty of conduct which, in the reasonable opinion of the Board is prejudicial to the interests of the Company. The Board must advise a Member in writing that it intends to terminate the membership of that Member and advise the Member of the Member's right to make a written or oral submission on the proposed termination to the Board. The Board may terminate a membership at any time not less than 30 days nor more than 90 days after service of the notice and is not bound to give reasons.

## Resignation

- 2.8 A Member may by notice in writing to the Company resign membership with immediate effect or with effect from a specified date occurring not more than six months after the service of the notice.
- 2.9 No fees or subscriptions shall be refunded to any person on the termination of membership and all monies then owing to the Company shall remain payable



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## 3 General Meetings

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### Annual General Meeting

- 3.1 The annual general meetings of the Company are to be held in accordance with the Corporations Act.

### General Meeting

- 3.2 The Directors may convene a general meeting of the Company and the Directors must convene and arrange to hold a general meeting when requisitioned by Members in accordance with the Corporations Act.

### Notice of General Meeting

- 3.3 Except where Section 249H(2) applies, at least 21 days' notice must be given of a meeting of the Members, exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given.
- 3.4 Notice of a meeting of Members must be given in accordance with Section 249J, and the replaceable rule in Section 249J(4) applies.
- 3.5 A notice of a general meeting must -
- (a) set out the place, date and time of meeting, and state the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and
  - (b) state that -
    - (i) a Member who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy; and
    - (ii) a proxy need not be a Member.
- 3.6 If a special resolution is to be proposed, the notice of meeting must set out an intention to propose the special resolution and state the resolution.
- 3.7 The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

### Postponement or Cancellation of Meeting

- 3.8 Where a general meeting (including an annual general meeting) is convened by the Directors they may, whenever they think fit but subject to the provisions of the Corporations Act, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

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- 3.9 Written notice of cancellation or postponement of a general meeting must be given to each Member individually and to each other person as is entitled under the Corporations Act or this Constitution to receive notice and must specify the reason for cancellation or postponement (as the case may be).
- 3.10 A notice postponing the holding of a general meeting must specify -
- (a) a date and time for the holding of the meeting; and
  - (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
  - (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.
- 3.11 The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the meeting required to be given by this Constitution or the Corporations Act.
- 3.12 The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the notice convening the meeting.
- 3.13 The accidental omission to give notice of the cancellation or postponement of a meeting to, or the non-receipt of any such notice by, any Member or person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.
- 3.14 Where -
- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
  - (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,
- then, by force of this Article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of representative unless the Member appointing the proxy, attorney or representative gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.
- 3.15 Articles 3.8 to 3.14 (both inclusive) do not apply to a general meeting convened by Members under Section 249F or by the Directors pursuant to a requisition of Members under the Corporations Act.

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## 4 Proceedings at General Meetings

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### Representation of Member

- 4.1 A Member may be present and vote in person or may be represented at any meeting of the Company by -
- (a) proxy;
  - (b) attorney; or
  - (c) in the case of a body corporate which is a Member, a Representative.
- 4.2 Unless the contrary intention appears, a reference to a Member in Article 4 means a person who is a Member, or is a proxy, attorney or Representative of that Member.

### Quorum

- 4.3 Subject to Article 4.6, 25% of the current Members or 40 Members (whichever is the lesser) present in person or by proxy, attorney or Representative are a quorum at a general meeting.
- 4.4 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is to be deemed present throughout the meeting unless the chairman of the meeting on the chairman's own motion, or at the instance of a Member, proxy, attorney or Representative who is present, otherwise declares.
- 4.5 If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting -
- (a) if convened by, or on requisition of, Members is dissolved; and
  - (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.
- 4.6 At a meeting adjourned under Article 4.5(b) 20 Members, present in person or by a proxy, attorney or Representative are a quorum and, if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### Appointment and Powers of Chairman of General Meeting

- 4.7 If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.
- 4.8 If a general meeting is held and -
- (a) a chairman has not been elected by the Directors; or

- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence) - the deputy chairman (if any); a Director chosen by a majority of the Directors present; the only Director present; a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

4.9 The chairman of a general meeting -

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to Sections 250S and 250T, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting;

and a decision by the chairman under this Article is final.

### **Adjournment of General Meetings**

- 4.10 The chairman may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to a new day, time or place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 4.11 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 4.12 Except as provided by Article 4.11, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.
- 4.13 A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- 4.14 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

### **Voting on a Resolution**

- 4.15 At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded -
  - (a) before the vote is taken;
  - (b) before the voting results on the show of hands are declared; or

(c) immediately after the voting results on the show of hands are declared;

by -

(d) the chairman; or

(e) not less than 25% of Members or five Members present in person or by proxy and entitled to vote on the resolution (whichever is the lesser).

On a show of hands, a declaration by the chairman is conclusive evidence of the result.

### **Questions Decided by Majority**

4.16 Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **Poll**

4.17 If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

4.18 A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

4.19 A demand for a poll may be withdrawn.

### **Entitlement to Vote**

4.20 Subject to any rights or restrictions for the time being attached to membership and to this Constitution on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote;

4.21 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

### **Objection to Voting Qualification**

4.22 An objection may not be raised to the right of a person to attend or vote at the meeting or adjourned meeting except at that meeting or adjourned meeting. Any such objection must be referred to the chairman of the meeting, whose decision is final. A vote not disallowed under such an objection is valid for all purposes.

### **Appointment of Proxy**

4.23 A Member entitled to attend and vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. A proxy need not be a Member.

4.24 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information -

- 
- (a) the Member's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meetings at which the appointment may be used.

An appointment may be a standing one.

- 4.25 An undated appointment is to be taken to have been dated on the day it is given to the Company.
- 4.26 An appointment may specify the way the proxy is to vote on a particular resolution. In that event -
  - (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (b) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
  - (c) if the proxy is the chairman, the proxy must vote on a poll, and must vote that way; and
  - (d) if the proxy is not the chairman, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a Member, this Article does not affect the way that the person can cast any votes attached to that person's membership.

- 4.27 Except to the extent that the appointment of a proxy expressly limits the exercise by the proxy of the power to vote at a meeting, a proxy has the same rights to attend, vote and otherwise act at the meeting as a Member attending the meeting in person.
- 4.28 An appointment of a proxy does not need to be witnessed.
- 4.29 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
- 4.30 An instrument appointing a proxy is to be taken to confer authority to demand or join in demanding a poll.

### **Receipt of Proxy and Other Instruments**

- 4.31 An instrument appointing a proxy may not be treated as valid unless the instrument and the power of attorney under which the instrument is signed or, in the case of an unregistered power, a copy of that power or authority certified as a true copy, is or are received by the Company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote at the Registered Office or at any other place specified for that purpose in the notice convening the meeting.

If the notice convening a general meeting specifies a facsimile number or e-mail address to which a proxy and related materials may be sent then receipt by the facsimile machine on that number or the e-mail address of a complete and legible copy of the document will be taken as a receipt by the Company at a specified place for the purposes of this Article.

#### **Validity of Vote in Certain Circumstances**

4.32 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding -

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument, or of the authority under which the instrument was executed, or of the power; or

if notice in writing of the death, unsoundness of mind, revocation or transfer has not been received by the Company at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

#### **Director Entitled to Notice of Meeting**

4.33 A Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

#### **Auditor Entitled to Notice of Meeting**

4.34 The Company must give its auditor -

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member is entitled to receive.

## **5 The Directors**

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### **Number of Directors**

5.1

- (a) The number of Directors (not including Alternate Directors) must be the number, not being less than 6 nor more than 14, which the Directors may determine.
- (b) The Directors may not reduce the number below the number of Directors in the office at the time of reduction.
- (c) All Directors are to be natural persons.

### **Term of Directors**

5.2 [Repealed]

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- 5.3 All Directors elected to the office by the Members will be elected for a term ending on the date of the third annual general meeting after the date of the Director's election.
- 5.4 Subject to this Article 5.4, a Director may be re-elected. A Director shall not serve more than nine consecutive years as a Director after their first election by the Members unless a minimum period of one year has elapsed since that person last held the position of Director or the Members in general meeting specifically give their approval. A Director who has served 12 years in total will not be eligible for re-election as a Director without the approval of the Members.

### **Election and Appointment of Directors**

- 5.5
- (a) Subject to Articles 5.1, 5.4, 5.5A, 5.5B and 5.7, the Members shall be entitled to elect any person as a Director. All elections of Directors shall be conducted by postal ballot, in such manner as the Board approves having regard to the objective set out in Article 1.11. A postal ballot shall be conducted prior to each annual general meeting at which vacancies in the office of Director will exist or arise, unless there are no eligible candidates for those vacancies.
  - (b) Members recorded on the Register on the day that is 49 days before the relevant annual general meeting shall be entitled to vote in the ballot.
  - (c) Subject to Article 5.5B, the chairman of the general meeting shall, at the relevant annual general meeting, declare elected as Directors that number of the eligible candidates which is equal to the number of vacancies in the office of Director that will exist or arise at the general meeting, being the candidates who have received the highest number of votes in the ballot.



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- 5.5A No person other than a retiring Director or a Director vacating office under Article 5.6 is eligible to be elected a Director by a postal ballot conducted prior to an annual general meeting unless a notice of the person's candidature is given to the Company at least 49 days before the meeting.
- 5.5B If the result of a declaration by the chairman of the general meeting in accordance with Article 5.5(c) would be that, immediately after the annual general meeting, any State would not be represented on the Board, the chairman of the general meeting shall not make a declaration in accordance with Article 5.5(c) but the following shall apply:
- (a) the chairman of the general meeting shall declare elected as Directors that number of the eligible candidates which is equal to the number of vacancies in the office of Director that will exist or arise at the general meeting less the number of States that would not be represented on the Board, being the candidates who received the highest number of votes in the ballot;
  - (b) if there is one eligible candidate who is a resident of a State that would not be represented on the Board, the chairman of the general meeting shall declare elected as a Director that candidate;
  - (c) if there is more than one eligible candidate who is a resident of a State that would not be represented on the Board, the chairman of the general meeting shall declare elected as a Director the eligible candidate from the State with the highest number of votes; and
  - (d) if there is no eligible candidate who is a resident of a State that would not be represented on the Board, the chairman of the general meeting shall declare a casual vacancy on the Board for each State that will not be represented on the Board.
- 5.6
- (a) Subject to Articles 5.1 and 5.4, the Board may at any time following the receipt of a recommendation of the Board Nomination Committee appoint any person as a Director to fill a casual vacancy or as an addition to the Board. In exercising its power under this Article 5.6, the Board must have regard to the objective set out in Article 1.11. Any Director appointed under this Article 5.6 may hold office only until the next annual general meeting of the Company and is then eligible for election at that meeting.
  - (b) Where any State is not represented on the Board, the Board:
    - (i) must use all reasonable endeavours to ensure that a resident of such a State becomes a Director as soon as practicable; and
    - (ii) must leave vacant a position on the Board for each State that is not represented on the Board, until the position can be filled by a resident of that State.
- 5.7 No employee of the Company shall be eligible to hold office as a Director.

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## Removal of Director

- 5.8 The Company in general meeting may by resolution remove a Director from office as a Director.
- 5.9 [Repealed]
- 5.10 [Repealed]

## No Remuneration of Directors

- 5.11 No payment shall be made or other benefit given to any Director of the Company other than for -
- (a) reimbursement of expenses incurred by the Director in the performance of any duty as Director of the Company where the Board has previously approved the expense;
  - (b) reasonable and proper remuneration for any services rendered to the Company by the Director in a professional or technical capacity, not including the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable for the service.

## Directors' Interests

- 5.12 Subject to the provisions of this Constitution, a Director and any firm, body or entity in which a Director has a direct or indirect material interest may in any capacity -
- (a) enter into any contract or arrangement with the Company; and
  - (b) act in a professional capacity, other than as auditor, for the Company.
- 5.13 Each Director must disclose any and all interests to the Company in accordance with the Corporations Act and the Secretary must record all declarations in the Minutes of the relevant Board meeting.
- 5.14 The Board shall, at its absolute discretion, decide whether the interest of the Director is material.
- 5.15 Where such interest is material no payment or benefit shall be paid by the Company for such services other than for the recovery of fair and reasonable out-of-pocket expenses, unless the Board gives specific prior approval for such additional payments or rewards.
- 5.16
- (a) A Director must not vote in respect of a contract or arrangement or proposed contract or arrangement in which the Director has a direct or indirect material interest.
  - (b) If the Director does purport to vote, the Director's vote will not be counted.

- (c) The requirement in paragraph (a) is in addition to any requirements of the Corporations Act in relation to voting by an interested director of a public company.

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

### **Vacation of Office of Director**

5.18 In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director -

- (a) 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 or guardianship;
- (b) resigns from the office by notice in writing to the Company;
- (c) is removed from the office under Article 5.8;
- (d) is not present personally or by an Alternate Director at three consecutive meetings of the Directors or for a continuous period of six months (whichever is the greater period of time) without leave of absence from the Directors; or
- (e) is not a Member of the Company for a continuous period of three months during their term in office.

## **6 Powers and Duties of Directors**

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### **Directors to Manage Company**

- 6.1 The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.
- 6.2 Without prejudice to the powers conferred by this Constitution it is hereby expressly declared that the Board shall, subject to this Constitution, have the following powers:
  - (a) Oversee all the Company's representation and advocacy.
  - (b) Oversee all the Company's marketing and fundraising.
  - (c) Set policies for the operations of the Company.
  - (d) Delegate specific responsibilities to the State Councils.
  - (e) Determine the policies, guidelines and general principles for overseas and domestic programs and their evaluation.
  - (f) Set policies and guidelines for the coordination of the Company's activities throughout Australia.

- (g) Set annual membership fees and may set differential rates.
- (h) Develop and approve an annual business plan and budget for each financial year.

In the setting of and making amendments to policies under this Article the Board will consult with the State Councils prior to the implementation of such policies or amendments thereto.

- 6.3 Neither the Directors nor the Company may sell or dispose of any of the property listed in Schedule 1 without the approval of a simple majority of the Members residing in the State in which the property being sold or disposed of is located and voting on such proposal. Such vote may be conducted by post.
- 6.4 Without limiting the generality of Article 6.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

#### **Appointment of Attorney**

- 6.5 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.
- 6.6 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

#### **Minutes**

- 6.7 The Directors must cause Minutes of meetings to be made and kept in accordance with the Corporations Act.

#### **Execution of Company Cheques, etc**

- 6.8 All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine from time to time.

## **7 Proceedings of Directors**

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### **Directors' Meetings**

- 7.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit. There shall be at least six Directors' meetings per annum.
- 7.2 A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

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### Questions Decided by Majority

- 7.3 Questions arising at a meeting of Directors are to be decided by a majority of votes of Directors present and entitled to vote and any such decision is for all purposes to be deemed a decision of the Directors.
- 7.4 A person who is present at a meeting of Directors as an Alternate Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director, and if that person is also a Director has one vote as a Director in that capacity.

### Chairman's Casting Vote

- 7.5 The chairman of the meeting does not have a casting vote.

### Alternate Directors

- 7.6 Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors to be an Alternate Director in the Director's place during such period as the Director thinks fit.
- 7.7 An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's stead.
- 7.8 An Alternate Director may exercise all the powers except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.
- 7.9 Whilst acting as a Director, an Alternate Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them.
- 7.10 The appointment of an Alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.
- 7.11 An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Company.
- 7.12 An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

### Quorum for Directors' Meeting

- 7.13 At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is six. For the purposes of this Article, a quorum is present during the consideration of a matter at a meeting of the Directors only if at least six Directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.

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### Remaining Directors May Act

- 7.14 The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as their number is reduced below the minimum fixed by Article 5.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or of convening a general meeting.

### Chairman of Directors

- 7.15 The Directors may elect one of their number as chairman of their meetings and may also elect a deputy chairman. The Directors shall determine the period for which the person elected as chairman and deputy chairman are to hold office.
- 7.16 If a Directors' meeting is held and -
- (a) a chairman has not been elected as provided by Article 7.15; or
  - (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act; and
  - (c) the deputy chairman is not present or is unable or unwilling to chair the meeting;

the Directors present must elect one of their number to be a chairman of the meeting.

### Directors' Committees

- 7.17 The Directors may delegate any of their powers, other than powers required by law to be dealt with by directors as a board, to a committee or committees consisting of at least one of their number and such other persons as they think fit. The Directors will appoint a member of each committee to be chairman of meetings of the committee.
- 7.17A
- (a) The Directors shall establish a committee (Board Nomination Committee) consisting of at least three Directors, which may also include one or more persons with relevant experience who are not a Director or an employee of the Company. The Board Nomination Committee reports to the Board and is responsible for reviewing the skills of existing directors and for nominating individuals to be elected or appointed to the Board.
  - (b) In exercising its function of nominating individuals to be elected or appointed to the Board, the Board Nomination Committee must have regard to the objective set out in Article 1.11.

- 7.17B The Directors shall establish a committee (the Board Audit Committee) consisting of at least three Directors, which may also include one or more persons with relevant experience who are not a Director or an employee of the Company. The Board Audit Committee reports to the Board and is to assist the Board in discharging its obligations in relation to the legal, ethical and financial integrity of the Company, and maintaining the Board's accountability to stakeholders.
- 7.18 A committee to which any powers have been delegated under Article 7.17 must exercise the powers delegated in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.
- 7.19 If a meeting of a committee is held and the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the members involved may elect one of their number to be chairman of the meeting.
- 7.20 A committee may meet and adjourn as it thinks proper.
- 7.21 Questions arising at a meeting of a committee are to be determined by a majority of votes of the members involved and voting. The chairman, in addition to the chairman's deliberative vote, does not have a casting vote.

#### **Written Resolution by Directors**

- 7.22 A resolution in writing signed by all the Directors who are then in Australia and are eligible to vote on the resolution (being at least a quorum) is as valid and effectual as if it had been passed at a meeting of the Directors held at the time when the written resolution was signed by the last eligible Director to sign it. A written resolution may consist of several documents in like form, each signed by one or more Directors.
- 7.23 For the purposes of Article 7.22, two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.
- 7.24 Any document referred to in this Article may be in the form of an email, telex or facsimile transmission. A document bearing a facsimile of a signature is to be regarded as signed.
- 7.25 The Minutes of Board meetings must record that a meeting was held in accordance with this Article 7.
- 7.26 The same procedure applies to meetings of committees of the Board as applies to Board meetings.

#### **Use of Technology**

- 7.27 A Directors' meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

- 7.27A The Board may from time to time make (and amend or repeal and replace) rules in relation to the passing or approval (including by electronic means) of resolutions of the Board or any committee of the Board without a meeting of the Directors or the members of any such committee. Any resolution passed or approved in accordance with any such rules, whether with or without the signature of a Director or Directors or committee members, will be validly passed notwithstanding any other provision of this Constitution, including Article 7.22 or any other provision requiring resolutions to be signed.

### **Validity of Acts of Directors**

- 7.28 All acts of the Directors, a committee or a person or committee or member of a committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

### **Appointment of the Chief Executive Officer**

- 7.29 The Directors will appoint a Chief Executive Officer (who is not a Director) who will have delegated responsibility for the day-to-day management of the Company for such period as the Directors see fit. The Directors may, subject to the terms of any contract between the Chief Executive Officer and the Company, at any time remove or dismiss the Chief Executive Officer from that office and may appoint another person in their place.

### **Remuneration of the Chief Executive Officer**

- 7.30 The remuneration of the Chief Executive Officer must be fixed by the Directors and shall be by way of salary package.

### **Powers of the Chief Executive Officer**

- 7.31 The Directors may confer on the Chief Executive Officer any of the powers exercisable by them, on such terms and conditions and with such restrictions as they think fit. The Directors may at any time withdraw or vary any of the powers conferred on the Chief Executive Officer.

## **8 Secretary**

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### **Appointment of Secretary**

- 8.1 The Secretary of the Company shall be appointed by the Directors.
- 8.2 The Directors may appoint other Secretaries as required.

### **Suspension and Removal of Secretary**

- 8.3 The Directors may suspend or remove a Secretary from that office.



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### **Powers, Duties and Authorities of Secretary**

- 8.4 The Directors may vest in a Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

## **9 Treasurer**

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### **Appointment of Treasurer**

- 9.1 There must be at least one Treasurer of the Company who is to be appointed by the Directors who must be or become a Director.

### **Suspension and Removal of Treasurer**

- 9.2 The Directors may suspend or remove a Treasurer from that office.

### **Powers, Duties and Authorities of Treasurer**

- 9.3 The Directors may vest in a Treasurer such powers, duties and authorities as they may from time to time determine, and the Treasurer must exercise all such powers and authorities subject at all times to the control of the Directors.

## **10 The State Councils**

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### **Number of State Councils**

- 10.1 Unless the Members of a State recommend otherwise prior to 31 December 2001, the Board will establish a State Council in that State. Such recommendation shall be determined by a vote passed by a simple majority of Members resident in that State eligible to vote and voting, voting in favour of such a recommendation.
- 10.2 The rules governing meetings of Members resident in a State, and the procedures of each of the State Councils, will until altered with the approval of the Board (which shall not be unreasonably withheld) be the appropriate rules set out in Article 4. Any altered rules must be consistent with this Constitution and current policies of the Company.
- 10.3 [Repealed]
- 10.4 No employee of the Company is eligible to hold office as a State Council Member.
- 10.5 Subject to such recommendations meeting the requirements of the Corporations Act for directors, State Council Members shall be appointed by the Board on the recommendations of the Members resident of the State in which the particular State Council is established. Such recommendations shall be determined by a vote of Members resident in that State. The Board shall not unreasonably reject a recommendation by such Members.

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- 10.6 The Board may only dissolve a State Council at the request of the Members of that State (determined by 75% of Members, eligible to vote and voting, voting on a resolution to request the dissolution of a State Council voting in favour of the request being made).
- 10.7 A vote for the purposes of Articles 10.1, 10.5 and 10.6 may be conducted by post in such manner as the Board approves.

#### **Delegation to State Committees**

- 10.8 Subject to the Corporations Act, the Board may delegate any of its powers, other than the power of delegation, to one or more of the State Councils.
- 10.9 In the exercise of powers delegated to it, a State Council must conform to any direction given by the Board and must submit to the Board all recommendations it makes.
- 10.10 A Director resident in a particular State and the State Manager may take an ex-officio position on the State Council in that State. The Chairman of the Board and the Chief Executive Officer may attend any State Council meeting.

#### **Removal of State Council Members**

- 10.11 The Board may terminate the appointment of a State Council Member if that committee member is guilty of conduct which, in the reasonable opinion of the Board, is prejudicial to the interests of the Company. The Board must advise a committee member in writing that it intends to terminate the appointment of that committee member, giving that committee member the reason and advise them of their right to make a written or oral submission on the proposed termination to the Board. The Board may terminate the appointment at any time not less than 30 days nor more than 90 days after the service of notice. The Board shall advise the State Council at the time of advising the committee member that it intends to terminate the appointment, without giving reasons to the State Council.

#### **Powers and Duties of the State Councils**

- 10.12 A State Council must act in accordance with the authority delegated to it by the Board and observe any policies and guidelines that may from time to time be given to it by the Board.
- 10.13 A State Council must exercise its duties -
- (a) in the best interests of the Company;
  - (b) in accordance with this Constitution;
  - (c) in accordance with policies of the Company and any other guidelines determined by the Board; and
  - (d) in accordance with all applicable laws.
- 10.14 A State Council must -

- (a) keep records of its activities (including records of meetings and financial records of funds spent) as required by the Board;
- (b) report to the Board on a regular basis or as otherwise required by the Board; and
- (c) allow the Board to conduct a full audit of all accounts and records for the purpose of ensuring that it is exercising its duties in accordance with this Constitution.

10.15 The Board may reject any decision of a State Council made in contravention of Article 10.13.

10.16 A State Council's duties may include -

- (a) delegated responsibilities from the Board;
- (b) oversight of State-based fundraising initiatives, including shops, and communications;
- (c) monitoring expenditure against budget;
- (d) monitoring the implementation in the State of the policies, budgets and targets set by the Board;
- (e) monitoring domestic programs within the State;
- (f) raising and spending money within Board policies and accountabilities, with an agreed proportion of funds raised being retained for domestic activities;
- (g) management of specific significant assets and obligations, such as buildings, the fulfilment of existing legal contracts and the implementation of bequests and contracts with State governments; and
- (h) involvement in the selection, review and dismissal of the State Manager, who is directly accountable to the Chief Executive Officer.

10.17 A State Council is responsible for the determination of the allocation of funds raised by and in the State and retained for State-based domestic grants.

## **11 Seals**

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### **Common and Duplicate Common Seal**

11.1 The Company may have -

- (a) a common seal; and
- (b) a duplicate common seal, which must be a copy of the common seal with the words "duplicate seal",

11.2 The Directors must provide for the safe custody of each seal of the Company.

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## Use of Common Seal

- 11.3 The common seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the common seal. Every document to which the common seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## 12 Inspection of Records

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### Inspection by Members

- 12.1 Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors), and a Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting. Notwithstanding the foregoing, a former Director shall be granted reasonable access to the Company's records if such access is reasonably necessary to allow the former Director to defend any action brought against the former Director.

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## 13 Service of Documents

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### Service of Documents

- 13.1 This Part does not apply to a notice of a meeting of Members.
- 13.2 The Company may give a document to a Member -
- (a) personally;
  - (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
  - (c) by sending it to a fax number or electronic address nominated by the Member.
- 13.3 If a document is sent by post, delivery of the document is deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and the document is deemed to have been delivered on the second business day after the date of its posting.
- 13.4 If a document is sent by facsimile or electronic transmission, delivery of the document is to be deemed -
- (a) to be effected by properly addressing and transmitting the facsimile or electronic transmission, and
  - (b) to have been delivered on the day following its despatch.

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## 14 Audit and Accounts

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### Company to Keep Accounts

- 14.1 The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act.

### Company to Audit Accounts

- 14.2 The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

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## 15 Winding Up

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### Distribution of Assets

- 15.1 If the Company is wound up -
- (a) each Member; and
  - (b) any person or association who has ceased to be a Member in the preceding year prior to the winding up or dissolution;
- undertakes to contribute to the property of the Company for such amount as may be required not exceeding \$1,000 for Members that are corporations and \$10 for all other Members for -
- (c) payment of debts and liabilities of the Company and the costs, charges and expenses of winding up provided that where subclause (b) applies the Member shall contribute only in relation to debts and liabilities incurred prior to the winding up or dissolution; and
  - (d) adjustment of the rights of the contributories amongst themselves.

### Surplus Distribution

- 15.2 If any surplus remains following the winding up or dissolution of the Company the surplus will not be paid to or distributed amongst Members but will be given or transferred to another corporation or incorporated body which has objects specified in its memorandum which are similar to the Company and -
- (a) whose Constitution or Memorandum prohibits distribution of income to its members; and
  - (b) which the Members of the Company at or before winding up or dissolution determine to be the beneficiary of such gift or transfer; or
  - (c) in default of a determination under subparagraph (b), by determination of the Supreme Court of Victoria; and

Provided that any money standing to the credit of Save the Children Overseas Aid account shall be transferred only to a fund that has been declared under S.30 of the Income Tax Assessment Act to be an eligible fund and provided that any surplus amounts in the Gift Account must be transferred to a fund, authority or institution which is characterised as a public benevolent institution in item 4.1.1 of the table in section 30 45.

## 16 Indemnity

### Indemnity of Officers

- 16.1 Every person who is or has been a Director, Secretary or Executive Officer of the Company is entitled to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person -
- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
  - (b) in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person in which judgment is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith; or
  - (c) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Corporations Act by the court.
- 16.2 Every person who is or has been a Director, Secretary or Executive Officer of the Company is entitled to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability to another person (other than the Company or a related body corporate) as such an officer unless the liability arises out of conduct involving a lack of good faith.

### Insurance

- 16.3 The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or Executive Officer of the Company and its related bodies corporate against -
- (a) any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of Section 182 or 183 of the Corporations Act; and
  - (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome

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## 17 SAVE THE CHILDREN AUSTRALIA

### Index of Company Constitution

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Part	Page
<b>1. Preliminary</b>	<b>3</b>
Definitions	3
Interpretation	4
Replaceable Rules Not to Apply	5
Changes to Constitution	5
Objects and Powers	5
Use of Income and Property	6
DGR Status	6
DGR as a Public Benevolent Institution	6
Board Composition	7
<b>2. Membership</b>	<b>7</b>
Becoming a Member	7
Ceasing to be a Member	<b>8</b>
Termination	8
Resignation	8
<b>3. General Meetings</b>	<b>9</b>
Annual General Meeting	9
General Meeting	9
Notice of General Meeting	9
Postponement or Cancellation of Meeting	9
<b>4. Proceedings at General Meetings</b>	<b>11</b>
Representation of Member	11
Quorum	11
Appointment and Powers of Chairman of General meeting	11
Adjournment of General Meetings	12
Voting on a Resolution	12
Questions Decided by Majority	13
Poll	13
Entitlement to Vote	13
Objection to Voting Qualification	13
Appointment of Proxy	13
Receipt of Proxy and Other Instruments	14
Validity of Vote in Certain Circumstances	15
Director Entitled to Notice of Meeting	15
Auditor Entitled to Notice of Meeting	15

<b>5. The Directors</b>	<b>15</b>
Number of Directors	15
Term of Directors	15
Election and Appointment of Directors	16
Removal of Director	18
No Remuneration of Directors	18
Directors' Interests	18
Vacation of Office of Director	19
<b>6. Powers and Duties of Directors</b>	<b>19</b>
Directors to Manage Company	19
Appointment of Attorney	20
Minutes	20
Execution of Company Cheques, etc	20
<b>7. Proceedings of Directors</b>	<b>20</b>
Directors' Meetings	20
Questions Decided by Majority	21
Chairman's Casting Vote	21
Alternate Directors	21
Quorum for Directors' Meeting	21
Remaining Directors May Act	22
Chairman of Directors	22
Directors' Committees	22
Written Resolution by Directors	23
Use of Technology	23
Validity of Acts of Directors	24
Appointment of the Chief Executive Officer	24
Remuneration of the Chief Executive Officer	24
Powers of the Chief Executive Officer	24
<b>8. Secretary</b>	<b>24</b>
Appointment of Secretary	24
Suspension and Removal of Secretary	24
Powers, Duties and Authorities of Secretary	25
<b>9. Treasurer</b>	<b>25</b>
Appointment of Treasurer	25
Suspension and Removal of Treasurer	25
Powers, Duties and Authorities of Treasurer	25
<b>10. The State Councils</b>	<b>25</b>
Number of State Councils	25
Delegation to State Committees	26
Removal of State Council Members	26
Powers and Duties of the State Councils	26



---

<b>11. Seals</b>	<b>27</b>
Common and Duplicate Common Seal	27
Use of Common Seal	28
<b>12. Inspection of Records</b>	<b>28</b>
Inspection by Members	28
<b>13. Service of Documents</b>	<b>28</b>
Service of Documents	28
<b>14. Audit and Accounts</b>	<b>29</b>
Company to Keep Accounts	29
Company to Audit Accounts	29
<b>15. Winding Up</b>	<b>29</b>
Distribution of Assets	29
Surplus Distribution	29
<b>16. Indemnity</b>	<b>30</b>
Indemnity of Officers	30
Insurance	30