

# Constitution of Habitat for Humanity Australia

ACN 131 976 004

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**CONSTITUTION OF HABITAT FOR HUMANITY  
ACN 131 976 004**

**1. PRELIMINARY**

**1.1 Company limited by guarantee**

The Company is limited by guarantee and the liability of members is limited as provided in this constitution.

**1.2 Objects of the Company**

The Company has been formed with the charitable purpose of providing direct relief to persons in need, due to such poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness as arouses compassion in the community, by improving their economic and social conditions by constructing and enabling ownership of simple, decent and affordable houses through the operation of:

(A) the Habitat for Humanity Australia Domestic Fund (ABN 66 095 541 841) for activities solely within Australia; and

(B) Habitat for Humanity Australia Overseas Aid Fund (ABN 36 747 459 174) for activities solely outside Australia.

In pursuit of the above charitable purpose, the objects of the Company are to:

- (a) demonstrate the Christian faith in action;
- (b) raise community awareness of those who need affordable housing;
- (c) build and renovate simple, decent and affordable houses for those who need affordable housing;
- (d) engage the broader community through inclusive leadership and diverse partnerships;
- (e) promote dignity through full partnership with those who need affordable housing;
- (f) provide benevolent support without favouritism or discrimination; and
- (g) promote transformational and sustainable community development.

**1.3 Application of income and property**

Subject to rules 1.4 and 13.1, the Company must apply the receipts and income of the Habitat Humanity Australia Domestic Fund towards promoting the objects of the Company solely within Australia as stated in rule 1.2(A).

Subject to rules 1.4 and 13.1, the Company must apply the receipts and income of the Habitat for Humanity Overseas Aid Fund towards promoting the objects of the Company solely outside Australia as stated in rule 1.2(B).

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The Company may only pursue the charitable purpose associated with the carrying out of its objects. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

#### 1.4 **Certain payments allowed**

Rule 1.3 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any member of the Company or other person in return for service rendered to the Company.

In addition, rule 1.3 does not prevent the Company paying to a member:

- (a) interest on money lent by the member to the Company at the prevailing bank interest rate for similar amounts and circumstances;
- (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises leased by the member to the Company.

#### 1.5 **Replaceable rules**

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this constitution.

#### 1.6 **Definitions**

The following definitions apply in this constitution.

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

**Affiliate** means state based not-for-profit organisations in Australia that have been approved by the Company for the purpose of entry into an Affiliate Agreement with the Company. They do not include individual Affiliate Chapters set up by the state based organisation.

**Affiliate Agreement** means the agreement between the Company and an Affiliate substantially in the form of the document set out in Schedule 1 as modified from time to time.

**Affiliate CEO** means the person appointed by an Affiliate's board of directors as the Affiliate's chief executive officer.

**Affiliate Chairperson** means the person appointed as chairperson of an Affiliate's board of directors.

**Affiliate Chapter** means a chapter of an Affiliate that the Affiliate sets up within its area of operation.

**Affiliate Director** means a person appointed as a director of an Affiliate's board of directors.



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**Affiliate Executive Director** means a person appointed by an Affiliate's board of directors as the Affiliate's executive director.

**Affiliate Member** means a person who is an Affiliate Chairperson, Affiliate Director, Affiliate' Executive Director or Affiliate Chief Executive Officer.

**Affiliate Nominated Director** means a person who is nominated by the Affiliates Group to be a Director of the Company and who is elected by the members by ordinary resolution to be a Director and, as required by this constitution, is a member.

**Affiliates Group** means the group established pursuant to rule 9.1.

**At-Large Director** means a person who is an At-Large Member and who is elected by the members by ordinary resolution to be a Director.

**At-Large Member** means a person who is not a member of an Affiliate or an Affiliate Chapter who becomes a member of the Company in accordance with this constitution.

**Background and Requirements for Prospective Board Members** means the Background and Requirements for Prospective Board Members promulgated by the Company and set and accepted at a duly constituted board meeting following annual review, update and recommendation of the Nominating Committee.

**Board** means the Directors acting collectively under this constitution.

**Chief Executive Officer** means the chief executive officer of the Company appointed under rule 8.1.

**Company** means the company named at the beginning of this constitution whatever its name is for the time being.

**Director** means a person who is, for the time being, a director of the Company including an Affiliate Nominated Director and At-Large Director.

**Eligible Affiliate** means an Affiliate that is in good standing with the Company and has at least three Affiliate Chapters within their relevant state/territory.

**Eligible Charity** means a fund, authority or institution:

- (a) which is charitable at law; and
- (b) gifts to which are deductible under Division 30 of the Tax Act.

**Fund Money** means money held in either Gift Fund.

**General Money** means the money described in rule 24.5.

**Eligible Recipient** means a family that qualifies for housing provided by the Company or an Affiliate under its prevailing policies.

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**Gift Fund** has the meaning ascribed to it under rule 24.1 and under section 30-130 of the Tax Act.

**Habitat for Humanity Australian Domestic Fund** has the meaning ascribed to it under rules 1.2 and 24.

**Habitat for Humanity Australia Overseas Aid Fund** has the meaning ascribed to it under rules 1.2 and 24.

**Independent** means a person who is eligible to be a director of the Company and who is independent of management of the Company and free of any business or other relationship that could materially interfere with, or could reasonably be perceived to interfere with, the exercise of their unfettered and independent judgement.

Legacy Affiliate Member means a member of an Affiliate or Affiliate Chapter who became a member of the Company in accordance with this constitution prior to 12 August 2013

**Liability** is defined in rule 13.1.

**Life Member** is defined in rule 2.5.

**member** means, subject to rule 2.7, a person whose name is entered in the Register as a member of the Company, and includes Affiliate Members, At-Large Members and Life Members unless the context otherwise requires.

**Nominating Committee** means the committee established by the Board pursuant to rule 10.1.

**ordinary resolution** means a resolution of the Board or members passed or required to be passed by Directors or members (whichever is applicable) that together hold more than 50% of the total voting rights of all Directors or members (whichever is applicable) entitled to vote on the resolution, including votes cast pursuant to rule 18.2.

**Register** means the register of members kept as required by sections 168 and 169 of the Act and in accordance with rule 25.1.

**Responsible Person** means an individual who:

- (i) performs a significant public function;
- (ii) is a member of a professional body having a code of ethics or rules of conduct;
- (iii) is officially charged with spiritual functions by a religious institution;
- (iv) is a director of a company whose shares are listed on the Australian Stock Exchange;
- (v) has received formal recognition from government for services to the community; or
- (vi) is approved as a Responsible Person by the Commissioner.

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**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this constitution.

**special resolution** means a resolution of the Board or members passed or required to be passed by Directors or members (whichever is applicable) that together hold not less than 75% of the total voting rights of all Directors or members (whichever is applicable) entitled to vote on the resolution, including votes cast pursuant to rule 18.2.

**Tax Act** means, jointly, the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997*(Cth).

## 1.7 Interpretation of this constitution

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, modified, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.

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- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
  - (j) A word (other than a word defined in rule 1.6) which is defined by the Act has the same meaning in this constitution where it relates to the same matters as the matters for which it is defined in the Act.
  - (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## **2. MEMBERSHIP**

### **2.1 Membership**

Subject to rules 2.6, 2.7 and 2.8, the members comprise:

- (a) the initial members named in the application for the Company's registration; and
- (b) any other person the Board admits to membership in accordance with this constitution.

### **2.2 Limited liability of members**

If the Company is wound up each member undertakes to contribute to the assets of the Company up to an amount not exceeding \$50, plus any outstanding membership fees payable in accordance with rule 2.9, for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for 1 year after a person ceases to be a member.

### **2.3 Applying to become a member**

An application to become a member:

- (a) must be made in writing, in the form and accompanied by the annual membership fee prescribed by the Board from time to time, and be signed by the applicant;
- (b) in the case of an At-Large Member, must be lodged with the Chief Executive Officer or the Secretary within a period determined by the Board; and
- (c) in the case of an Affiliate Member, must be lodged with the Affiliate to which the applicant belongs for forwarding to the Chief Executive Officer or the Secretary if the Affiliate considers that the applicant is fit and proper to be a member (which will involve considering factors such as whether, for example, the applicant endorses all the purposes of the Company and is committed to promoting and working towards the accomplishment of the purposes and objects of the Company and to complying with the provisions of this constitution).

### **2.4 Consideration of application**

Once an application for membership as an:

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- (a) At-Large Member is received, the Board must:
    - (i) consider the application at the next meeting of the Board; and
    - (ii) consider whether the applicant is fit and proper to be a member (which will involve considering factors such as whether, for example, the applicant endorses all the purposes of the Company and is committed to promoting and working towards the accomplishment of the purposes and objects of the Company and to complying with the provisions of this constitution); and
    - (iii) notify the applicant in writing of the outcome of the application, but it need not provide reasons why an applicant was rejected; and
  - (b) Affiliate Member is received, the Board must accept that application at the next meeting of the Board provided that applicant remains an Affiliate Chairperson, an Affiliate Director or Affiliate CEO at that time)

## 2.5 **Life Members**

The Board by special resolution may also appoint a member to be an honorary member for the life of that person (**Life Member**).

The following initial members are deemed to be Life Members:

- (a) Howard Fearn-Wannan;
- (b) Vera Randall; and
- (c) Allan O'Connor.

## 2.6 **Resigning as a member**

A member may resign from the Company by giving written notice to the Board.

## 2.7 **Cessation of membership**

If:

- (a) a Legacy Affiliate Member ceases to belong to an Affiliate or an Affiliate Chapter;  
or
- (b) an Affiliate Member ceases to be an Affiliate Chairperson, Affiliate Director, Affiliate Executive Director or Affiliate CEO; or
- (c) a Legacy Affiliate Member, an Affiliate Member or an At-Large Member fails to pay fees due under clause 2.9(b) for 2 consecutive years,

that member immediately and automatically ceases to be a member, and the Company must procure the removal of the member's name from the Register. In performing its obligations under this clause, the Company and its officers are entitled to rely on any information provided to them by an Affiliate in relation to the status of an Affiliate Member, and are

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not responsible for the accuracy of that information or any cessation of membership (or any consequences of such cessation) as a result of acting on that information.

## 2.8 **Expelling a member**

- (a) The Board may, by ordinary resolution, expel from the Company any member:
  - (i) who does not comply with this constitution or any by-laws, rules or regulations of the Company;
  - (ii) whose conduct is, in the opinion of the Board, prejudicial to the interests of the Company; or
  - (iii) upon the death or incapacity by illness or mental defect of the member, and procure the removal of that member's name from the Register.
- (b) At least 21 days before the Board holds a meeting to expel a member, the Board must give a written notice to the member which states:
  - (i) the allegations against the member;
  - (ii) the proposed resolution for the member's expulsion;
  - (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
  - (iv) that if the member notifies the Secretary in writing at least 48 hours before the meeting, the member may elect to have the question of that member's expulsion dealt with by the Company in general meeting.
- (c) The Company must expel a member and remove the member's name from the Register where:
  - (i) a general meeting is held to consider a special resolution by the members to expel a member; and
  - (ii) the special resolution is passed at the meeting. The vote must be taken by ballot.
- (d) A member expelled from the Company does not have any claim on the Company, its funds or property but is still subject to rule 2.2.

## 2.9 **Fees**

- (a) The amounts payable for entrance fees and annual membership fees, if any, shall be determined by the Board. Until otherwise determined by the Board in accordance with this rule, the annual membership fee is \$25 for all members.

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(b) Members must pay the annual membership fee determined in accordance with rule 2.9(a) promptly following the anniversary of the day on which the person became a member.

(c) Rule 2.9(b) does not apply to any Life Member.

### **3. DIRECTORS**

#### **3.1 Number of Directors**

The Company must have at least 7 Directors, and no more than a number of Directors as the Board may specify from time to time.

#### **3.2 Appointment of Directors**

(a) Subject to rules 3.1 and 3.3, the Board may appoint a person nominated in accordance with rule 9.2(b) or 10.2(e) to be a Director to fill a casual vacancy. Any Director so appointed automatically retires at the next annual general meeting and is eligible for nomination and election at that general meeting pursuant to rule 3.2(c).

(b) When making an appointment pursuant to rule 3.2(a), the Board will use reasonable endeavours to ensure that:

(i) persons appointed are qualified for election as either an Affiliate Nominated Director or an At-Large Director; and

(ii) the balance of Affiliate Nominated Directors and At-Large Directors existing prior to the casual vacancy is maintained.

(c) Subject to rules 3.1, 3.3, 3.4 and 8.1:

(i) the Board may nominate one or more persons (including Affiliate Nominated Director candidates nominated by the Affiliates Group to the Board pursuant to rule 9.2 and At-Large Director candidates nominated by the Nominating Committee pursuant to rule 10.2(d)) for election as a Director by the members at an annual general meeting pursuant to rule 3.2(c)(ii). The Board must notify the members of every candidate for election as a Director in the notice of the relevant annual general meeting; and

(ii) the members may elect, by ordinary resolution at an annual general meeting, one or more Directors from the persons nominated under rule 3.2(c)(i); and

(iii) if the number of nominations for Director exceed the respective positions available for Affiliate Nominated Directors and At-Large Directors, the nominees will be elected to the available positions in descending order of number of valid votes received in favour of the resolution to elect each Director.

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### 3.3 Composition and qualifications of the Board

- (a) The Board must, to the extent reasonably possible, be comprised of persons, who acting together, have sufficient, broad and relevant experience and expertise to equip the Company to achieve its objects set out in rule 1.2. To achieve this aim, the Board must be comprised of a simple majority of Independent Directors and:
  - (i) a minimum of 2 and a maximum of 3 Affiliate Nominated Directors with no more than 1 Affiliate Nominated Director from any state or territory;
  - (ii) the Chief Executive Officer, if the Board determines that one be appointed and made a Director pursuant to rule 8.1; and
  - (iii) At-Large Directors.
- (b) A Director:
  - (i) must be a member;
  - (ii) is encouraged to spend at least two days per year in a voluntary capacity assisting with the selection of Eligible Recipients, or building or renovating houses for Eligible Recipients;
  - (iii) cannot be the auditor of the Company nor any partner, director or employee of the auditor;
  - (iv) cannot be a manager, a paid or unpaid staff member of the Company or its Eligible Affiliates at the time of election or have been employed in the previous period which is equivalent to a directors terms as defined in 3.3(b)(vi);
  - (v) must act in good faith in the best interests of the Company, and may only act in accordance with the interests of any Affiliate by whom they were nominated or any specific geographical area to the extent that those interests are compatible with the interests of the Company as a whole;
  - (vi) must agree to serve the Company as a Director for at least 1 term of 2 years duration (in the case of an Affiliate Nominated Director) or 3 years duration (in the case of an At-Large Director);
  - (vii) must meet the provisions of the Background and Requirements for Prospective Board Members, and must sign and deliver to the Company within 7 days of his or her election to the Board a copy of that document acknowledging compliance with those provisions;
  - (viii) must not be a person described in any of paragraphs (a), (b) or (c) of rule 3.6.
- (c) The Board when fully constituted must, to the extent reasonably possible:
  - (i) possess expertise, skills and experience in:



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- (A) non-profit, charitable organisations;
  - (B) building simple, decent, affordable houses in partnership with those in need of housing;
  - (C) corporate governance and other relevant legal areas; and
  - (D) financing, audit and accountancy;
- (ii) be able to contribute to the expansion, development and efficient utilisation of the resources of the Company both domestically and internationally; and
  - (iii) be supportive of the principles of the Christian faith and be representative of society at large.

### 3.4 Retirement of Directors

- (a) A Director must retire from office no later than the completion of that Director's third consecutive term (as set out in rule 3.3(b)(vi)) in office. This rule 3.4(a) does not apply to a chairperson who, at the time this rule would otherwise apply, has served less than 3 consecutive years as chairperson.
- (b) A Director may elect to retire and seek re-election at an annual general meeting before the time required by rule 3.4(a), provided at least 30 business days (or any other period as the Board may determine) before the annual general meeting the Director has given the Board notice of their intention to do so. If the Director gives such a notice, the Director must then retire from office at the relevant annual general meeting. For the purposes of rules 3.4(a) and 3.5, a Director re-elected pursuant to this rule 3.4(b) is deemed have been in office from the date of his or her original election.
- (c) An election of Directors must be held at each annual general meeting (the first such election to be held at least 6 months after the incorporation of the Company) or as otherwise determined by the Board. Subject to serving the minimum term agreed pursuant to rule 3.3(b)(vi), at least 1 Affiliate Nominated Director and at least 2 At-Large Directors must retire from office at the annual general meeting in accordance with the procedure set out in rule 3.5.
- (d) None of rules 3.4(a), 3.4(b) or 3.4(c) apply to the Chief Executive Officer.
- (e) A Director who retires under this rule 3.4 must stand down from the office of Director for a period equivalent to the minimum term of service set out in rule 3.3(b)(vi).

### 3.5 Selection of Directors to retire

The Directors who retire under rule 3.4(c) are the Directors who have held office the longest (in their respective category of Director) since last being elected or appointed. If 2 or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

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### 3.6 Cessation of Director's appointment

Notwithstanding any other rule in this constitution, a person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend 3 consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 3.7;
- (g) ceases to be eligible to act as a Director under rule 3.3; or
- (h) is a representative of an Affiliate that is on probation or engaged in disenfranchisement proceedings.

### 3.7 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Company by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D.

### 3.8 Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1 for any consecutive three month period, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

## 4. POWERS OF THE BOARD

### 4.1 Powers generally

Except as otherwise required by the Act, any other applicable law or this constitution, the Board:

- (a) has power to manage the business of the Company; and

- 
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

#### **4.2 Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 14; or
- (b) in accordance with a delegation of the power under rules 7 or 8.

### **5. EXECUTING NEGOTIABLE INSTRUMENTS**

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

### **6. ESTABLISH BOARD OF GOVERNORS TO MANAGE EACH GIFT FUND**

#### **6.1 Board to establish a Board of Governors for each Gift Fund**

In accordance with rule 24.3, the Board must establish a separate committee, called a Board of Governors, to manage each Gift Fund in the manner prescribed by their respective rules and to carry out the activities of Habitat for Humanity Australia solely within Australia and solely outside Australia respectively, that is to manage and administer:

- (a) Habitat for Humanity Australia Domestic Fund in accordance with the rules for the Habitat for Humanity Australia Domestic Fund, and
- (b) Habitat for Humanity Australia Overseas Aid Fund in accordance with the rules for the Habitat for Humanity Australia Overseas Aid Fund.

#### **6.2 Composition and qualification of Board of Governors**

- (a) Each Board of Governors must comprise 3 or more Directors, a majority of whom must be Responsible Persons.
- (b) The Board may determine from time to time that the Board of Governors shall consist of more than 3 Directors.

#### **6.3 Resignation from the Board of Governors**

A member of a Board of Governors may resign from it by providing written notification to the remaining members of the Board of Governors and the Board at least 4 weeks before the proposed date of retirement.

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#### 6.4 **Removal of the Board of Governors or a member of the Board of Governors**

The Board may by special resolution at any time remove an existing Board of Governors and appoint a new one or remove a member of a Board of Governors and appoint a new member to replace the member removed.

#### 6.5 **Too few members of the Board of Governors**

If the number of members of the Board of Governors is less than the number of members referred to in rule 6.2(a) or the number determined by the Board pursuant to rule 6.2(b), the Board may appoint a new member or members to the Board of Governors to comply with rule 6.2.

#### 6.6 **Functions of Board of Governors for each Gift Fund**

The Board of Governors established pursuant to rule 6.1 for each Gift Fund will have the necessary powers to fulfil the functions required of it under rules of the relevant Gift Fund, including:

- (a) To manage all money and property received into the relevant Gift Fund;
- (b) To invest Fund money in the manner set out in rule 5 of the rules for the relevant Gift Fund;
- (c) To keep proper accounts in respect of all receipts and payments on account of the relevant Gift Fund, prepare financial statements and issue receipts with respect to the relevant Gift Fund;
- (d) To make decisions about tax matters relating to the relevant Gift Fund;
- (e) To delegate powers to people nominated by it to carry out certain activities as provided for in the rules for the relevant Gift Fund,
- (f) Any incidental powers that are necessary for the performance of its functions.

### 7. **DELEGATION OF BOARD POWERS**

#### 7.1 **Power to delegate**

The Board may delegate any of its powers as permitted by section 198D.

#### 7.2 **Terms of delegation**

A delegation of powers under rule 7.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

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A document of delegation may contain provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

### **7.3 Committees**

Committees may be established by the Board pursuant to, or to accept and act upon, a delegation under rule 7.1 may be established by the Board and must be chaired by a Director. Such a committee must record a charter approved by the Board after it is established.

### **7.4 Reporting by committees**

A committee established pursuant to rule 7.3 must report back regularly through its chairperson to the Board and, if required by the terms of its establishment, provide an annual written report to the Board.

### **7.5 Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

### **7.6 Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

## **8. CHIEF EXECUTIVE OFFICER**

### **8.1 Appointment and remuneration**

- (a) The Board by special resolution may, subject to rule 14.7:
  - (i) appoint a person (who must be a member but need not be a Director) other than the chairperson to be the Chief Executive Officer;
  - (ii) subject to rules 3.1 and 3.3, appoint the Chief Executive Officer to be a Director entitled to attend, be heard and vote at all Board meetings; and
  - (iii) remove from the Board any Chief Executive Officer appointed pursuant to rule 8.1(a)(ii).
- (b) The remuneration of the Chief Executive Officer must be determined by the Board by ordinary resolution on an annual basis.

### **8.2 Delegation**

The Board may delegate any of the powers of the Board to the Chief Executive Officer on the terms and subject to any restrictions the Board decides and may revoke the delegation at any time.

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### 8.3 **Retirement**

The Chief Executive Officer is subject to the same rules regarding resignation and removal (but not retirement) from office as the other Directors, regardless of whether or not their appointment has ceased.

### 8.4 **Termination of appointment**

The appointment of the Chief Executive Officer terminates if:

- (a) the Chief Executive Officer resigns; or
- (b) the Board, by special resolution, removes the Chief Executive Officer from their office (which, without affecting the rights of the Chief Executive Officer under any contract between the Company and the Chief Executive Officer, the Board has power to do).

### 8.5 **Role of the Chief Executive Officer**

The role of the Chief Executive Officer includes:

- (a) managing the Company on a day to day basis and implementing business plans in accordance with the powers delegated to the Chief Executive Officer under rule 8.2; and
- (b) reporting to the Board on the Company's activities and operations.

## 9. **AFFILIATES GROUP**

### 9.1 **Establishment of Affiliates Group**

The Affiliates may, failing which the Board must, establish an Affiliates Group comprising not more than 2 representatives from each Eligible Affiliate who:

- (a) are nominated by the Eligible Affiliate; and
- (b) to the extent reasonably possible, possess skill and expertise in one or more of the areas mentioned in rule 3.3(c)(i).

### 9.2 **Functions of Affiliates Group**

The Affiliates Group established pursuant to rule 9.1 will have the following functions:

- (a) consult in good faith with the Board in relation to issues relevant to the Affiliates;
- (b) provide to the Board a list of Affiliate Nominated Director candidates for nomination by the Board and subsequent election by the members under rule 3.2(c)(ii) or for appointment by the Board to fill a casual vacancy under rule 3.2(a), having regard to the composition and qualification requirement prescribed in rule 3.3 and the other relevant provisions of this constitution; and

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- (c) record a charter approved by the Board.

## **10. NOMINATING COMMITTEE**

### **10.1 Establishment of Nominating Committee**

The Board must establish a Nominating Committee comprising not less than 2 nor more than 3 Directors, including at least 1 Affiliate Nominated Director, who are familiar with corporate governance principles and director recruitment practices.

### **10.2 Functions of Nominating Committee**

The Nominating Committee established pursuant to rule 10.1 will have the following functions:

- (a) to update candidate criteria annually by conducting a review of competencies and skills required to enable the board to meet its mission;
- (b) review all applications for membership as an At-Large Member of the Company;
- (c) recommend to the Board which of those applications should be considered by the Board for admission as At-Large Members;
- (d) provide a list of At-Large Director candidates for nomination by the Board and subsequent election by the members under rule 3.2(c)(ii), having regard to the composition and qualification requirement prescribed in rule 3.3 and the other relevant provisions of this constitution; and
- (e) nominate a person or persons to fill any casual vacancy on the Board.

## **11. DIRECTORS' DUTIES AND INTERESTS**

### **11.1 Compliance with duties under the Act**

Each Director must comply with sections 180 to 183.

### **11.2 Director can hold other offices etc**

A Director may, among other things:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

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### 11.3 Disclosure of interests

Each Director must comply with section 191.

### 11.4 Director interested in a matter

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, paragraph (c) applies only if it is disclosed before the transaction is entered into.

### 11.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

### 11.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, Chief Executive Officer, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.



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## 12. DIRECTORS' REMUNERATION

### 12.1 Prohibition on payments to Directors

Subject to rules 8.1(b), 12.2 and 13, the Company must not pay fees or other remuneration to a Director.

### 12.2 Payments to Directors with Board approval

With the approval of the chairperson of the Board, the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to the Company;
- (c) reasonable remuneration where the Director is an employee of the Company (for example the Chief Executive Officer), and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at the prevailing bank interest rate for similar amounts and circumstances;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to the Company.

## 13. OFFICERS' INDEMNITY AND INSURANCE

### 13.1 Indemnity

Subject to and so far as permitted by the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs

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and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

### 13.2 **Insurance**

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

### 13.3 **Former officers**

The indemnity in favour of officers under rule 13.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

### 13.4 **Deeds**

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 13, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 13 on any terms and conditions that the Board thinks fit.

## 14. **BOARD MEETINGS**

### 14.1 **Convening Board meetings**

A Director or the chairperson may at any reasonable time, and a Secretary must on reasonable request from a Director or the chairperson, convene a Board meeting.

### 14.2 **Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give at least 7 days notice of the meeting (or 14 days notice if the meeting is a special meeting to remove a director or dissolve, merge or otherwise reorganise the Company) (and, if it is adjourned for more than 7 days, of its resumption) individually to each Director who is in Australia
- (b) may give that notice orally (including by telephone) or in writing and must give the notice in writing in the case of a special meeting,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### 14.3 **Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the

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Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chairperson of the meeting is located.

#### 14.4 **Chairing Board meetings**

The Board must, by special resolution, elect an Independent Director as chairperson and decide the period for which that Director holds that office. If there is no chairperson of Directors or the chairperson is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

#### 14.5 **Quorum**

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is 2 At-Large Directors (other than the Chief Executive Officer) and 2 Affiliate Nominated Directors (other than the Chief Executive Officer). However every practicable effort must be made to confer with all Directors before making any decisions. A quorum must be present for the whole meeting.
- (b) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

#### 14.6 **Majority decisions**

Unless otherwise stated in this constitution, a resolution of the Board must be passed by ordinary resolution. Each Director has one vote and the chairperson of a Board meeting has a casting vote in addition to any vote held as a Director where there is a deadlock.

#### 14.7 **Matters requiring vote by special resolution of the Board**

The following matters require a special resolution of the Board to be passed at a Board meeting at which a quorum consisting of a simple majority of Directors is present for the whole meeting:

- (a) dis-affiliation of an Affiliate by termination of an Affiliate Agreement;
- (b) enforcement of an Affiliate Agreement other than by termination under rule 14.7(a);
- (c) appointment and termination of the Chief Executive Officer or chairperson;
- (d) initiation of litigation, the subject matter of which:
  - (i) relates in any way to rules 14.7(a), (b) or (c); and
  - (ii) in any other case, has a value of at least \$50,000; and
- (e) otherwise as required by this constitution.

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## 14.8 **Procedural rules**

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

## 14.9 **Written resolution**

If more than:

(a) 50% of the Directors in the case of a matter requiring vote by ordinary resolution;  
or

(b) 75% of the Directors in the case of a matter requiring vote by special resolution,

entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

## 14.10 **Additional provisions concerning written resolutions**

For the purpose of rule 14.9:

(a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;

(b) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

## 14.11 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

(a) there was a defect in the appointment of the person; or

(b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## 15. **MEETINGS OF MEMBERS**

### 15.1 **Annual general meeting**

The Company must hold an annual general meeting as required by section 250N.

### 15.2 **Calling meetings of members**

A meeting of members:

(a) may be convened at any time by the Board; and

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- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

### 15.3 **Notice of meeting**

Subject to rule 15.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

### 15.4 **Short notice**

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### 15.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

### 15.6 **Fresh notice**

If a meeting of members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

### 15.7 **Technology**

The Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

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**15.8 Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

**16. PROCEEDINGS AT MEETINGS OF MEMBERS**

**16.1 Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

**16.2 Quorum**

Subject to section 249B, unless otherwise provided, the quorum for a meeting of members is 10 members. Each individual present may only be counted once toward a quorum. If a member has appointed more than 1 proxy or representative only 1 of them may be counted towards a quorum.

**16.3 Quorum not present**

If a quorum is not present within 30 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

**16.4 Chairing meetings of members**

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

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## 16.5 Attendance at general meetings

- (a) Every member has the right to attend all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

## 16.6 Adjournment

Subject to rule 15.6, the chairperson of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

## 16.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## 17. PROXIES, ATTORNEYS AND REPRESENTATIVES

### 17.1 Appointment of proxies

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company:

- (a) that complies with section 250A(1); or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

### 17.2 Member's attorney

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointing member is an individual, the power of attorney must be signed in the presence of at least 1 witness.

### 17.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the

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purposes of section 250A(1) by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and

(b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company in accordance with section 250B(3) at least 24 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

#### **17.4 Standing appointments**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

#### **17.5 Suspension of proxy or attorney's powers if member present**

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

(a) in the case of an individual, in person; or

(b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

#### **17.6 Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

(a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and

(b) subject to rule 17.6(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

#### **17.7 More than 1 current proxy appointments**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than 1 proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.



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## 17.8 **Continuing authority**

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

## 18. **ENTITLEMENT TO VOTE**

### 18.1 **Number of votes**

Subject to section 250A(4) and payment of all applicable fees under rule 2.9:

- (a) each member has 1 vote on a show of hands or a poll; and
- (b) a member who is present and entitled to vote and is also a proxy, attorney or representative of another member has 1 vote on a show of hands.

### 18.2 **Votes of members not present in person or by proxy, attorney or representative**

The chairperson must cast 1 vote for each member not present either:

- (a) in person; or
- (b) by a proxy, attorney or representative appointed in accordance with this constitution,

at a properly convened meeting of members. The chairperson has absolute discretion as to how any votes cast by the chairperson pursuant to this rule 18.2 are cast.

### 18.3 **Casting vote of chairperson**

If an equal number of votes is cast for and against a resolution at a meeting of members, the chairperson has a casting vote whether or not the chairperson is a member.

### 18.4 **Voting restrictions**

If:

- (a) the Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

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those members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 19.3(c) applies.

#### **18.5 Decision on right to vote**

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairperson, whose decision is final.

### **19. HOW VOTING IS CARRIED OUT**

#### **19.1 Method of voting**

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 19.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

#### **19.2 Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the chairperson of a meeting) by:

- (a) at least 1 member entitled to vote on the resolution; or
- (b) the chairperson.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

#### **19.3 When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 19.3(c), in the manner that the chairperson of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 19.3(c), in the manner that the chairperson of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

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## 20. **SECRETARY**

### 20.1 **Appointment of Secretary**

The Board:

- (a) must appoint at least 1 individual; and
- (b) may appoint more than 1 individual,

to be a Secretary either for a specified term or without specifying a term.

### 20.2 **Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### 20.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 20.4.

### 20.4 **Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## 21. **MINUTES**

### 21.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 7);

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(d) resolutions passed by Directors without a meeting; and

(e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

## 21.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

## 21.3 **Inspection of minute books**

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

## 22. **COMPANY SEALS**

### 22.1 **Common seal**

The Board:

(a) may decide whether or not the Company has a common seal; and

(b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

### 22.2 **Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

### 22.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

(a) by 2 Directors;

(b) by 1 Director and 1 Secretary; or

(c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

## 23. **FINANCIAL REPORTS AND AUDIT**

### 23.1 **Company must keep financial records**

The Board must cause the Company to keep written financial records that:

(a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and

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(b) would enable true and fair financial statements to be prepared and audited, and must allow a Director and the auditor to inspect those records at all reasonable times.

### **23.2 Financial reporting**

The Board must cause the Company to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315.

### **23.3 Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

### **23.4 Conclusive reports**

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

### **23.5 Inspection of financial records and books**

Subject to rule 21.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

## **24. ESTABLISHMENT AND OPERATION OF GIFT FUNDS**

### **24.1 Establishing and maintaining two Gift Funds**

The Company will establish and maintain for the principal purpose of the Company (being its purpose and objects stated in rule 1.2 of this constitution) the following two Gift Funds:

- (a) Habitat for Humanity Australia Domestic Fund for the carrying on of activities solely within Australia, and
- (b) Habitat for Humanity Australia Overseas Aid Fund for the carrying on of activities solely outside Australia.

### **24.2 Moneys to be received by the Gift Funds**

Each of the Gift Funds described in rule 24.1(a) and 24.1(b) is a fund:

- (a) to which gifts of money or property for the principal purpose are to be made;
- (b) to which contributions described in item 7 or 8 of the table in section 30-15 of Tax Act in relation to a fund-raising event held for the principal purpose are to be made;

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- (c) to which any money received by the Company because of those gifts or contributions is to be credited;
  - (d) to which the public is invited to contribute; and
  - (e) which does not receive any other money or property.

#### **24.3 Management and administration of the Gift Funds**

The Company will cause each of the Gift Funds to be managed and administered in accordance with their respective rules, that is:

- (a) Habitat for Humanity Australia Domestic Fund in accordance with the rules for the Habitat for Humanity Australia Domestic Fund, and
- (b) Habitat for Humanity Australia Overseas Aid Fund in accordance with the rules for the Habitat for Humanity Australia Overseas Aid Fund.

#### **24.4 Limits on use of the Gift Funds**

The Company must use the following only for the principal purpose of the Company:

- (a) gifts made to the Gift Funds;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of Tax Act in relation to a fund-raising event held for the principal purpose; and
- (c) any money received because of those gifts or contributions.

#### **24.5 General Money**

The Company must keep all amounts of money, property and any other asset or benefit that it receives other than amounts described in rule 24.2 (called General Money) separate to the two Gift Funds. The Company may apply the General Money for such Company purposes as a majority of Directors in a Board Meeting deem appropriate, including defraying the costs of the Company in relation to or for administering the Gift Funds.

#### **24.6 Bank account**

The Company must open and maintain a separate bank account for each Gift Fund.

#### **24.7 Winding up of Gift Fund**

At the first occurrence of:

- (a) the winding up of the Gift Fund; or
- (b) the Company ceasing to be endorsed to operate the Habitat for Humanity Australia Fund under section 30-125 of Tax Act and ceases to be recognised by AusAid as the "approved organisation" that operates the Habitat for Humanity Australia Overseas Aid Fund,

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any surplus assets of the Gift Fund must be transferred to a fund, authority or institution to which gifts can be deducted under Division 30 of the Tax Act.

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the Tax Act are satisfied, a transfer under this rule must be made in accordance with those conditions.

#### **24.8 Other provisions**

Any other provisions which from time to time are required in order to maintain the status of the Company as a Company to which gifts can be deducted under the Tax Act are deemed to form part of this constitution.

### **25. REGISTER OF MEMBERS**

#### **25.1 Company to maintain register**

The Company must set up and maintain a register of members with separate entries for Legacy Affiliate Members, Affiliate Members and At-Large Members.

The Register must contain the following information:

- (a) the name, address, telephone number and email address (if any) of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each person who stopped being a member within the last 7 years;
- (d) the date on which the person stopped being a member; and
- (e) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

#### **25.2 Members to keep details up to date**

Each At-Large Member must promptly notify the Company, and each Legacy Affiliate Member and Affiliate Member must promptly notify their Affiliate (who in turn is obliged to notify the Company), of any changes to the details of that member that the Company is required to record in the register maintained in accordance with rule 25.1.

### **26. WINDING UP**

In the event of the winding up of the Company any surplus assets remaining after the payment of the Company's liabilities shall be transferred to one or more organisations in Australia which are Eligible Charities and which comply with section 150(1) of the Act.

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## 27. NOTICES

### 27.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

### 27.2 Preferred medium

The Company and the members acknowledge that electronic message is the preferred medium for giving and receiving notices under this constitution, and agree to use this medium whenever reasonably possible.

### 27.3 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

### 27.4 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
  - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by fax or electronic message or given under section 249J(3)(cb):
  - (i) by 5 pm (local time in the place from which it is sent or given) on a business day - on that day; or



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- (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
  - (c) if it is sent by mail:
    - (i) within Australia - 1 business day after posting; or
    - (ii) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

### **27.5 Business days**

For the purposes of rule 27.4, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

### **27.6 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

## **28. MODIFYING THIS CONSTITUTION**

The members by special resolution may revoke, add to or vary any of the provisions of this constitution, so long as:

- (a) no part of the Gift Fund or the income of the Gift Fund becomes subject to any institution, organisation, fund or authority other than an approved relief institution, organisation, fund or authority under the Tax Act; and
- (b) unless the Commissioner of Taxation consents to the revocation, addition or variation:
  - (i) no modification is made to or affecting the objects or purpose of the Company; and
  - (ii) no modification is made which authorises the Company to invest money of the Gift Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia.

The Company must notify the Commissioner of Taxation of any modification under paragraph (b) prior to the modification being effected.

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**SCHEDULE 1**

**AFFILIATE AGREEMENT**

( not attached as no modification proposed)