

CONSTITUTION

UNDER

CORPORATIONS ACT 2001

FOR

**ADVENTIST DEVELOPMENT AND RELIEF AGENCY
AUSTRALIA LIMITED**

Approved 29 November 2023



**ADVENTIST DEVELOPMENT AND RELIEF AGENCY
AUSTRALIA LIMITED**

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Constitution of
**ADVENTIST DEVELOPMENT AND RELIEF AGENCY AUSTRALIA
LIMITED**

Under the Companies Act 2001

1. INTERPRETATIONS

1.1 Subject to this rule 1, expressions contained in this Constitution bear the same meaning as specified in the Act at the date on which this Constitution becomes binding on the Company. Unless the context otherwise requires the following words and expressions have the meaning given to them in this rule:

ACA means Australasian Conference Association Limited;

the **Act** means the Corporations Act 2001 as amended from time to time;

“ADRA” means Adventist Development and Relief Agency, an agency of the Church as defined by it from time to time that acts as the development and relief arm of the Church in various regions of the world including Australia;

Affiliated Entity means any corporation established by the SPD, the union conferences/missions or any of their constituent conferences/missions and designated as an affiliated entity;

Australian Union Conference means that part of the Church with geographical territory as defined from time to time but including the Territory;

Board means the members for the time being of the board of directors of the Company;

Chair means the person designated to preside over the meeting;

Church means the Seventh-day Adventist Church;

Company means Adventist Development and Relief Agency Australia Limited;

the **Local Conference** means the Conference of the Church being a constituent part of the Church with geographical Territory as determined by the Church and defined from time to time in the Conference Constitution;

the **Union Conference** means the Australian Union Conference of the Church being a constituent part of the Church with geographical Territory as determined by the Church and defined from time to time in the Union Conference Constitution;

the **Union Conference Constitution** means the constitution of the Conference as amended from time to time;

Constituency Meeting in relation to the Union Conference means the meeting of delegates held in accordance with the Union Conference Constitution;

“Constituent Conferences” means those local conferences, recognised as such by the Australian Union Conference and organized within the territory of the Australian Union Conference;

Constitution means this constitution of the Company and all amendments to it from time to time;

Executive Committee means the executive committee of the Union Conference;

for cause when used in connection with removal from an elected or appointed position shall include incompetence and/or conduct which in the opinion of the members at a general meeting of members or of the Board as the case may be amounts to, but is not limited to persistent failure to co-operate with duly constituted authority in substantive matters and with relevant employment and Church principles, and/or actions which may be susceptible to discipline within the Church in accordance with Church principles at the relevant time;

Local Churches means those church congregations organised within the Conference from time to time as recognised from time to time by a Constituency Meeting of the Conference;

month means calendar month;

Officer when used in this Constitution, means “a director” or “secretary” or chief executive officer of the Company;

Ordinary Resolution means a resolution of members approved by a simple majority of those members present and voting on the question;

Purposes means the objects and purposes of the Company as described in rule 2 that are charitable at law;

registered office means the location nominated as the registered office of the Company being a location in New South Wales, Australia;

Regular Constituency Meeting means a regular Constituency Meeting as defined by the Union Conference Constitution;

Regulations means any regulations made by the Company and all supplementary substituted or amended regulations for the time being in force;

rules means rules and sub-rules contained in the Constitution;

secretary of the Company shall include the secretary, an assistant/associate secretary (if applicable) and the acting secretary for the time being of the Company;

SPD means the South Pacific Division of the Church which is a division of the Church with geographical territory as defined by the Church from time to time but which includes Australia and certain nations located in the South Pacific Ocean;

SPD Working Policy means those policies, adopted from time to time by the SPD and/or by such entity affiliated with the SPD as the SPD executive committee may determine;

Special Resolution means a resolution of members approved by a majority of 75% of all members entitled to vote on the question;

Special Constituency Meeting means a Constituency Meeting of the Union Conference which is not a Regular Constituency Meeting, as defined by the Union Conference’s constitution;

Territory means the territory of the Union Conference as determined by the Church and defined from time to time in the Union Conference Constitution or where application to a local Conference, the territory of the Local Conference as determined by the Church and defined from time to time in the Conference Constitution ;

Term means the period from one Regular Constituency Meeting of the Union Conference until the next Regular Constituency Meeting as determined by the Union Conference Constitution or as otherwise determined by this Constitution;

Termination Notice means the written notification or notice referred to in sub-rules 5.6.5.1 and 5.6.5.2;

writing includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine.

- 1.2** This Constitution is intended to be gender neutral. To avoid any misunderstanding words importing masculine gender only shall include females and vice versa. Words importing persons include corporations. Words importing the singular number only include the plural, and vice versa.
- 1.3** A reference to a rule means a rule of this Constitution and the relevant sub-rules also. A reference to a sub-rule includes a reference to any sub-division of the sub-rule.
- 1.4** Rule and sub-rule headings are included for convenience only and do not affect the construction of this Constitution.
- 1.5** Reference to any legislation or to any provisions in any legislation shall be deemed to be reference to that legislation or provisions (and including all forms of subordinate legislation made thereunder) as from time to time amended, re-enacted, or substituted, and unless otherwise stated, to Australian legislation.

2. OBJECTS & PURPOSES

2.1 Reason for establishment

The Company has been established by the Union Conference for the purposes of exercising and assuming, as the case may be, the duties, liabilities, responsibilities, powers, rights and entitlements of the Executive Committee assigned to it by written instrument of the Executive Committee and in particular of providing humanitarian, development and relief services in accordance with the religious, moral and ethical standards of the Church in the Union Conference.

2.2 Principal Objects

The principal objects of the Company are to reduce poverty by serving people and communities in need, by the provision of humanitarian, development and relief aid and assistance in Australia and overseas, without regard to ethnic, political, racial or religious association or qualification. . These objects are to be effected in the Union Conference by the Company, while working in harmony with the principles of the Church, Australian Union Conference policy and the SPD Working Policy.

2.3 Purposes of the Company to be Charitable

Without limiting the generality of sub-rule 2.2, the Company may pursue the principal objects through supplementary objects that may include the following: -

- (a) To aid the poor, the deprived, the significantly materially disadvantaged, the sick, the disabled or helpless, the malnourished and the victims of natural and man-made disasters;
- (b) To formulate and implement community and culturally-appropriate development and/or relief programs that relieve and eradicate poverty, ensure sustainable livelihoods, enhance wellbeing, ensure protection and safety and contribute to a vibrant civil society;
- (c) To study and understand the causes of poverty, deprivation, injustice and need in order to provide assistance that will be appropriate to the community and their needs;
- (d) To establish policies and procedures that eliminate race, sex, creed or politics from the criteria used for the grant of aid and which ensure that the Company does not engage in activities that promote or support: -
 - i. particular religious adherence;
 - ii. partisan political engagement of any political party, candidate or any organisation affiliated with a political party.
- (e) To develop plans and policies which not only meet emergency needs but also put in place programs which build long-term sustainable development solutions and equip those affected to permanently relieve and eradicate their poverty, suffering or distress;
- (f) To establish educational and training programs ancillary to objectives of the Company;
- (g) To establish programs to assist the poor that seek to meet their situation within their respective cultural contexts and which they will regard as helpful in both the short and long-term;
- (h) To co-operate with other denominations, philanthropic organisations, government agencies and multi-lateral organisations which share similar concerns and objects and with whom it may participate in advancing the objects of the Company;
- (i) To create and enter into partnerships with organisations that forward the work and objects of the Company, that work toward the restoration of human dignity and justice and that seek the improvement of human wellbeing and the establishment of a vibrant civil society;
- (j) To ensure that all activities recognise the importance of gender, equity and environmental sustainability as foundational elements within the development process;
- (k) To demonstrate Christian values through compassionate service without ever using them as a criteria for the giving of aid;
- (l) To establish policies and procedures to ensure that Company or Church-sponsored volunteers and employees will protect vulnerable persons and not burden the communities where they serve and that their skills will contribute toward meeting the needs which they are assigned to meet;
- (m) To develop a program of public communication and information to make known its objectives and programs in development and relief;
- (n) To do all such other things as are or may be incidental or conducive to the attainment of any of the above objects.

3. POWERS

3.1 In pursuance of the objects as set out in rule 2 above, the Company has, subject to this Constitution, the powers set out in s.124 of the Act, except s.124 (1) (a), (c), (d), (e), (g) and (h).

3.2 Without limiting the generality of sub-rule 3.1, the Company may, in harmony with the principles of the Church, Australian Union Conference policy and the SPD Working Policy: -

- (a) carry on religious charitable, humanitarian and development work;

- (b) apply to the Commissioner of Taxation for registration as a deductible gift recipient, but only if it establishes a “gift fund” for the purposes of Division 30 of the *Income Tax Assessment Act 1997* in accordance with sub-rule (c) below.
- (c) as appropriate establish, maintain and operate an endorsed gift fund or gift funds within the meaning of Division 30 of the *Income Tax Assessment Act 1997* provided that:
- (i) the Company opens a bank account to hold or opens as many bank accounts as are necessary to hold money in separate bank accounts for each fund;
 - (ii) all money received for the purposes of a gift fund must be deposited to the relevant gift fund;
 - (iii) no other money or property may be credited to a gift fund;
 - (iv) all donations to each fund are properly received by the Company for or on behalf of the fund or funds;
 - (v) subject to sub-rule 3.2(c)(vi) below, money credited to a bank account in respect of a gift fund may only be applied to the principal purpose of the relevant gift fund; and
 - (vi) in the event that any endorsed gift fund operated by the Company is wound up or if the endorsement of the Company as a deductible gift recipient is revoked, then any surplus assets of the fund remaining after the payment of liabilities has been made shall be transferred to an Australian fund, authority or institution to which income tax deductible gifts can be made as recommended by not less than a two-third majority of the Australian Union Conference Executive Committee and in default of any such recommendation to an Australian fund, authority or institution to which tax deductible gifts can be made operated by the Church as determined by the Supreme Court having jurisdiction in the matter;
- (d) make donations gifts or appropriations to persons companies institutions organisations and enterprises of or affiliated with the Church;
- (e) acquire take and hold real and personal property including shares;
- (f) make appointments or terminate or vary any such appointment or remove for cause any person appointed by the Company;
- (g) acquire any rights or privileges that the Company may regard as necessary desirable or expedient for the primary objects hereof or for promoting its interests in harmony with the principles and policies of the Church;
- (h) purchase take on lease or exchange hire or otherwise acquire any real or personal property and maintain erect or alter any buildings or works necessary or convenient for the carrying out of any or all of the objects of the Company;
- (i) sell improve lease or otherwise deal with all or any part of the property of the Company;

- (j) invest any moneys of the Company not immediately required by the Company upon such securities as may from time to time be determined;
- (k) receive income from trusts donations legacies and bequests under wills or otherwise and raise money required for the Company in such manner (in accordance with the principles and policies of the Church) as the Company shall think fit;
- (l) borrow money or receive money on deposit either without security or secured by debentures debenture stock (perpetual or terminal) legal or equitable mortgage or other security charged on the undertaking of all or any of the assets of the Company including the moneys due on the winding-up and give such guarantees and indemnities either unsecured or secured as may be deemed necessary or desirable;
- (m) lend money for such purposes as may be germane to the objects of the Company and on such terms as may seem expedient;
- (n) sell or dispose of the assets of the Company or any part thereof for such consideration as the Company may think fit and in particular for debentures or securities of any other company or association having similar objects and activities;
- (o) make by-laws and regulations and do all such other things as may be incidental or conducive to the attainment of the objects of the Company or any of them or which may be incidental or conducive to the government and maintenance of the Company;
- (p) do all such other things as are or may be incidental or conducive to the attainment of any of the above.

4. RESTRICTIONS ON COMPANY

4.1 Company powers to be limited

For the avoidance of doubt, the capacity of the Company and the exercise by the Company of any rights, powers and privileges conferred on the Company by the Act which are inconsistent with the provisions of rules 2, 3 and 4 are prohibited. For the purposes of the Act, this rule 4 shall be a provision limiting the capacity, rights, powers and privileges of the Company accordingly.

4.2 Purposes to be a restriction on the Company

Notwithstanding anything expressed or implied in this Constitution or permitted under the Act nothing shall give the Company any rights, powers or privileges, or permit the Company to operate for purposes other than charitable purposes, in particular:

4.2.1 Nothing expressed or implied in this Constitution shall permit the activities of the Company or any business carried on by or on behalf of or for the benefit of the Company, to be carried on for the private pecuniary profit of any individual; and

4.2.2 No distribution of profit, capital or surplus may be made to any person unless such distribution must be applied by that person toward the charitable purposes referred to in rule 2.

4.3 Capacity to act to be a restriction on the Company

4.3.1 The Company shall not engage in any business or activity or enter into any transaction except on behalf of the Union Conference and the Church in accordance with rule 2 or as trustee of any specific trust. Any ancillary activities as may be reasonably necessary or desirable to give effect to the foregoing together with any other acts as are reasonably required for the profit or for maintenance and administration of the Company shall be undertaken only in accordance with or to give effect to such roles.

4.3.2 The income and property of the Company shall (subject to any specific trusts affecting the same) be held and applied solely for the purposes of the Company and of the Australian Union Conference of the Seventh-day Adventist Church that are directly for the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness and/or for the purposes of the Church that are directly for the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness.

4.3.3 Persons who may not benefit

No portion of income or property of the Company shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever called by way of profit to the persons who at any time or times are or have been members of the Company, the Union Conference or the Church or to any person claiming through any of them.

4.3.4 Notwithstanding the terms of sub-rule 4.3.3:-

- (a) nothing herein contained shall prevent the payment in good faith of specified remuneration, wages, and/or allowances to any officers or employees of the Company or to any member thereof or other person in return for any services actually rendered to the Company, the Conference or the Church;
- (b) nothing shall be deemed to exclude any members, officers or employees of the Company, the Conference or the Church or their families or relations from the benefit of any grant made in furtherance of any of the objects of the Company.

4.3.5 The Company's right of indemnity:

- (a) is limited to income and property received and held for application pursuant to sub-rule 4.3.2;
- (b) does not permit personal recovery from any recipient of income and/or property pursuant to sub-rule 4.3.2.

4.4 Director's remuneration

The restrictions contained in rule 12 shall limit the Company with respect to payments to directors and shall limit any of the powers contained in or implied by the Act.

4.5 Restrictions to override

The restrictions and conditions provided for in this rule 4 apply notwithstanding any other provision in this Constitution to the contrary.

5. MEMBERS - APPOINTMENT AND REMOVAL

5.1 Qualifications

5.1.1 The qualification of a member of the Company shall be that the person:-

- (a) be a member of the Church in regular standing, and
- (b) is a member of the Executive Committee, and
- (c) not be an insolvent under administration, and
- (d) not be mentally incapacitated, and
- (e) has not been disqualified from managing corporations under the Act (or under any similar or corresponding provision in any amending legislation), and
- (f) has not been convicted of an offence punishable by imprisonment for a term of more than 12 months or, where convicted of any lesser offence punishable by a term of imprisonment of less than 12 months, has their qualification confirmed by a resolution of a general meeting of members, and
- (g) be a member for the time being of one of the two categories described in sub-rules 5.2 or 5.2.2.

5.2 Composition of members

5.2.1 Ex officio members

The ex officio members of the Company shall be persons who consent to become members, in accordance with sub-rule 5.3, from among persons occupying the following positions: -

- (a) the President of the Australian Union Conference;
- (b) the Union Secretary of the Australian Union Conference;
- (c) the Chief Financial Officer of the Australian Union Conference
- (d) the ADRA Director of the South Pacific Division.

provided that where one person holds any two of the positions named above, that person shall have the rights and responsibilities of a single ex officio member only.

5.2.2 Appointed members

5.2.2.1 Subject to sub-rule 5.2.2.2, appointed members shall be appointed by the Executive Committee for a Term at its first meeting following a Regular Constituency Meeting and must comprise at least 75% of the members of the Executive Committee.

5.2.2.2 Between Regular Constituency Meetings of the Union Conference, the committee that is charged with the duty of appointing persons to vacancies in the Executive Committee pursuant to the Union Conference constitution may fill by appointment any vacancies in the appointed members category whether such vacancies are created by resignation or removal or loss of qualification or other reason and the period of membership of any such appointees shall expire at the end of the Term in which they were

appointed or earlier in accordance with this constitution. Such appointment shall be by resolution and shall be made from the same group (as set out in sub-rule 5.2.2.1) in which the vacancy occurred.

5.2.2.3 An ex officio member of the Company cannot be appointed as an appointed member, unless and until the person ceases to hold the relevant office.

5.3 Consent of members

5.3.1 When any person holding such qualification as aforesaid agrees to be admitted to membership of the Company the person must sign and deliver to the secretary of the Company an application for admission in the terms following, that is to say:

“To Adventist Development and Relief Agency Australia Limited:

I, of
 being a member of the Church in regular standing and a member Australian Union Conference Executive Committee, hereby request you to enter my name in the register of members of the Company subject to your Constitution, the obligations of which I hereby accept. I declare that, in all respects, I conform to the qualifications required by sub-rule 5.1.

Dated this 20.....”

5.3.2 The Board upon receiving any such application as is mentioned in the last preceding sub-rule and upon being satisfied that the applicant is qualified for membership shall enter the name of such applicant in the register of the members of the Company.

5.4 Members may serve for more than one Term and may serve in consecutive Terms.

5.5 The rights of a member as such shall be personal, and shall not be transferable, and shall cease upon the death of the member or on loss of Church membership.

5.6 Disqualification

5.6.1 Between Regular Constituency Meetings of the Conference, a member of the appointed members category shall cease to be a member of that category if a two-thirds majority of those present and voting at a meeting of the Executive Committee, after consideration of the recommendation (if any) of the Board of the Company, so determine. Any such determination may be made only “for cause” and / or if the member ceases to be a member of the Church in regular standing.

5.6.2 Any member may withdraw from the Company by giving one month's notice in writing to the Board of intention so to do, and upon the expiration of such notice the person shall cease to be a member.

5.6.3 Any person who:-

- (a) ceases to be a member of the Church in regular standing; or
- (b) has ceased to be a member of the Executive Committee, or
- (c) being a member of the ex officio members category, ceases to hold the relevant office; or

- (d) ceases to be a member of the appointed members category; or
- (e) becomes mentally incapacitated; or
- (f) becomes an insolvent under administration; or
- (g) is or becomes or has become disqualified from managing corporations under the Act (or under any similar or corresponding provision in any amending legislation); or
- (h) has been convicted of an offence punishable by imprisonment for a term of more than 12 months or, where convicted of any lesser offence punishable by a term of imprisonment of less than 12 months, has not had their qualification confirmed by a resolution of a general meeting of members

ceases to be qualified for membership of the Company.

5.6.4 In case any member shall lose qualification for membership, the person shall thereupon ipso facto cease to be a member of the Company.

5.6.5 Disqualification resulting from service of notice by ACA

5.6.5.1 Notwithstanding sub-rules 5.2.2.1 and 5.2.2.2, if written notification is received by the Company from ACA that the licence to use the expression “Adventist” in the company name is to be withdrawn or cancelled or otherwise terminated by ACA, then the membership positions filled by appointed members (“the Retiring Appointed Members”) shall be automatically declared vacant for up to 30 days after the Special Constituency Meeting has been held. Within 30 days of the Special Constituency Meeting the Executive Committee shall appoint persons to fill the vacancies thus created from within the appointed members, save that the Retiring Appointed Members of the Company are not eligible for appointment to the appointed members category of members.

5.6.5.2 The meeting referred to in sub-rule 5.6.5.1 hereof shall take place as soon as practicable after receipt of the Termination Notice by the Company but in any event not less than 14 days prior to the intended termination date of the said licence. Forthwith upon appointment of a new membership to the appointed members category in accordance with sub-rule 5.6.5.1, the Company shall notify ACA and invite ACA to withdraw the Termination Notice.

5.6.5.3 The period of membership of members appointed following the Special Constituency Meeting under sub-rule 5.6.5.1 hereof shall expire at the end of the Term in which they were appointed or earlier in accordance with this Constitution.

6. EXERCISE OF POWERS RESERVED TO MEMBERS

6.1 Powers reserved to members

6.1.1 Powers reserved to members of the Company by the Act or by this Constitution may be exercised at a general meeting of members.

6.1.2 Unless otherwise specified in the Act or this Constitution, a power reserved to members may be exercised by an Ordinary Resolution.

6.2 Special Resolutions

6.2.1 When members exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (b) an alteration of the Company name pursuant to rule 15;
- (c) the liquidation of the Company.

7. GENERAL MEETINGS OF MEMBERS

7.1 Annual general meeting

7.1.1 An annual general meeting shall be held in accordance with the Act at such time and place (or places in accordance with sub-rule 7.2.3) inside the Territory as may be prescribed by the Company in general meeting of members and if no time or place is so prescribed such time and place inside of the Territory may be determined upon by the Board.

7.1.2 The annual general meeting and all other meetings of the Company's members shall be called "general meetings of members".

7.1.3 The ordinary business of an annual general meeting shall be to:

- (a) receive and consider financial statements, Board reports and auditors reports as may be required by the Act;
- (b) elect members of the Board in the place of retiring directors; and
- (c) transact any other business which under the Constitution ought to be transacted at an annual general meeting except as provided for in rule 17.

7.2 Convening general meetings of members

7.2.1 Sub-rule 7.2 replaces the replaceable rule of the Act entitled "Calling of meetings of members by a director".

7.2.2 In addition to the annual general meeting referred to in sub-rule 7.1.1, the Board may call other general meetings of members at any time and for any purpose connected with Company business.

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

7.2.4 A general meeting of members shall be held on requisition of any of the members in accordance with the provisions of the Act.

7.3 Notice of meeting

7.3.1 Subject to sub-rule 7.3.2 written notice of the time and place of a general meeting of members must be sent to every member entitled to receive notice of the meeting, and to every director and, in the case of the annual general meeting of members, the auditor of the Company, not less than 21 days before the

meeting. A general meeting of members may be convened at shorter notice only in accordance with the Act.

7.3.2 Where notice is given by advertisement in accordance with sub-rule 14.1 such notice shall be given at least 30 days before the meeting.

7.3.3 If a Special Resolution is to be submitted to the meeting provision must be given for members unable to attend the meeting to appoint a proxy in accordance with Rule 8. In such circumstances a proxy form should be included with the notice.

7.4 Contents of notice

7.4.1 The notice referred to in sub-rule 7.3 must state:

- (a) the time and place of the meeting;
- (b) any technology to be used to enable members a reasonable opportunity to participate from any other location;
- (c) the nature of the business to be transacted at the meeting in sufficient detail to enable a member to form a reasonable judgment in relation to it;
- (d) the text of any Special Resolution to be submitted to the meeting; and
- (e) the person or persons who can be appointed as a proxy in accordance with sub-rule 8.3.1.

7.5 Irregularities in notice

7.5.1 An irregularity in a notice of a meeting is waived if a majority of the members entitled to attend and vote at the meeting, attend the meeting without protest as to the irregularity, or if a majority of the members entitled to attend and vote at the meeting agree to the waiver.

7.5.2 The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a member does not invalidate the proceedings at that meeting.

7.6 Method of holding meeting

7.6.1 A general meeting of members may be held either:

- (a) by a number of members, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all members participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

7.7 Chair of general meetings of members

7.7.1 Sub-rule 7.7 replaces the replaceable rule of the Act entitled “Chairing meetings of members”.

7.7.2 The President of the Union Conference shall be entitled to preside as Chair at every general meeting of the Company.

7.7.3 If at any general meeting the President of the Union Conference be not present or be present but before or during the meeting elect not to act as Chair the Union Secretary of the Union Conference, if present, shall be the chairperson. If both the President and the Union Secretary be absent or elect not to act as Chair the Chief Financial Officer of the Union Conference shall chair the meeting.

7.7.4 If all of the President, Union Secretary and Chief Financial Officer are absent or elect not to chair the meeting, the President must choose a member present to act as Chair during such absence.

7.8 Adjournments

7.8.1 In addition to the provisions set out in sub-rule 8.1.5 the Chair may with the consent of the meeting adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

7.8.2 If a general meeting of members is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

7.9 Appointment of Auditor

7.9.1 The Company shall, by Ordinary Resolution at a general meeting of members, appoint an auditor or auditors in harmony with the SPD Working Policy and the Act, and their qualification, appointment remuneration rights and duties shall be regulated by the Act or, in the absence of such regulation, by SPD Working Policy.

7.10 Annual Reports

7.10.1 The Company shall make and lodge an annual report as may be required by the Act.

7.11 Minutes

7.11.1 The Board must ensure that minutes are kept of all proceedings at meetings of members.

7.11.2 Minutes which have been signed correct by the Chair of the meeting are prima facie evidence of the proceedings.

8. VOTING AT GENERAL MEETINGS

8.1 Quorum

8.1.1 Sub-rule 8.1 replaces the replaceable rule of the Act entitled “Quorum”.

8.1.2 No business shall be transacted at a general meeting of members unless a quorum is present at the time for the meeting to proceed to business, and such quorum shall be ascertained as set out in sub-rule 8.1.3.

8.1.3 If the members of the Company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten and do not exceed twenty the quorum shall be eight; if they exceed twenty and do not exceed forty the quorum shall be eleven; if they exceed forty and do not exceed sixty the

quorum shall be twelve, and thereafter one shall be added to the quorum for every twenty additional members.

8.1.4 A quorum must be present at all times during the meeting.

8.1.5 If within one hour after the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Chair of the meeting may then appoint; and if at such adjourned meeting a quorum is not present, it shall be adjourned, sine die, but no notice of any such adjournment shall be required to be given to the members and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

8.2 Voting

8.2.1 Sub-rule 8.2 replaces the replaceable rule of the Act entitled “How voting is carried out”.

8.2.2 A resolution is carried by a majority of votes of those present and entitled to vote at the meeting, save where otherwise stipulated by this Constitution or the Act.

8.2.3 At any general meeting of members, unless a poll is demanded by at least five members, a declaration by the Chair that a resolution has been carried on a show of hands and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

8.2.4 If a poll is demanded in the manner aforesaid, the same shall be taken in such manner as the Chair directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting of members.

8.2.5 Subject to sub-rule 8.2.6, every member shall have one vote, and no more, both on a show of hands and a poll.

8.2.6 The Chair has a casting vote both on a show of hands and a poll.

8.2.7 A challenge to a right to vote at a general meeting of members

- (a) may only be made at the meeting; and
- (b) must be determined by the Chair at the meeting, and the chairperson’s decision is final.

8.3 Proxies and representatives

8.3.1 A member may appoint in writing another person who must also be

- (a) a member, and
- (b) approved by the Board as a proxy prior to the meeting,

as proxy or attorney to attend and vote instead of the member at the meeting, save that a proxy is not entitled to vote on a show of hands.

Where a meeting is adjourned, and the appointment of the proxy has not been revoked, either the member or the member's proxy in the person's stead may exercise that member's vote at the adjourned meeting.

- 8.3.2** The appointment of a proxy must be in accordance with the Act and may include how the proxy is to vote on specified matters.

9. DIRECTORS - APPOINTMENT AND REMOVAL

- 9.1** In accordance with sub-rule 10.1.1 the management of the business and affairs of the Company shall be vested in a Board of directors.

- 9.2** The Company shall not have a managing director.

9.3 Qualifications

The qualification of a director shall be that the person:

- (a) be a member of the Church in regular standing; and
- (b) not be an insolvent under administration; and
- (c) not be mentally incapacitated; and
- (d) has not been disqualified from managing corporations under the Act (or under any similar or corresponding provision in any amending legislation); and
- (e) has not been convicted of an offence punishable by imprisonment for a term of more than 12 months or, where convicted of any lesser offence punishable by a term of imprisonment of less than 12 months, has their qualification confirmed by a resolution of a general meeting of members; and
- (f) has not been removed or sanctioned by any professional association of teachers that the director has previously belonged to (teachers only).
- (g) be a member of either category set out in rule 9.4.1.

9.4 Composition of the Board

- 9.4.1** The Board shall be comprised of ex officio directors as set out in sub-rule 9.4.3 and appointed directors as allowed for in sub-rule 9.4.4 provided that at least two thirds of the directors are Australian residents.

- 9.4.2** No person, whether an ex officio director or an appointed director, shall assume the role of director unless the person has first given the Company a written consent to act as a director. Such consent must include a declaration attesting that the person conforms to the qualifications required by sub-rule 9.3.

9.4.3 Ex officio directors

- 9.4.3.1** Subject to the receipt of an executed written consent and declaration pursuant to sub-rule 9.4.2, the ex officio directors shall be persons occupying the following positions:-

- (a) the President of the Australian Union Conference;
- (b) the Union Secretary of the Australian Union Conference;
- (c) the Chief Financial Officer of the Australian Union Conference;
- (d) the Chief Executive Officer of ADRA Australia;

provided that where one person holds any two of the positions named above, that person shall have the rights and responsibilities of a single ex officio director.

9.4.4 Appointed directors

9.4.4.1 Not less than three and not more than seven appointed directors shall be appointed by resolution passed by the members. To enable a rotation of appointed directors and to provide an overlap of directors approximately half will be appointed at the first general meeting of members immediately following the Regular Constituency Meeting, the other half approximately mid-way between the previous Regular Constituency Meeting and the next scheduled Regular Constituency Meeting or at such other times as the members of the Company determine.

9.4.4.2 At least three appointed directors shall be members of the Seventh-day Adventist Church who are not currently employed by the Seventh-day Adventist Church.

9.4.4.3 Between Regular Constituency Meetings, the members of the Company may fill by appointment any vacancy or vacancies in the appointed directors category whether such vacancies are created by resignation, removal, by the failure to appoint at the first members' meeting immediately following the Regular Constituency Meeting or other reason and the period of appointment of any such appointees shall expire at the end of the Term in which they were appointed, or earlier in accordance with this Constitution. Such appointment shall be by resolution passed at a general meeting of members. If two or more persons are proposed for appointment as directors, a separate resolution is required in respect of each.

9.5 A director holds office until their retirement, disqualification or removal in accordance with this Constitution.

9.6 Directors may serve for more than one Term and may serve in consecutive Terms.

9.7 The Company shall not have alternate directors.

9.8 Disqualification

9.8.1 Persons will be disqualified from holding the office of director if they:

- (a) resign in writing and is not reappointed in accordance with this Constitution, or
- (b) cease to be a member of the Church; or
- (c) are removed by Ordinary Resolution of the members in accordance with the procedure set down in the Act; or

- (d) becomes mentally incapacitated; or
- (e) are or become an insolvent under administration; or
- (f) die; or
- (g) become or have become disqualified from managing corporations under Part 2D.6 of the Act (or under any similar or corresponding provision in any amending legislation); or
- (h) have been convicted of an offence punishable by imprisonment for a term of more than 12 months or, where convicted of any lesser offence punishable by a term of imprisonment of less than 12 months, has not had their qualification as a director confirmed by a resolution of a general meeting of members.

9.8.2 Any director who, being an ex officio director, ceases to hold the relevant office shall cease to be an ex officio director.

9.8.3 A director of the Company may resign as a director by giving a written notice of resignation to the Company at its registered office.

9.9 No vacancy or vacancies in the office of a member of the Board shall affect the authority or powers of the Board and subject to the provisions as to a quorum such authority and powers may be exercised by the members of the Board for the time being holding office.

10. POWERS AND DUTIES OF THE BOARD

10.1 Powers of the Board

10.1.1 Subject to sub-rule 10.1.2 and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

10.1.2 The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of, the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the members or any other person.

10.1.3 In accordance with the powers set out in sub-rule 3.2(o) the Company in a general meeting of members may from time to time make, vary or repeal any Regulation that may restrict the powers otherwise available to the Board provided that such Regulation does not invalidate any prior act of the Board which would have been valid if such Regulation had not been made.

10.1.4 Without prejudice to the general powers conferred by sub-rule 10.1.2 and of the other powers conferred by this Constitution, the Board may, subject to any Regulation made in accordance with sub-rule 10.1.3:

- (a) from time to time make, vary, and repeal by-laws for the regulation of the business of the Company, its officers, employees and other servants, and agents;
- (b) determine who shall be entitled to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts, and all other documents and deeds;

- (c) make and give receipts, releases, and other discharges for money payable to the Company and for the claims and demands of the Company;
- (d) enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on behalf of the Company as they may consider expedient for or in relation to the purposes of the Company;
- (e) take steps to protect intellectual property rights including the registration of trademarks;
- (f) adopt all such other measures and do all such acts as they may consider advisable for the purposes of the Company.

10.2 Delegation by Board

10.2.1 In accordance with the Act the Board may delegate such of the powers exercisable by it to any person or groups of persons as set out in, and limited by this sub-rule 10.2, and may confer such powers, except those listed in sub-rule 10.2.6, for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions (if any) as it thinks expedient, and may from time to time revoke, withdraw, alter, or vary all or any of such powers. Matters relating to any such delegation must be recorded in the Company's minute book.

10.2.2 The Board may from time to time entrust to and confer upon the President and/or Union Secretary and/or Chief Financial Officer of the Union Conference for the time being, being members of the Board, such of the powers exercisable by the Board as it may think fit, and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions (if any) as it thinks expedient, and may from time to time revoke, withdraw, alter, or vary all or any of such powers.

10.2.3 Branch Offices and Attorneys

10.2.3.1 The Board may establish branch offices and agencies at places in or out of the Territory and appoint any person or persons to be representatives or agents local boards or members of such local boards in any country or place out of the said Territory with such powers and authorities upon such terms and with such remuneration as the Board shall think fit and from time to time delegate to such representatives agents local boards of advice or members of such local boards all or any of the powers authorities and discretions of the Board.

10.2.3.2 The Board may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Board under these presents) and for such period and subject to such conditions as the Board may from time to time think fit and any such appointment may (if the Board thinks fit) be made in favour of the members or any of the members of any local board established as aforesaid or in favour of any fluctuating body of persons whether nominated directly or indirectly by the Board; and any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney or attorneys as the Board may think fit.

10.2.3.3 Any such delegates or attorneys as aforesaid may be authorised by the Board to sub-delegate all or any of the powers authorities and discretions for the time being vested in them.

10.2.4 Delegation to committees of the Board

10.2.4.1 The Board may delegate any of its powers to committees consisting of such member or members as it thinks fit, and any committee so formed:-

- (a) shall include (but not be limited to) a member or members of the Board;
- (b) shall in exercise of the powers so delegated conform to any regulations that may be imposed on them by the Board (and the effect of the committee exercising a power in this way is the same as if the directors had exercised the power);
- (c) may obtain and consider the advice of a person or persons with relevant expertise (as determined by the Board on reasonable grounds), whether or not such persons are members of the Board, at any meeting(s) of the said committee;
- (d) shall, in considering the advice referred to in (c), make by the individual directors constituting the committee, an independent assessment of the information or advice.

10.2.4.2 A committee shall have as Chair of its meetings such person as is designated by the Board as Chair of the committee, and if no such Chair is designated or if the person is not present at the time appointed for the holding of a committee meeting, the committee meeting shall be adjourned.

10.2.4.3 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the committee members present, and in case of an equality of votes the Chair shall have a second or casting vote.

10.2.5 The Board may delegate to a director, or an employee of the Company or any other person any one or more of its powers.

10.2.6 Whether or not permitted by the Act the following powers may not be delegated:

- (a) change of the Company's name;
- (b) change of the registered office;
- (c) change of address for service.

10.2.7 The Board shall appoint a secretary to care for duties as are outlined in the Constitution and for such other matters as it may delegate to the secretary from time to time.

10.2.8 The Board is responsible for the exercise by any delegate of a power delegated under this sub-rule 10.2 as if the power had been exercised by the Board, unless the Board:

- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this Constitution; and
- (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

10.3 Directors to act in good faith

10.3.1 Subject to this sub-rule 10.3, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.

10.3.2 Nothing in this sub-rule 10.3 limits the power of a director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

10.4 Accounts

10.4.1 The Board shall cause true accounts to be kept of the sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place, and of all the property, assets, credits, and liabilities of the Company.

10.4.2 The books of accounts shall be kept at the registered office of the Company, or at such other office or offices as the Board may from time to time think fit.

10.4.3 The Board shall from time to time determine at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of the members.

10.4.4 The Board shall lay before the Company at each annual general meeting such reports as are required by sub-rule 7.1.3.

10.4.5 There shall be attached to the financial statements of the Company statements and or reports made and signed in accordance with the provisions of the Act.

10.4.6 The financial statements, any other statements and reports required by the Act shall lie for inspection of the members of the Company at the office of the Company for a period of seven days prior to the meeting to which they are to be submitted and all financial statements of the Company required by the Act or by this Constitution to be laid before the Company at each annual general meeting accompanied by copies of the statements and of the reports referred to in the Act shall, not less than twenty-one days before each annual general meeting after the end of the financial year or four months after the end of the financial year (whichever is the earlier), be sent to all persons entitled to receive notice of general meetings of the Company.

10.5 Seal

10.5.1 The Board may provide a common seal of the Company and such seal shall be kept by such person and in such place and in such manner as the Board may think fit, and the Board shall have power to use such seal in the execution of all or any of the powers hereby vested in it; but it shall not be affixed to any document except pursuant to a resolution of the Board. The affixing of the seal shall be attested by at least two persons of whom at least one must be an ex officio director and the other must be either a director or the secretary, and such attestation shall be sufficient evidence of the authority to affix the seal.

10.5.2 The Company may have for use in place of its common seal outside the State or Territory where its common seal is kept, one or more official seals, each of which shall be a facsimile of the common seal of the Company with the addition on its face of the name of every place where it is to be used.

10.5.3 Documents not requiring the seal to be affixed may be signed by the Chair of the Board or the secretary or if approved by a resolution of the Board by at least two directors.

10.6 All acts done by any meeting of the Board or of a committee or a director or directors or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any director or directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

11. PROCEEDINGS OF THE BOARD

11.1 Sub-rule 11.1 replaces the replaceable rule of the Act entitled “Passing of directors’ resolutions”.

The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit.

11.2 Convening of directors’ meetings

11.2.1 Sub-rule 11.2 replaces the replaceable rule of the Act entitled “Calling directors’ meetings”.

The Chair or any four directors may at any time (and the secretary shall upon the request in writing of said four directors) convene a meeting of the Board. The meetings of the Board shall ordinarily be held in such place or places in the Territory as the Board shall from time to time determine, but any of such meetings may be held in any other place in Australia or elsewhere which the Board may from time to time determine upon.

11.3 Method of holding meetings

11.3.1 A meeting of the Board may be held either:

- (a) by a number of directors sufficient to form a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.

11.4 Quorum

11.4.1 Sub-rule 11.4 replaces the replaceable rule of the Act entitled “Quorum at directors’ meetings”.

The quorum of members of the Board necessary for the transaction of business shall be five.

11.4.2 No business may be transacted at a meeting of the Board if a quorum is not present.

11.5 Chairing directors’ meetings

11.5.1 Sub-rule 11.5 replaces the replaceable rule of the Act entitled “Chairing directors’ meetings”.

11.5.2 The President of the Australian Union Conference shall chair Board meetings whether held in one place or by means of a technology consented to by the directors of the Company as allowed by the Act.

11.5.3 In the absence of the President, Secretary of the Australian Union Conference shall chair the meeting.

11.5.4 In the absence of both President and the Secretary, the Chief Financial Officer of the Australian Union Conference shall chair the meeting of directors.

11.5.5 If neither the President, the Secretary or the Chief Financial Officer is able to attend a meeting of directors, the President of the AUC must delegate a director present to chair the meeting.

11.6 Voting

11.6.1 Questions arising at any meeting of the Board shall be decided by a majority of votes of those present and entitled to vote on the resolution.

11.6.2 Every director has one vote.

11.6.3 In the case of an equality of votes the Chair shall have a second or casting vote.

11.7 Minutes

11.7.1 The Board must ensure that full and accurate minutes are kept of all proceedings of the Board.

11.7.2 In accordance with sub-rule 11.7.1 the secretary shall cause minutes to be entered:-

- (a) of all appointments of officers;
- (b) of the delegation of any of the Board's powers to a committee of the Board;
- (c) of the names of the members of the Board present at each meeting of the Board and of any committee of members of the Board;
- (d) of all orders made by the Board and committees of members of the Board;
- (e) of all resolutions and proceedings of meetings of the Board and committees and any such minutes of any such meetings of the Board or of any committee or of the Company, if purporting to be signed by the Chair of such meeting or by the Chair of the next succeeding meeting, shall be received as prima facie evidence of the matters stated in such minutes.

11.8 Resolutions in writing

11.8.1 Sub-rule 11.8 replaces the replaceable rule of the Act entitled "Circulating resolutions of companies with more than 1 director".

11.8.2 Subject to sub-rule 11.8.5 a resolution in writing (other than a resolution modifying or repealing any rule or sub-rule of this Constitution and other than a resolution reserved for the determination of members at a general meeting) signed by two-thirds of the members of the Board and containing a statement that they are in favour of the resolution set out in the document shall be as valid as if it had been passed at a meeting of the Board duly-called and constituted.

11.8.3 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

11.8.4 A director may signify assent to a resolution in writing by: -

- (a) signing the document in which the resolution is set out and providing it to the Company by:
 - (i) personal delivery; or
 - (ii) post or facsimile; or
- (b) notifying the director's assent by sending:
 - (i) an electronic message from the electronic address notified to the Company by the director; or
 - (ii) such other form of electronic communication consented to by the Board

and which contains a statement that the director is in favour of the resolution set out in the document and which complies with any other verification of the transmission that the Board may require from time to time.

11.8.5 If a director signifies

- (a) a desire for the resolution in writing to be discussed at a meeting of the Board; or
- (b) a response not indicating assent

the resolution shall be held over to the next meeting of the Board.

11.8.6 A copy of any such resolution must be entered in the minute book of Board proceedings with an indication of the names of directors who have indicated assent and shall be confirmed at the next meeting of the Board.

11.9 Other Proceedings

11.9.1 Except as provided in this rule 11 the Board may regulate its own procedure.

11.10 Continuing directors

11.10.1 The continuing directors will continue to comprise the Board notwithstanding any vacancy in the number of directors. If their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of directors, the continuing directors will comprise the Board only for the purpose of summoning a general meeting of members of the Company.

12. INTERESTED DIRECTORS

12.1 Authority to Remunerate directors

12.1.1 Sub-rule 12.1 replaces the replaceable rule of the Act entitled "Remuneration of directors".

12.1.2 The Board may not authorise the payment of remuneration or the provision of other benefits by the Company to a director for his or her services as a Director.

12.1.3 The Company may pay the directors' travelling and other expenses that they properly incur:

- (a) in attending directors' meetings or any meetings of committees of directors; and

- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

12.2 Other Offices with Company held by director

12.2.1 Any director may act by himself or herself or by the director's firm in a professional capacity for the Company, and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this rule authorises a director or the director's firm to act as auditor to the Company.

12.2.2 A director may also be an employee of the Company.

12.2.2.1 At any meeting of the Board such a director shall in accordance with the Act:

- (a) notify the Board when they becomes aware of a material personal interest; and
- (b) not be present while the matter involving the material personal interest is being considered; and
- (c) not vote upon the matter involving the material personal interest.

12.2.3 Other than as provided in sub-rule 12.3, a director is not disqualified by virtue of his or her office from entering into any transaction with the Company and any such transaction will be valid and enforceable to the same extent if they were not a director and not in a fiduciary relationship with the Company.

12.3 Disclosure of Interest

12.3.1 At any meeting of the Board a director shall, in accordance with the Act:

- (a) notify the Board when the director becomes aware of a material personal interest; and
- (b) not be present while the matter involving the material personal interest is being considered; and
- (c) not vote upon the matter involving the material personal interest.

13. INDEMNITY AND INSURANCE

13.1 In rule 13:

“legal action” means any legal proceeding or action whatsoever, and, without limiting the generality of the above, includes a threatened or prospective legal action, a quasi-judicial proceeding and investigative or disciplinary proceeding conducted by a Government authority or pursuant to statute against an Officer of the Company, but does not include a legal proceeding to which:-

- (a) the Company itself, or a related body corporate, is or is proposed to be a party, or
- (b) the Church or any of its administrative entities, Affiliated Entities, institutions, agencies or services is or is proposed to be a party;

has an interest adverse to that of the Officer.

“liabilities” include, but are not limited to, expenses, awards of damages and compensation, amounts paid in settlement, fines, penalties, interest, legal costs (on a solicitor and client basis) and disbursements, but “liabilities” do not include a liability to the Company itself or to a related body corporate, other than a liability for costs and expenses incurred by the Officer:-

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer under the Act.

“performance of duties” includes an attempt to perform duties and a failure to perform duties.

“effect insurance” includes pay, whether directly or indirectly, the costs of the insurance;

“Employee” includes a former employee;

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises and “indemnity” has a corresponding meaning;

13.2 Indemnity

13.2.1 Subject to sub-rule 13.2.2 and to the Act, the Company shall indemnify an Officer against all liabilities incurred in consequence of any legal action to which the Officer is a party or to which it is proposed that the Officer be a party arising out of or in connection with the Officer’s performance of their duties as an Officer.

13.2.2 The indemnity granted by sub-rule 13.2.1 does not extend to liabilities incurred as a result of:

- (a) legal action initiated or threatened by the Officer without the prior written consent of the Board, unless the Board in its absolute discretion, otherwise determines;
- (b) the deliberate commission of a tort or other civil wrong, or dishonest or malicious conduct by the Officer;
- (c) the commission of a criminal offence by the Officer:-

unless the Officer did not intentionally commit the acts or omissions constituting the offence; or,

where the liability is to the Company itself or to a related body corporate, unless the liability is for costs and expenses incurred by the Officer:-

- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
- (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer under the Act;
- (d) conduct (including omissions) of the Officer, where the Officer fails to satisfy the Board that they held an honest and reasonable belief that the conduct would further the legitimate interests of the Company;

- (e) liabilities (other than those imposed by a court or other public authority without the consent of the Officer) incurred by the Officer without the prior written consent of the Board, such consent not to be unreasonably withheld, unless the Board, in its absolute discretion, otherwise determines.

13.2.3 No indemnity shall be granted under sub-rule 13.2.1 unless the Officer gives notice in writing to the Board as soon as is reasonably practicable after becoming aware of any occurrence which may result in an indemnity being sought under sub-rule 13.2.1, unless the Board, in its absolute discretion, otherwise determines.

13.2.4 It is a condition of the grant of an indemnity under sub-rule 13.2.1 that the Company or its nominee shall be entitled to take over and conduct in the name of the Officer the conduct and settlement of the legal proceeding (other than the defence to a criminal prosecution), and that the Officer shall not admit any civil liability or settle any claim against him without the consent of the Board.

13.2.5 (a) Where the Officer is not eligible for an indemnity under sub-rule 13.2.1, the Board may, in its absolute discretion but subject to the Act, pay all or part of the legal costs (on a solicitor and client basis) of an Officer who is in name or substance a defendant to any legal action, whether civil or criminal, where the Board considers, in its absolute discretion, that the reasons the Officer has been made a defendant include the fact that they are an Officer, and that it would be just and proper for this Company to make the payment;

(b) The Board shall be under no legal obligation to make a payment authorised by paragraph (a) or to consider whether a payment should be made in any individual case;

(c) The Board may impose such conditions as in its absolute discretion it sees fit on the making of a payment under paragraph (a).

13.2.6 Nothing in sub-rule 13.2 is intended to prevent ratification by the members in a general meeting of an Officer's abuse of power or an Officer's exceeding power, where such ratification does not offend the Act.

13.2.7 The Board must ensure that particulars of any indemnity given at its discretion are recorded in its minutes.

13.3 Insurance of Directors and Employees

13.3.1 The Board may, subject to the Act, cause the Company to effect insurance for directors and/or Employees of the Company in respect of:

(a) liability, not being criminal liability, for any act or omission in their capacity as a director or Employee; or

(b) costs incurred by such directors or Employees in defending or settling any claim or proceeding relating to any such liability.

14. NOTICES

14.1 Subject to any provisions herein contained as to notices a notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid envelope or wrapper

addressed to such member at their last-known place of business or residence, or (where the member's last-known place of business or residence was in Australia or New Zealand) by advertisement in any newspaper published by or under the auspices of the Church having at least a monthly issue and circulating among Seventh-day Adventists throughout Australia and New Zealand or by sending it to the fax number or electronic address if any nominated by the member or director.

14.2 Any notice if served by post shall be deemed to have been served at ten o'clock in the morning of the third business day after the day when the letter containing the notice was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and stamped and put into a post office box in the Territory. Any notice if served by fax or by other electronic means is taken to be given on the business day after it is sent and in proving such service it is sufficient to prove the transmission of the notice and produce the transmission record.

15. RESTRICTIONS ON COMPANY NAME

15.1 The use of the expression "Adventist" by the Company in the company name and the use of that name or any other trade or business names registered to ACA is subject to a separate licence agreement being entered into by the Company and ACA..

15.2 Subject to part 5B.3 of the Act any change to the company name by the Company itself requires a resolution of members which:–

- (a) has first been approved in writing by the South Pacific Division Constitution Advisory Committee, and
- (b) must be approved as a Special Resolution of the members of the Company.

15.3 If notice is served for the licence to use the expression "Adventist" in the company name is to be withdrawn or cancelled or otherwise terminated by ACA, then the members of the Company shall, if requested by ACA, (and in addition to the obligations imposed by 5.6.5.1) also call an extraordinary general meeting at which the name of the Company shall be changed so that it does not use the expression "Adventist" or any derivative thereof.

16. LIQUIDATION

16.1 Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that the person is a member or within one year afterwards for the payment of the debts and liabilities of the Company contracted before the time at which the person ceases to be a member and of the costs charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding two dollars.

16.2 In addition to any requirements imposed by the Act or this Constitution, any resolution to place the Company into voluntary liquidation must first be approved in writing by not less than a two-third majority of the Australian Union Conference Executive Committee.

16.3 Funds to be held in trust by the Church in Australia

If the Company should at any time by reason of statutory proceedings or from any other cause whatsoever be placed in liquidation or begin to be wound up within the meaning of the Act and if upon the winding-up or dissolution of the Company there remains after the satisfaction of all debts and liabilities any property and assets whatsoever the same shall not be paid to or distributed amongst the then members of

the Company but subject to sub-rule 16.4 shall be paid given or transferred to or to trustees for and to be nominated by or on behalf of an income tax-exempt legal entity with similar purposes that has rules prohibiting the distribution of its assets and income to its members, as recommended by not less than a two-third majority of the Australian Union Conference Executive Committee for the objects of the Church within the Territory, and in default of any such recommendation by the Supreme Court having jurisdiction in the matter.

16.4 Nominated entity to hold funds

If the Company operates a gift fund (within the meaning contained in the *Income Tax Assessment Act 1997*, as amended) and if the gift fund is wound up or if the endorsement (if any) of the Company as a deductible gift recipient is revoked, any surplus assets of the gift fund remaining after payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made and where possible operated by the Church, as recommended by not less than a two-third majority of the Australian Union Conference Executive Committee.

17. ALTERATION OF CONSTITUTION

17.1 A resolution altering or repealing any rule or sub-rule of this Constitution (including this rule 17) may only be approved after recommendation from the Executive Committee, and approval in writing by the South Pacific Division Constitution Advisory Committee and then passed as a Special Resolution at a general meeting of the members.

17.2 There shall be no change to this Constitution which would change the exclusively charitable nature of the Company unless this is permitted by and carried out in accordance with law.

Constitution approved by the *Members, Adventist Development and Relief Agency Australia Limited* on 29 November 2023 and registered with the *Australian Government, Australian Charities and Not-for Profits Commission* on 30 November 2023.

Chief Executive Officer/Director:

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