



HERBERT  
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## Constitution

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## Constitution

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Australian Committee for  
UNICEF Limited  
ABN 35 060 581 437



# Contents

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# Constitution

## **Australian Committee for UNICEF Limited**

### **A company limited by guarantee**

Australian Committee for UNICEF Limited is the official and exclusive partner to represent and promote the interests of UNICEF in Australia under the prevailing Cooperation Agreement. The company is committed to supporting UNICEF in pursuing the objectives in the United Nations' Convention on the Rights of the Child and ensuring children survive and thrive, are lifted out of poverty, are healthy, educated, protected and treated fairly, and have a voice in the decisions that affect them.

## **1 Company's name**

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The name of the company is Australian Committee for UNICEF Limited.

## **2 Company's purposes**

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The company's purposes are to advance the health, education and wellbeing of children in need by, without limitation:

- (a) raising funds for and supporting international programs and aid activities in developing countries in compliance with the Cooperation Agreement with UNICEF;
- (b) raising funds for and supporting activities to advance the health, education and wellbeing of children in need both domestically and internationally;
- (c) making citizens, corporations and governments in Australia aware of, educated and interested in, the health, education and wellbeing of children throughout the world and the assistance available to them through UNICEF and the company;
- (d) promoting recognition that programs for the benefit of children should be an integral part of social and economic development.

## **3 Company's powers**

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Solely for carrying out the company's purposes, the company may exercise all of the powers of a company limited by guarantee under the Corporations Act.

## 4 Not for profit

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### 4.1 Application of the company's income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any company member or director in their capacity as a company member or director.
- (c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution and in a manner consistent with the laws and policy on conflicts of interest.

### 4.2 Payments of directors fees

No directors fees may be paid to the directors.

### 4.3 Other payments to directors

All other payments to directors must be approved by the directors in a manner consistent with the laws and policy on conflicts of interest, including, but not limited to:

- (a) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
- (b) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
  - (1) the provision of the service has the prior approval of the directors; and
  - (2) the amount payable is not more than an amount that commercially would be reasonable payment for the service.

## 5 Company membership

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### 5.1 Company members

- (a) The company members are:
  - (1) the persons who are company members at the time of adopting this constitution;
  - (2) the directors; and
  - (3) any other persons the directors admit to company membership in accordance with this constitution.
- (b) Every applicant for company membership of the company (except the initial company members) must apply in the form and manner decided by the directors.



- (c) After receipt of an application for company membership, the directors must consider the application within a reasonable time and decide whether to admit or reject the applicant. The directors need not give any reason for rejecting an application.
- (d) Every company member agrees to comply with this constitution, act in the interests of the company, comply with the policies of the company and support the purposes of the company set out in rule 2.

## 5.2 Life company membership

- (a) A company member may be granted life company membership of the company for outstanding services to the company.
- (b) Life company membership may only be granted by the company members in general meeting on the recommendation of the directors.
- (c) Life company members are not required to pay subscription fees under 5.3, commencing the first financial year after they are granted life company membership.

## 5.3 Subscription fee

- (a) An annual subscription fee may be decided by the directors, and notified to the company members.
- (b) The directors are not required to pay subscription fees while they are directors.
- (c) The directors must notify all persons entered on the register of company members of the amount and time for payment of any annual subscription fee and of any alteration to the annual subscription fee. Varying amounts may be applied as decided by the directors and made available to the company members in a notice or a company membership policy.
- (d) Where the annual subscription fee is not received:
  - (1) after one month of the due date, the directors may issue a written reminder notice to the company member; and
  - (2) after one month of the written reminder notice, the company member's rights and privileges associated with that company membership will be suspended, including the right to receive notices of general meetings and the right to attend and vote at general meetings.
- (e) If a company member who was suspended pursuant to rule 5.3(d) has not paid an annual subscription fee for more than 2 months after the written reminder notice, the person ceases to be a company member.

## 5.4 Rights and obligations of company members

- (a) Company members have the following rights:
  - (1) to receive information on company's activities and finances in accordance with rule 11.1(b);
  - (2) to participate at a general meeting, vote, ask questions and express views and comments on the company's activities and finances, subject to the authority of the chairperson;
  - (3) to vote by special resolution on amending the constitution, changes to legal form, and winding up or dissolution of the company;



- (4) to nominate a person to be considered for as a director, to be nominated and elected as a director (subject to meeting the eligibility requirements), and a right to vote on resolutions to elect or remove a director in accordance with this constitution;
  - (5) to request resolutions for consideration at a general meeting in accordance with rule 11.2;
  - (6) to lodge a complaint with the directors and to have the complaint responded to.
- (b) Company members have the following obligations:
- (1) to support the interests and activities of the company, and to respect the decisions of the company and the directors;
  - (2) to act in accordance with the policies of the company;
  - (3) to avoid abusing their status of a company member of the company in particular with respect to personal benefits or advantages.

## 5.5 Register

The company must maintain a register of company members setting out the name, address, alternate electronic or other address (if any) for receipt of notices and date company membership starts and ceases.

## 5.6 When company membership ceases

A person immediately ceases to be a company member if the person:

- (a) dies;
- (b) resigns as a company member by giving written notice to the company;
- (c) is convicted of an offence against a child;
- (d) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (f) is expelled under rule 5.7;
- (g) becomes, if the directors so decide in their absolute discretion, an untraceable company member because the person has ceased to respond or otherwise communicate with his or her Registered Address; or
- (h) ceases to be a company member under rule 5.3(e).

## 5.7 Expulsion

- (a) The directors may by resolution expel a company member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a company member.
- (b) If the directors intend to consider a resolution under rule 5.7(a), at least one week before the meeting at which the resolution is to be considered, they must afford the company member natural justice by giving the company member written notice:
  - (1) stating the date, place and time of the meeting;

- (2) setting out the intended resolution and the grounds on which it is based;
  - (3) informing the company member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote and, if the company member does not attend, or does not provide a written explanation or submission, without providing a written excuse giving sound reasons, the directors may proceed to a resolution.
- (c) The company member ceases to be a company member at the moment a resolution of expulsion is passed subject to the resolution stating an alternate date for the cessation of company membership to take effect.

## 6 Liability and guarantee of company member

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- (a) The liability of the company members is limited to the amount of the guarantee given in rule 6(b).
- (b) Every company member must contribute an amount not more than \$1 to the property of the company if it is wound up while the person is a company member or within one year after the person ceases to be a company member, for:
  - (1) payment of the company's debts and liabilities contracted before the time he or she ceased to be a company member; and
  - (2) costs, charges and expenses of winding up.

## 7 Winding up

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- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, and after application of rule 8 and rule 9, and subject to any agreement with UNICEF, this property must only be given or transferred to an entity that is charitable at law.
- (b) The identity of the entity referred to in rule 7(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the company members by ordinary resolution at or before the time of winding up of the company and, if the company members do not decide, by the Supreme Court of New South Wales.

## 8 Public Benevolent Institution status

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### 8.1 Application of this rule

This rule only applies if the company is endorsed as a deductible gift recipient under item 4.1.1 of the table in section 30-45 ITAA97.



## 8.2 Gift Account

- (a) The company must maintain a management account (**Gift Account**) for its principal purpose:
  - (1) to identify and record Gifts and Deductible Contributions for its purposes, other than those for the Relief Fund;
  - (2) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
  - (3) that does not record any other money or property.
- (b) Receipts for Gifts or Deductible Contributions must state the:
  - (1) name and ABN of the company;
  - (2) the date and amount (or value, if property) of the Gift or Deductible Contribution;
  - (3) the name of the donor or contributors;
  - (4) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).

## 8.3 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon:
  - (1) the winding up of the company; or
  - (2) the company ceasing to be endorsed as a deductible gift recipient under the ITAA 97,whichever is earlier, any surplus funds in the Gift Account must be transferred to an entity:
  - (3) which is charitable at law; and
  - (4) gifts to which are deductible under the ITAA 97 on the basis that it is characterised as a registered public benevolent institution as described in item 4.1.1 of the table in section 30-45.
- (b) The identity of the entity referred to in rule 8.3(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the company members by ordinary resolution at or before the time of winding up of the company and, if the company members do not decide, by the Supreme Court of the state or territory in which the company's registered address is.

# 9 Developing Country Relief Fund

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## 9.1 Application of this rule

This rule only applies if the company is endorsed as a deductible gift recipient for the operation of a developing country relief fund under item 9.1.1 of section 30-80 ITAA97 and only to the extent required by relevant law, regulation or guideline applicable to the



company, or any administrative requirement or practice of the Australian Taxation Office or any regulator.

## 9.2 Relief Fund

- (a) The company must maintain a public fund for the relief of people in developing countries (as declared by the Government) to be known as United Nations Children's Fund or such other name as decided by the directors and approved by the Commissioner (if required) (**Relief Fund**):
  - (1) to identify and record Gifts and Deductible Contributions for these purposes;
  - (2) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
  - (3) that does not record any other money or property.
- (b) The company must invite the public to contribute to the company to support its purposes.
- (c) Receipts for Gifts or Deductible Contributions to the Relief Fund must state the:
  - (1) name and ABN of the company;
  - (2) name of the Relief Fund;
  - (3) the date and amount (or value, if property) of the Gift or Deductible Contribution;
  - (4) the name of the donor or contributors;
  - (5) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).
- (d) The company must notify the Commissioner, as soon as practicable, of
  - (1) any changes to the purposes or the constitution; and
  - (2) any change to the name of the company.

## 9.3 Relief Fund administration

- (a) The Relief Fund must be administered by the directors. If required by a relevant law, if there is not a majority of the directors who are individuals who have a degree of responsibility to the general community (**Responsible Persons**), the directors must delegate the power to administer the Relief Fund to a committee of at least 3 people, the majority of whom are Responsible Persons.
- (b) If at any time the requirement in rule 9.3(a) is required by law and is not met, the board or committee must not exercise any discretion or power in respect to the administration of the Relief Fund until the requirement is met, except to protect the Relief Fund or in the case of urgency.

## 9.4 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon:
  - (1) the winding up of the company; or



- (2) the company ceasing to be endorsed as a deductible gift recipient for the operation of the Relief Fund under item 9.1.1 of section 30-80 ITAA 97,  
whichever is earlier, any surplus funds in the Relief Fund must be transferred to an entity:
  - (3) which is charitable at law; and
  - (4) gifts to which are deductible under Division 30 of the ITAA 97.
- (b) The identity of the entity referred to in rule 8.3(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the company members by ordinary resolution at or before the time of winding up of the company and, if the company members do not decide, by the Supreme Court of the state or territory in which the company is registered.

## 10 Altering this constitution

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- (a) The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.
- (b) Any resolution purporting to alter or repeal the constitution so that the company would cease to be a charity will have no effect.

## 11 Accountability to company members

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### 11.1 Accountability to company members

- (a) The company must be accountable to the company members within the terms of the law, including, as applicable, the Corporations Act, the ACNC Act and this constitution.
- (b) The directors may decide the manner in which the company will be accountable to the company members and the manner in which they will provide an adequate opportunity for company members to raise any concerns about the governance, activities and finances of the company.

### 11.2 Calling general meetings

- (a) The directors may convene a general meeting at such time and place as the directors think fit.
- (b) If company members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held for a proper purpose and with a valid resolution, the directors must:
  - (1) within 2 months of the company members' request, give all company members notice of a general meeting; and
  - (2) hold the meeting within 3 months of the company members' request.
- (c) The company members who make the request for a general meeting must:
  - (1) state in the request the resolution to be proposed at the meeting;



- (2) sign the request; and
  - (3) give the request to the company.
- (d) The directors may not postpone or cancel a general meeting convened in response to a company members requisition under rule (b) in accordance with rule 11.4 without the prior written consent of the persons who requisitioned or convened the meeting.

### 11.3 Notice of general meetings

- (a) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 15 to each person who is at the date of the notice:
  - (1) a company member;
  - (2) a director;
  - (3) the auditor of the company, if applicable.
- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting;
  - (2) state the general nature of the business to be transacted at the meeting and if a special resolution is proposed, state the full terms of the special resolution; and
  - (3) specify any details of voting such as proxies, written voting or other methods, if any, as decided by the directors.
- (c) A person may waive notice of a general meeting or consent to shorter notice by written notice to the company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate anything done or resolution passed at the general meeting if:
  - (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person has notified or notifies the company of that person's agreement to that thing or resolution.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

### 11.4 Changing, postponing or adjourning general meetings

- (a) The directors may change the venue for, postpone, adjourn or cancel a general meeting if:
  - (1) they reasonably consider that the meeting has become unnecessary;
  - (2) the venue would be unreasonable or impractical;



- (3) a change is necessary in the interests of conducting the meeting efficiently; or
  - (4) a quorum is not present under rule 11.5.
- (b) The chairperson must adjourn or close a general meeting if a majority of company members present at the meeting and entitled to vote direct the chairperson to do so.
- (c) No business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (d) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (e) Except as provided by rule 11.4(d), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **11.5 Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of company members is present when the meeting proceeds to business.
- (b) A quorum consists of at least 5 company members entitled to vote and be present at the meeting. A person may only be counted once even if a person is a representative or proxy of more than one company member.
- (c) If a quorum is present at the beginning the meeting it is deemed present throughout the meeting unless the chairperson otherwise declares on the chairperson's own motion or on the motion of a company member entitled to vote.
- (d) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) a general meeting called by directors on the request of company members under 11.2(b) will be dissolved; and
  - (2) in any other case, the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place.
- (e) If at the adjourned meeting under rule 11.5(d)(2), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### **11.6 General meetings by technology**

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the company members in person, to constitute a quorum constitutes a meeting of the company members, provided each company member has a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution relating to meetings of the company members apply, as far as they can, with any necessary changes, to meetings of the company members by telephone or other electronic means.
- (c) A company member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.



- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the company members involved was at that place for the duration of the meeting.

### **11.7 Chairperson of general meetings**

- (a) The chairperson of directors or, in the chairperson's absence, the deputy chairperson, must preside as chairperson at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If there is no chairperson or deputy chairperson of directors or both the conditions in rule 11.7(a) have not been met, a majority of the directors present must elect another chairperson of the meeting.
- (c) A chairperson elected under rule 11.7(b) must be:
  - (1) another director who is present and willing to act; or
  - (2) if no other director present at the meeting is willing to act, a company member who is present and willing to act.
- (d) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (e) Where the votes on a proposed resolution are equal, the chairperson may exercise a casting vote.

### **11.8 Decisions of the company members**

- (a) Every company member has one vote.
- (b) The directors may decide the manner voting is held at a meeting or, where a meeting is not required, by postal, electronic or any other means of voting.
- (c) Subject to this constitution, each company member entitled to vote at a meeting of company members may vote as decided by the directors:
  - (1) in person or, where a company member is a body corporate, by its representatives;
  - (2) by one proxy (if permitted); or
  - (3) by written vote (if permitted).
- (d) A proxy (if any) or representative is entitled to a separate vote for each company member the person represents, in addition to any vote the person may have as a company member in his or her own right.
- (e) If the directors decide, written voting may be permitted in addition to or instead of proxy voting. The directors must decide the manner written votes are to be given.
- (f) An objection to the qualification of a person to vote must be:
  - (1) raised before the vote objected to is counted; and
  - (2) referred to the chairperson, whose decision is final.
- (g) A vote not disallowed by the chairperson under rule 11.8(f) is valid for all purposes.
- (h) Except where by law a resolution requires a special majority, resolutions must be decided by a majority of the votes cast by the company members.

## 11.9 Voting by show of hands or ballot

- (a) A resolution put to the vote of a general meeting is to be decided in the first instance on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a ballot (poll) is demanded by:
  - (1) the chairperson of the meeting;
  - (2) at least 3 company members present and with the right to vote on the resolution;
  - (3) any company member or company members present and who are together entitled to at least 5% of the votes on the resolution.
- (b) A vote cast by written vote in accordance with rule 11.11 will be counted as if the vote was cast in person at the meeting.
- (c) A demand for a ballot does not prevent a general meeting continuing to transact any business except the question on which the ballot has been demanded.
- (d) Unless a ballot is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or lost and an entry to that effect in the book containing the minutes of the company's proceedings, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (e) If a ballot is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the ballot is the resolution of the meeting at which the ballot was demanded.
- (f) A ballot demanded at a general meeting on a question of adjournment must be taken immediately.
- (g) The demand for a ballot may be withdrawn.

## 11.10 Voting by proxy or representative

- (a) A company member may appoint by written notice to the company, a proxy, and an incorporated company member (a body corporate) may appoint a proxy or a representative, to attend meetings and vote on behalf of the company member. The proxy does not need to be a company member of the company.
- (b) Unless otherwise provided in the written appointment, the appointment of a proxy or representative will give the proxy or representative the power:
  - (1) to agree to a meeting being convened by shorter notice than is required by law or by this constitution;
  - (2) to vote on any amendment to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (3) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
  - (4) to ask questions and other customary actions at a meeting.
- (c) The written appointment of a proxy or representative may direct the proxy or representative how to vote in respect of a particular resolution and, where this is provided, the proxy or representative is not entitled to vote on the proposed resolution except as directed in the appointment.



- (d) Unless the directors otherwise agree, a proxy or representative may not vote at a general meeting or adjourned meeting or on a ballot unless a written appointment is:
  - (1) received in the manner specified for that purpose in the notice convening the meeting before the time specified in the notice;
  - (2) in the case of an adjourned meeting, provided to the secretary at the adjourned meeting.
- (e) The appointment of a proxy is not revoked by the individual company member appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy for the appointer is not entitled to vote as the appointer's proxy on the resolution.

### **11.11 Voting by written votes**

- (a) The directors may decide that a company member who is entitled to vote on a resolution is entitled to a written vote in respect of that resolution. A 'written vote' is a vote submitted by a company member by giving notice to the company for or against the identified resolution.
- (b) The directors may decide the procedures in relation to written voting, including specifying the form, method and timing of giving a written vote.
- (c) If a company member attempts to cast more than one vote on a particular resolution, the last vote received by the company is taken as the vote.

### **11.12 Written resolutions of company members**

- (a) A company members' resolution may be passed without a meeting (unless a meeting is required under this constitution or the Corporations Act, such as a resolution to remove an auditor or a director, or for passing a special resolution). Such a resolution is passed if all the company members entitled to vote sign or agree in writing to the resolution. The resolution is taken to be passed on the date the last company member signs or agrees to the resolution.
- (b) If the company has only one company member, the company may pass a resolution by the company member recording it and signing the record.

## **12 Directors**

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### **12.1 Appointing directors**

- (a) The minimum number of directors is 6. The maximum number of directors is to be fixed by the directors, but may not be more than 12, unless the company in general meeting resolves otherwise. The directors must not fix a maximum which is less than the number of directors in office at the time.
- (b) The directors will adopt a board charter which includes a policy on board composition, or adopt a separate board composition policy, setting out the desired mix of diversity and skills and experience of the directors.
- (c) The directors may appoint any individual as a director either to fill a casual vacancy or as an additional director, provided:



- (1) the appointment is consistent with the board composition policy or board charter adopted by the directors;
  - (2) the number of directors does not exceed the maximum number fixed under rule 12.1(a);
  - (3) unless the individual is a managing director, the individual is not an employee of the company;
  - (4) before appointing the director, that individual signs a consent to act as a director and holds a current Working With Children Check; and
  - (5) the director is not disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act.
- (d) A director, other than a managing director, appointed by the directors under rule 12.1(c) holds office only until the conclusion of the next election following his or her appointment.

## **12.2 Process for retirement, re-election and renewal**

- (a) The directors must hold an election each financial year, where at least one-third of the directors will be eligible for re-election determined in accordance with this rule. Elections may take place at a general meeting or by written vote as decided by the directors.
- (b) At every election if the number of directors (after excluding a managing director and any director appointed since the last election by the directors under rule 12.1(c)):
  - (1) is 6 or less, then at least 2 of the remaining directors must retire from office; or
  - (2) if the number is more than 6, at least one third of those directors (to the nearest whole number) must retire from office.
- (c) No director may hold office without re-election beyond the third election following the election at which the director was last elected or re-elected.
- (d) The directors to retire under rule 12.2(b) are those directors who wish to retire and not offer themselves for re-election, those directors required to retire under rule 12.2(c) and, so far as is necessary to obtain the number required, those who have been longest in office since their last election. As between directors who were last elected on the same day, those to retire must, unless they can agree among themselves, be decided by lot.
- (e) The directors to retire under rule 12.2(b) (both as to number and identity) is decided having regard to the composition of the board of directors at the date of the notice calling the election general meeting or sending the information to enable written voting on the election. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after this date but before the voting closes.
- (f) A director retiring from office is eligible for re-election subject to a maximum term of 9 years. The maximum term for directors is calculated by reference to the total years in office whether the years are consecutive or otherwise.



- (g) The retirement of a director from office and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the election.

### **12.3 Nomination of directors**

- (a) Nominations of candidates for election as directors will be received by the secretary up to 45 days prior to the election unless the directors agree to accept nominations after this time.
- (b) The nominations must be:
  - (1) made in writing, signed by one company member other than the candidate;
  - (2) accompanied by a short biographical statement and the written consent of the candidate (which may be endorsed on the form of nomination);
  - (3) consistent with the requirements of the board composition policy;
  - (4) delivered to the secretary before the date notified.

### **12.4 Vacation of office**

The office of a director becomes vacant:

- (a) in the circumstances outlined in the Corporations Act;
- (b) if a person is appointed to make decisions on behalf of the director under a law relating to mental health;
- (c) if the director is removed from office by resolution of the company members;
- (d) if the director is charged or convicted of an offence against a child;
- (e) if the director ceases to hold a current Working With Children Check;
- (f) if the director is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (g) except to the extent of a leave of absence granted by the directors, if the director fails to attend at least 3 consecutive meetings of the directors or at least 4 meetings over a period of 365 days;
- (h) if the director resigns by written notice to the company; or
- (i) if the director is appointed for a specific term of office and is not reappointed;
- (j) if the director is a managing director, on termination of their employment.

### **12.5 Directors conflict of interest**

- (a) A director must disclose a perceived or actual material conflict of interest to the other directors.
- (b) Unless the directors otherwise decide and where permitted by law, a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:
  - (1) be present while the matter is being considered at the meeting; or
  - (2) vote on the matter.



- (c) The directors may make a policy or rules relating to disclosure of interests and subsequent requirements of the directors. Any policy or rules will bind all directors. An act, transaction, agreement, instrument, resolution or other thing with a third party is not invalid or voidable only because a director fails to comply with the policy or rules.
- (d) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity, merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (e) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (f) A director who is interested in an arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with applicable disclosure requirements under this constitution, any policy or rules adopted by the directors, and under the Corporations Act and ACNC Act regarding that interest.
- (g) A director may hold any other office or position (except auditor) in the company or related body corporate in conjunction with his or her directorship and may be appointed to that office or position on terms (including remuneration and tenure) that the directors decide.

## 12.6 Powers and duties of directors

- (a) The directors are responsible for carrying out the company's purposes set out in rule 2 and for managing the company's affairs to further the purposes.
- (b) The directors may exercise all the company's powers which are not required, by the Corporations Act or by this constitution, to be exercised by the company members in a general meeting.
- (c) The directors must ensure they are aware of, and comply with their duties as directors, including the ACNC governance standards and external conduct standards.
- (d) The directors must comply with and periodically review the board charter and policies of the company.
- (e) The directors must ensure the company's financial affairs are managed in a responsible manner, including:
  - (1) maintaining financial records that correctly record and explain its transactions and financial performance, and enable true and fair financial statements to be prepared annually;
  - (2) deciding how payments are to be approved or executed by or on behalf of the company; and
  - (3) ensuring the company does not continue to operate while insolvent.
- (f) The directors may delegate any of their powers and functions to one or more of the directors, a committee, an employee, or agent or other person as the directors decide.

## 12.7 Meetings of directors

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) A director may call a meeting of the directors by giving reasonable notice to the other directors, or by the secretary giving notice of the meeting to all directors.
- (c) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) may be given in any way authorised by rule 15.2.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the director has waived or waives notice of that meeting before or after the meeting;
  - (3) the director has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
  - (4) the director attended the meeting.

## 12.8 Directors' meetings using technology

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (b) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (c) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.
- (d) If, before or during the meeting, a technical difficulty occurs which means that one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, if a quorum of directors remains present, continue with the meeting.

## 12.9 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of at least a majority of directors.
- (c) If the number of directors in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of directors fixed under this



constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### **12.10 Chairperson of directors**

- (a) The directors may elect one of the directors as chairperson of directors for a term of up to 4 years, unless the term is extended for a maximum of one year for a particular chairperson by the directors.
- (b) The directors may also elect a deputy chairperson who, in the absence of the chairperson at a meeting of the directors, may exercise all the powers and authorities of the chairperson.
- (c) The chairperson of directors must preside as chairperson at each meeting of directors if present within 10 minutes after the time appointed for the meeting and willing to act.
- (d) If there is no chairperson or deputy chairperson of directors or the conditions in rule 12.10(c) have not been met, the directors present must elect one of the directors as chairperson of the meeting.

### **12.11 Decisions of directors**

- (a) A directors' resolution at a directors' meeting must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.
- (b) Where the votes on a proposed resolution are equal, the chairperson of the meeting may exercise a casting vote in addition to their vote as director.

### **12.12 Written resolutions of directors**

- (a) A written resolution is taken to have been passed if:
  - (1) all of the directors who would be entitled to receive notice of a meeting and to vote on a resolution are given a document setting out that resolution;
  - (2) at least 75% of the directors sign or consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent to the director; and
  - (3) the directors who sign or consent to the resolution would have constituted a quorum at a meeting held to consider that resolution.
- (b) A director may consent to a written resolution by:
  - (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving to the company written notice (including by email or other electronic means) addressed to the secretary or to the chairperson agreeing to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (3) telephoning the secretary or the chairperson of directors and signifying assent to the resolution and clearly identifying its terms.



The resolution is taken as passed when the last director required to constitute at least 75% of the directors signs or consents to that resolution within the time period specified in rule 12.12(a)(2).

### **12.13 Minutes of meetings and minutes of resolutions**

- (a) The directors must ensure:
  - (1) minutes of general meetings, directors' meetings and committee meetings (including all resolutions proposed); and
  - (2) records of resolutions passed by company members, directors and committees, without a meeting,are recorded and kept as part of the company's records. The records must be made within one month after the relevant meeting is held or written resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

### **12.14 Committees**

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors and others as they think fit.
- (b) A committee to which powers have been delegated must exercise those powers delegated in accordance with directions given by the directors.
- (c) Provisions of this constitution that apply to meetings and resolutions of directors apply, as far as they can, with any necessary changes, to meetings and resolutions of a committee of directors.

### **12.15 Validity of acts**

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the directors or the committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified as a director or having vacated office; or
- (c) the person not being entitled to vote.

## **13 Managing director and secretary**

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### **13.1 Managing director**

- (a) The directors may employ a managing director.
- (a) The appointment of a managing director may be for the period, at the remuneration and on the conditions the directors think fit.



- (b) Subject to any contract between the company and a managing director, a managing director may be removed or dismissed by the directors at any time, with or without cause.
- (c) The directors may:
  - (1) confer on a managing director such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties so conferred; and
  - (3) authorise the managing director to delegate all or any of the powers, discretions and duties conferred on the managing director.
- (d) An act done by a person acting as managing director is not invalidated merely because of:
  - (1) a defect in the person's appointment as managing director; or
  - (2) the person being disqualified from being managing director, if that circumstance was not known by the person when the act was done.

## 13.2 Secretary

- (a) The directors must appoint at least one secretary, who may also be a director.
- (b) The secretary must provide written consent to the appointment.
- (c) The secretary can be removed by the directors, and another person appointed as secretary, at any time.

# 14 Indemnity and insurance

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## 14.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 14 applies to Indemnified Officers.

## 14.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
  - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company;
  - (2) is enforceable without that person having first to incur any expense or make any payment; and
  - (3) operates only to the extent that the loss or liability in question is not covered by insurance.



### **14.3 Insurance**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

### **14.4 Savings**

Nothing in this rule 14:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 14; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 14 does not apply.

## **15 Notices**

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### **15.1 Notices by the company to company members**

The company may give notices and any communication, including a notice of general meeting to a company member:

- (a) personally;
- (b) by sending it by post to the address for the company member in the register of company members or the alternative address (if any) nominated by the company member; or
- (c) by sending it to the email or other electronic address (if any) (including providing a URL link to any document or attachment) nominated by the company member; or
- (d) by notifying the company member by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

### **15.2 Notices by the company to directors**

Subject to this constitution, a notice may be given by the company to any director by:

- (a) serving it personally at the director's usual residential or business address;
- (b) sending it by post in a prepaid envelope to the director's usual residential or business address; or
- (c) sending it to the email or other electronic address supplied by the director to the company for giving notices.

### **15.3 Notices by company member or directors to the company**

Subject to this constitution, a notice may be given by a company member or director to the company by:



- (a) serving it on the company at the registered office of the company;
- (b) sending it by post in a prepaid envelope to the registered office of the company;  
or
- (c) sending it to the principal electronic address of the company at its registered office, or if there is no principal electronic address, to the email or other electronic address of the secretary.

#### 15.4 Time of service

- (a) A notice from the company properly addressed and posted is taken to be served at 10.00am on the day that is five Business Days after the date it was posted.
- (b) Where the company sends a notice by email or other electronic transmission, the notice is taken as served at the time the email or electronic transmission is sent.
- (c) If service under rules 15.4(a) or 15.4(b) is on a day which is not a Business Day or is after 4.00pm (addressee’s time), the notice is regarded as having been received at 9.00am on the next following Business Day.

#### 15.5 Other communications and documents

Rules 15.1 to 15.4 (inclusive) apply, as far as they can, with any necessary changes, to the service of any communication or document.

#### 15.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by electronic transmission or any other form of written communication. A signature to a written notice need not be handwritten.

### 16 Definitions and interpretation

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#### 16.1 Definitions

The meanings of the terms used in this constitution are set out below.

Term	Meaning
<b>ACNC Act</b>	the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
<b>Business Day</b>	Monday to Friday inclusive, excluding New Years’ Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.

<b>Cooperation Agreement</b>	The Cooperation Agreement between the Australian Committee for UNICEF Limited and the United Nation's Children Fund dated 17 August 2011, as amended from time to time.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Deductible Contribution</b>	a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
<b>Gift</b>	a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage as described in item 1 of the table in section 30-15 of the ITAA 97.
<b>Indemnified Officer</b>	<ol style="list-style-type: none"> <li>1 each person who is or has been a director or executive officer of the company; and</li> <li>2 any other officers or former officers of the company as the directors in each case decide.</li> </ol>
<b>ITAA 97</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Registered Address</b>	a company member's addresses (including any alternate or electronic addresses) as notified to the company by the company member and recorded in the company's records.
<b>Responsible Person</b>	an individual who has a degree of responsibility to the general community as defined by the Commissioner of Taxation.
<b>UNICEF</b>	United Nation's Children Fund, an international inter-governmental organization established by the General Assembly of the United Nations by resolution No. 57(I) of 11 December 1946 as a subsidiary organ of the United Nations and provided an indefinite mandate by resolution 802 (VIII) of 6 October 1953.

## 16.2 Interpretation

In this constitution:

- (a) references to notices include formal notices of meeting, all documents and other communications from the company to its company members;
- (b) a reference to a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;



- (c) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (d) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (e) a reference to a company member present at a general meeting is a reference to a company member present in person or by proxy, attorney or representative;
- (f) a reference to writing and written includes printing, lithography, electronic means of writing (e.g. fax, email) and other ways of representing or reproducing words in a visible form;
- (g) the singular includes the plural and the plural includes the singular; and
- (h) headings and bold type are used for convenience only and do not affect the interpretation of this constitution.

## 17 Corporations Act and ACNC Act

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- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) If at any time, the company is not a registered charity under the ACNC Act, the Corporations Act applies and (unless it is a replaceable rule) overrides any part of this constitution, or policy of the company, which is inconsistent with the Corporations Act.