

# Constitution of The Salvation Army (Australia) Redress Limited

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## 1 Preamble

The Salvation Army, an international movement, is an evangelical part of the universal Christian Church. Its message is based on the Bible. Its ministry is motivated by love for God. Its mission is to preach the gospel of Jesus Christ and meet human needs in His name without discrimination. The Doctrines of The Salvation Army are contained in the appendix to this Constitution.

The Salvation Army (Australia) Redress Limited is part of The Salvation Army and is that part of The Salvation Army Australia Territory, which will interface with the Commonwealth Government's Redress Scheme.

The worldwide Salvation Army, of which The Salvation Army (Australia) Redress Limited is a part, is under the oversight, direction and control of the General, the person then occupying the office of the General of The Salvation Army. The General's principal duties are to determine, issue and enforce the policies, discipline, orders and regulations and minutes of the worldwide Salvation Army, to superintend and direct its operations, and to conserve the worldwide Salvation Army for the objects and purposes for which it is established. The Directors of the Company will fulfil their roles in accordance with this understanding and structure, and at all times in accordance with the strategic direction for the Company as approved by the Members. The Directors of the Company will also ensure that the work of the Company is undertaken consistent with the Mission and Values Statements of The Salvation Army Australia Territory, set out in Schedule 2 to this Constitution.

## 2 Name of the Company

The name of the Company is **The Salvation Army (Australia) Redress Limited**.

## 3 Object and powers of the Company

### 3.1 Object

The objectives of the Company shall be for the advancement of the Christian religion as promulgated in the religious doctrines set out in the Appendix to this Constitution which are professed, believed and taught by the worldwide Salvation Army and pursuant thereto, the relief of poverty, and other charitable objects beneficial to society or the community of mankind as a whole.

The Company is to:

- (a) manage the provision of, and actually provide, financial redress and any other appropriate forms of redress to survivors of institutional child sexual abuse by The Salvation Army Australia Territory through the National Redress Scheme;
- (b) assist with the provision of individualised direct personal responses to survivors of institutional child sexual abuse through the National Redress Scheme;
- (c) liaise with the operator of the National Redress Scheme on behalf of The Salvation Army Australia Territory;

(d) support the work of The Salvation Army.

### **3.2 Limitation of powers**

The Company is prohibited from making distributions of income or assets directly or indirectly to Members and paying fees to the Directors for acting as Directors.

The assets and income of the Company shall be applied solely in the furtherance of its object and no portion shall be directly or indirectly applied to a Member or Director except as bona fide compensation for services rendered to the Company (in the case of a Director, other than as a Director) or to reimburse a Member or Director for expenses incurred on behalf of the Company. The Company must approve all payments the Company makes to Directors and Members.

The Company can undertake all such other activities in furtherance of its object.

## **4 Status of the Constitution**

### **4.1 Constitution of the Company**

This is the constitution of the Company. To the extent of any inconsistency between the provisions of this Constitution and the *Corporations Act 2001* (Cth), the provisions of the *Corporations Act 2001* (Cth) will prevail.

### **4.2 Replaceable Rules**

This Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

## **5 Interpretation**

### **5.1 Definitions**

In this Constitution:

**Auditor** means the person appointed for the time being as the auditor of the Company.

**Board** means the Directors and alternates present at a meeting duly convened and at which quorum is present.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Victoria.

**Company** means The Salvation Army (Australia) Redress Limited.

**Constitution** means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

**Director** means a person who is a director for the time being of the Company and **Directors** means more than one Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors includes alternates.

**Member** means the person who is, or who is registered as, a member of the Company and **Members** means more than one Member. At the date of this constitution, the Members of the Company are:

- a) The Salvation Army (New South Wales) Property Trust  
ABN 57 507 607 457
- b) The Salvation Army (Queensland) Property Trust  
ABN 32 234 126 186
- c) The Salvation Army (Tasmania) Property Trust  
ABN 94 917 169 560
- d) The Salvation Army (Western Australia) Property Trust  
ABN 25 878 329 270
- e) The Salvation Army (South Australia) Property Trust  
ABN 13 320 346 330
- f) The Salvation Army (Victoria) Property Trust  
ABN 64 472 238 844
- g) The Salvation Army (Northern Territory) Property Trust  
ABN 65 906 613 779

**Members Guarantee Amount** means \$10.00.

**National Redress Scheme** means the national redress scheme created by the National Redress Scheme for Institutional Sexual Abuse Act 2018 (Cth).

**Register of Members** means the register of Members maintained pursuant to the Corporations Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

**Secretary** means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

**Survivor/s** means a person or those persons who have has suffered sexual abuse and any related non-sexual abuse that is within the scope of National Redress Scheme.

## 5.2 Interpretation

In this Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;



- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (d) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act.

## **6 Modification or repeal of this Constitution**

### **6.1 Modifying or repealing Constitution**

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting and only following receipt of prior written approval from the General of The Salvation Army for any proposed modification or amendment to this Constitution.

### **6.2 Date of effect of modification or repeal**

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

## **7 Member's liability**

### **7.1 Liability to contribute**

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

### **7.2 Limited liability**

The amount that each Member or past Member is liable to contribute is limited to the amount of the Members Guarantee Amount.

## **8 Members**

### **8.1 Number of Members**

The Company must have at least one Member.

## **8.2 Pre-condition to Membership**

A person is entitled to become a Member if that person agrees to assume the liability to pay the Member's Guarantee Amount.

## **8.3 Becoming a Member**

Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register of Members.

## **8.4 Application for Membership**

- (a) The Board may prescribe the form of the application for Membership.
- (b) An application for Membership must be:
  - (i) proposed by a Member (**proposer**);
  - (ii) in writing signed by the applicant and the proposer; and
  - (iii) if the Board has prescribed the form of the application for Membership, be in that prescribed form.
- (c) The Members of the Company must propose or approve the proposal of an application pursuant to clause 8.4(b).

## **8.5 Consideration for application for Membership**

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept, accept subject to conditions or reject the application.

## **8.6 Registration as Member**

If the Board accepts an application for Membership and the Members must approve the registration, the Board must register the name of the person in the Register of Members and record any conditions imposed on that person's Membership, as soon as practicable .

## **8.7 Members' Levy**

The Directors must ensure the Company is adequately capitalised and is funded by the Members to meets its debts and liabilities as they become due and payable.

The Directors may impose a levy on the Members (in whatever proportions that the Directors consider appropriate in their absolute discretion) to fund the legal obligations of the Company at any time if such a decision is approved unanimously by the Directors present at a Director's meeting and such a levy shall be payable by the Members by the time period deemed by the Directors.

## **9 Rights of Members are non-transferable**

The rights and obligations of a Member are personal and are not transferable.

## **10 Cessation of Membership**

### **10.1 Cessation of Membership**

A person ceases to be a Member, if the person:

- (a) resigns as a Member in accordance with this Constitution; or
- (b) is expelled as a Member in accordance with this Constitution.

### **10.2 Resignation of Member**

A Member may resign from the Company by giving the Board at least 30 days' written notice.

### **10.3 Expulsion of Member**

- (a) If the Board resolves that it is not in the best interests of the Company for a person to remain as a Member, that person is automatically expelled as a Member on the date the resolution takes effect. The Board must give that person written notice of the outcome of the resolution as soon as practicable thereafter.
- (b) The Board must give written notice to a Member of a meeting at which the resolution for the Member's expulsion is proposed:
  - (i) setting out the place, date and time of the meeting;
  - (ii) setting out the proposed resolution and the grounds for the proposed expulsion; and
  - (iii) informing the Member that the Member may submit written submissions to the Board before the resolution is put to vote.

## **11 Maintenance of Register**

### **11.1 Register of Members**

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) any conditions imposed on a Member's Membership; and
- (d) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

### **11.2 Inspection of Register of Members**

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

## **12 General meetings**

### **12.1 Annual general meetings**

The Company must hold its first annual general meeting within 18 months after its incorporation.

### **12.2 Business at annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of the directors;
- (c) the appointment of the auditor; and
- (d) determination of auditor's remuneration.

### **12.3 Director convening a general meeting**

Any Director or the Directors may convene a general meeting.

### **12.4 Meetings requested by Members**

- (a) If the Board receives a request from a Member or Members with at least five percent of the votes that may be cast at any general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

### **12.5 Notice of general meeting**

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

## **12.6 Shorter notice of general meeting**

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

## **12.7 Notice of resumption of an adjourned meeting**

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

## **12.8 General meetings at two or more places**

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

## **12.9 Postponement or cancellation of general meeting**

- (a) Subject to this Constitution and the Corporations Act, the Member (or a majority of Members if there is more than one) may change the place (or places) of, postpone or cancel a general meeting convened by the Directors or Members.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not change the place (or places), or postpone or cancel the general meeting without the consent of a majority of Members.

## **12.10 Notice of change, postponement or cancellation of meeting**

Subject to clause 12.9, the Members or Board as the case may be, must give notice of a change, postponement or cancellation of a general meeting. Notice must be given to each Member, the Board, and each person entitled to receive notice of the new place (or places) of the meeting, or if postponed, the new date, time and place (or places) of the meeting, or the cancellation of the meeting, as the case may be.

# **13 Proceedings at general meetings**

## **13.1 Quorum**

- (a) While The Salvation Army (Victoria) Property Trust is a Member, quorum at a general meeting is at least one Member present in person or by

proxy, provided that that Member is The Salvation Army (Victoria) Property Trust. At any other time, quorum is two or more Members present in person or by proxy. The quorum must be present at all times during the general meeting.

- (b) If a Member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

### **13.2 Lack of quorum**

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
  - (i) if convened by a Director or on the request of Members, is dissolved; or
  - (ii) in any other case:
    - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
    - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
      - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
      - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
      - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

### **13.3 Chairing general meetings**

- (a) At the first general meeting of the Company, the Members will elect a Director as chair. The person elected as chair may chair each subsequent general meeting for a period determined by the Members. The Members may remove or elect a new chair (who must be one of the Directors), at a subsequent general meeting or outside of a general meeting in accordance with clause 13.3(d).
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present must elect a Director present to chair that general meeting.

- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.
- (d) Subject to clause 13.3(a), the Members may elect or remove a person as chair and may determine the period for which the new chair shall hold office, by giving notice in writing to the Secretary. While The Salvation Army (Victoria) Property Trust is a Member it must approve the election or removal under this clause 13.3(d), or otherwise if it is not a Member then all current Members must approve the election or removal under this clause 13.3(d). This clause 13.3(d) does not limit the ability of the Members to elect or remove a chair at a general meeting as prescribed in clause 13.3(a) of this Constitution.

#### **13.4 Conduct of general meetings**

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

#### **13.5 Adjournment**

- (a) The chair of a general meeting at which a quorum is present may, with the consent of the Members present in person or by proxy, adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the Members.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business referred to in the notice convening the adjourned or postponed general meeting.

### **14 Proxy**

#### **14.1 Appointment of proxy**

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a Member.
- (c) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.

- (d) If a Member is entitled to cast two or more votes at a meeting, the Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

## **14.2 Proxy instruments**

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
  - (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
- (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
  - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
  - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

## **14.3 Proxy to be received by Company**

- (a) The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:
  - (i) the registered office;
  - (ii) a facsimile number at the registered office; or
  - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.



#### **14.4 Power to demand poll**

A proxy may demand, or join in demanding, a poll.

#### **14.5 Revocation of proxy**

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

#### **14.6 Validity of votes of proxy**

A vote cast by a proxy will be valid unless before the start or resumption of a general meeting at which a proxy votes, the Company receives written notice that the appointing Member:

- (a) ceases to be a Member;
- (b) has died;
- (c) is mentally incapacitated;
- (d) appoints a new proxy;
- (e) revokes the proxy's appointment; or
- (f) revokes the authority of a representative or agent who appointed the proxy.

#### **14.7 No liability**

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

### **15 Body corporate representative**

#### **15.1 Appointment of corporate representative**

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
  - (i) at meetings of the Members;
  - (ii) at meetings of creditors or debenture holders; or
  - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

#### **15.2 Authority to act as corporate representative**

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
  - (i) the Member's name and address;

- (ii) the Company's name;
  - (iii) the representative's name or the name of the office held by the representative; and
  - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

### **15.3 Instrument to be received by Company**

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
- (i) the registered office;
  - (ii) a facsimile number at the registered office; or
  - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

### **15.4 Revocation and appointment of corporate representative**

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

### **15.5 Validity of votes of corporate representative**

A vote cast by a corporate representative will be valid unless before the start or resumption of the general meeting at which a corporate representative votes, the Company receives written notice that the appointing Member:

- (a) ceases to be a Member;
- (b) appoints a new corporate representative; or
- (c) revokes the appointment of the corporate representative.

### **15.6 No liability**

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

## **16 Voting**

### **16.1 Entitlement to vote**

Each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member has one vote, whether on a show of hands, or on a poll.

### **16.2 Casting vote**

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has a casting vote.

### **16.3 Proxy vote to be identified**

Before a vote is taken, the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

### **16.4 Voting on resolution**

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.

### **16.5 Objection to right to vote**

- (a) A challenge to a right to vote at a general meeting:
  - (i) may only be made at that general meeting; and
  - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

### **16.6 Written resolutions**

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

### **16.7 Minutes**

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
  - (i) carried;
  - (ii) carried unanimously;
  - (iii) carried by a particular majority; or
  - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:

- (i) the proceedings and resolutions of each general meeting;
  - (ii) any declarations at each general meeting ; and
  - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

### **16.8 Disputes to be resolved by chair**

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

## **17 Poll**

### **17.1 Chair may determine to take a poll**

The chair of a general meeting may determine that a poll be taken on any resolution.

### **17.2 Right to demand poll**

A poll may be demanded on any resolution at a general meeting by a Member or Members with at least five percent of the votes that may be cast on the resolution on a poll.

### **17.3 Procedure for demanding poll**

- (a) A poll may be demanded:
- (i) before a vote on a show of hands is taken;
  - (ii) before the result of a vote on a show of hands is declared; or
  - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.

- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

## **18 Appointment and removal of Directors**

### **18.1 Number and type of Directors**

- (a) The number of Directors (not counting alternates) must not be less than three. At least two Directors must ordinarily reside in Australia.

### **18.2 Appointment of a Director**

- (a) The Company may by resolution at a general meeting appoint a person as a Director.
- (b) The Board may by resolution at a Board meeting appoint a person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director, but only in circumstances where the written consent of the Member has been tabled at the meeting considering any such appointment.
- (c) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as the Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

### **18.3 Confirmation of appointment**

If a person is appointed as a Director by the Board, the Company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

### **18.4 Removal of a Director**

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, a Director must be given a copy of the notice as soon as practicable.
- (c) The Director must be informed that the Director may:
  - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
  - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (d) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed.

The notice must set out the proposed resolution and the grounds for the proposed resolution.

### **18.5 Cessation of Directorship**

A person ceases to be a Director and the office of that Director is vacated if the person:

- (a) is removed from office as the Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies; or
- (e) is disqualified from acting as a director under the Corporations Act.

### **18.6 Resignation of a Director**

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

## **19 Powers and duties of the Directors**

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Directors.
- (b) Subject to this Constitution and the Corporations Act, the Directors may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The Directors may only exercise the powers of the Company in respect of the matters identified in Schedule 1 of this Constitution if they have received the written consent of the Member prior to the exercise of such powers.
- (d) The powers of the Directors include the power to:
  - (i) borrow or otherwise raise money;
  - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
  - (iii) issue debentures and other securities, and any instrument (including any bond),

provided that the Directors may only exercise any of these powers by passing a resolution in accordance with this Constitution.

## 20 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Directors may determine.

## 21 Alternate Directors

### 21.1 Appointment and terms of appointment

- (a) If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
  - (i) the name, experience and qualifications of the person;
  - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the notified; and
  - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- (b) The Board may ask for further information in relation to the alternate's qualifications and experience.
- (c) If the alternate is a Director, the appointment will take effect immediately.
- (d) If the alternate is not a Director, at the first meeting of the Board after the notice of the proposed appointment has been received by the Board, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate, the Director may appoint the person on the terms of appointment.
- (e) Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- (f) An alternate is not an agent of the Director appointing the alternate.

### 21.2 No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

### 21.3 Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

#### **21.4 Notice and attendance at Board meetings**

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate. An alternate may not attend any board meeting at which the Director who appointed the alternate is present, except where the alternate is appointed by more than one Director and the alternate is attending that Board meeting in respect of a Director who is not present.

#### **21.5 Voting of alternate**

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

#### **21.6 Termination of appointment of alternate**

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

#### **21.7 Cessation of appointment of alternate**

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

### **22 Reimbursement for expenses**

Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

### **23 Board meetings**

#### **23.1 Convening meetings**

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

#### **23.2 Notice of meetings**

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).



- (b) Each notice must state:
  - (i) the date, time and place (or places) of the Board meeting;
  - (ii) the general nature of the business to be conducted at the Board meeting; and
  - (iii) any proposed resolutions.

### **23.3 Omission to give notice**

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

### **23.4 Use of technology**

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting to the extent appropriate.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.
- (e) A Director may not leave a meeting using technology consented to by all Directors unless the chair consents to that Director leaving.

### **23.5 Quorum at meetings**

A quorum at a Board meeting is at least two Directors in total. The quorum must be present at all times during the Board meeting.

### **23.6 Chair of meetings**

- (a) The person that has been elected as chair pursuant to clause 13.3(a) shall chair each Board meeting during the term of their appointment.
- (b) If there is no elected chair pursuant to clause 13.3(a), or the chair is not present within 30 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

### **23.7 Passing resolutions at meetings**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate is entitled to vote and has one vote.

### **23.8 Conduct of meetings**

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

### **23.9 Written resolutions**

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document.

### **23.10 Minutes of meetings**

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
  - (i) the proceedings and resolutions of each Board meeting; and
  - (ii) all resolutions passed without a Board meeting.
- (b) The chair of the meeting, or the chair of the next Board meeting, must sign the minutes within one month after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books at no charge between the hours of 9:00 am and 5:00 pm on any Business Day. No amount may be charged for inspection.

### **23.11 Committee meetings**

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

## **24 Director's interests**

### **24.1 Declaration of interest**

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.

- (b) A notice of a material personal interest must set out:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

## **24.2 Voting by interested Directors**

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

## **25 Appointment of Secretary**

- (a) The Company must have at least one Secretary.
- (b) The Board may appoint a natural person to act as Secretary on the terms and for such a period as the Directors may determine.
- (c) Any Secretary appointed may be removed at any time by the Board.

## **26 Removal and remuneration of Auditor**

### **26.1 Remuneration of Auditor**

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

### **26.2 Removal of Auditor**

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
  - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and

- (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

### **26.3 Auditor's attendance at general meetings**

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

## **27 Financial records**

### **27.1 Member's access to financial records**

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members. Whilst The Salvation Army (Victoria) Property Trust is either the sole Member or a Member of the Company, it shall be able to access any and all books and records of the Company in such manner and at such times as it wishes.

### **27.2 Directors' access to financial records**

Any Director may at any time access and inspect any financial and any other record of the Company.

### **27.3 Access to financial records after ceasing to be a Director**

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

## **28 Notices**

### **28.1 General**

Any notice, statement or other communication under this Constitution must be in writing.

### **28.2 How to give a communication**

In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or

- (d) sent by email or fax to the email address or fax number nominated by the person for service of notices.

### **28.3 Communications by post**

A communication is given if posted:

- (a) within Australia to an Australian address, on the fourth Business Day after posting;
- (b) outside Australia to an address outside Australia, on the eleventh Business Day after posting.

### **28.4 Communications by fax**

A communication is given if:

- (a) sent by email, on the business day after it was sent;
- (b) sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### **28.5 After hours communications**

If a communication is given:

- (a) after 5:00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **29 Indemnity and insurance**

### **29.1 Indemnity**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may indemnify each officer, Member, Director and Secretary or any person who has been an officer, Member, Director or Secretary of the Company out of the assets of the Company against any liability, loss, damage, cost or expense incurred or to be incurred by the officer, Member, Director or Secretary in or arising out of the conduct of any activity of the Company or in or arising out of the proper performance of the officer's, Member's, Director's or Secretary's duties including any liability, loss, damage, cost, charge and expense incurred by that officer, Member, Director or Secretary in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by the officer, Member, Director or Secretary, in which judgment is given in the officer's, Member's, Director's or Secretary's favour or in which the officer, Member, Director or Secretary is acquitted or in connection with

any application in relation to any such proceedings in which relief is granted by the court to the officer, Member, Director or Secretary.

- (b) This indemnity is not intended to indemnify any officer, Member, Director or Secretary in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.

## **29.2 Documenting indemnity**

The Company may enter into an agreement containing an indemnity in favour of an officer, Member, Director or Secretary. The Company will determine the terms of the indemnity contained in the agreement.

## **29.3 Insurance**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer, Member, Director or Secretary or any person who has been an officer, Member, Director or Secretary of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer, Member, Director or Secretary of any duty.
- (b) If the Company determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

# **30 Winding up**

## **30.1 Surplus assets not to be distributed to Members**

If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member of the company, unless that Member or former Member is a charity described in clause 30.2.

## **30.2 Distribution of surplus assets**

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in paragraph (d)) that remain after the company is wound up must be distributed to one or more charities:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 3.1,
  - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company, and
  - (iii) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997*(Cth).
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time

of winding up. Unless otherwise prohibited by law, the fund, authority or institution to which these surplus assets are to be transferred must be owned or operated by The Salvation Army (Victoria) Property Trust, or such other suitable fund, authority or institution as nominated by The Salvation Army (Victoria) Property Trust.

- (c) If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements in paragraph (a), as decided by the Members.
- (d) For the purpose of this clause:
  - (i) 'gift funds' means:
    - (A) gifts of money or property for the principal purpose of the Company;
    - (B) contributions made in relation to a fund-raising event held for the principal purpose of the Company, and
    - (C) money received by the Company because of such gifts and contributions.
  - (ii) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

# Appendix

## Doctrines of The Salvation Army

1. **We believe** that the Scriptures of the Old and New Testaments were given by inspiration of God, and that they only constitute the Divine rule of Christian faith and practice.
2. **We believe** that there is only one God, who is infinitely perfect, the Creator, Preserver, and Governor of all things, and who is the only proper object of religious worship.
3. **We believe** that there are three persons in the Godhead-the Father, the Son and the Holy Ghost, undivided in essence and co-equal in power and glory.
4. **We believe** that in the person of Jesus Christ the Divine and human natures are united, so that He is truly and properly God and truly and properly man.
5. **We believe** that our first parents were created in a state of innocence, but by their disobedience they lost their purity and happiness, and that in consequence of their fall all men have become sinners, totally depraved, and as such are justly exposed to the wrath of God.
6. **We believe** that the Lord Jesus Christ has by His suffering and death made an atonement for the whole world so that whosoever will may be saved.
7. **We believe** that repentance towards God, faith in our Lord Jesus Christ, and regeneration by the Holy Spirit, are necessary to salvation.
8. **We believe** that we are justified by grace through faith in our Lord Jesus Christ and that he that believeth hath the witness in himself.
9. **We believe** that continuance in a state of salvation depends upon continued obedient faith in Christ.
10. **We believe** that it is the privilege of all believers to be wholly sanctified, and that their whole spirit and soul and body may be preserved blameless unto the coming of our Lord Jesus Christ.
11. **We believe** in the immortality of the soul; in the resurrection of the body; in the general judgment at the end of the world; in the eternal happiness of the righteous; and in the endless punishment of the wicked.



# SCHEDULE 1

The Directors may only exercise the powers of the Company in respect of the following matters if they have received the written consent of the Member to do so:

- **business change** - a fundamental change in the nature or scale of the business or strategic direction;
- **litigation** - commencement of any material litigation;
- **settlement** - settlement of any litigation;
- **winding-up or appointing a liquidator or receiver;**
- **merger or amalgamation;**
- **entering into a joint venture;**
- **material asset disposals** - (e.g. sale of premises or other assets exceeding \$100,000 in value)
- **debt and guarantees** - raising any financial accommodation or incurring a financial obligation in respect of a liability of any other person;
- **encumbrances** - granting security or encumbrances over a material part of the assets or undertaking of the Company;
- **capital expenditure** - any capital expenditure in any year exceeding the amount specified for aggregate capital expenditure in the budget by \$100,000;
- **leasing** - entering into or surrendering any lease for premises which are not owned by a related entity.