

**CONSTITUTION**

**OF**

**WESLEY COMMUNITY SERVICES  
LIMITED**

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## WESLEY COMMUNITY SERVICES LIMITED ACN

### CONSTITUTION

#### 1. Name

The name of the Company is "Wesley Community Services Limited".

#### 2. Replaceable Rules Displaced

The replaceable rules in the Corporations Act do not apply to the Company.

#### 3. Interpretation

(a) In this Constitution unless the context otherwise requires:

"**Assembly**" means the Australian national body of the Church as defined in the Uniting Church Act.

"**Auditor**" means the auditor for the time being of the Company.

"**Basis of Union**" means the document defined as such in the Uniting Church Act.

"**Board**" or "**Board of Directors**" means the Directors of the Company holding office pursuant to clause 19 of this Constitution.

"**Business Day**" means a day which is not a Saturday, Sunday or public holiday in the State.

"**Chairperson**" means the person elected or acting in that position pursuant to this Constitution.

"**Charitable Fundraising Act**" means the Charitable Fundraising Act 1991 (New South Wales).

"**Chief Executive Officer**" means the person described in Clause 26 of this Constitution.

"**Church**" means The Uniting Church in Australia.

"**Company**" means the company established by this Constitution by whatever name from time to time known.

"**Corporations Act**" means the Corporations Act 2001 (Commonwealth) as amended from time to time.

"**General Meeting**" means a meeting of the Members.

"**General Secretary**" means the General Secretary of the Synod appointed by the Synod pursuant to the Uniting Church Laws and shall include a person authorised from time to time to act as the General Secretary or authorised by the General Secretary to act on behalf of the General Secretary for any purpose under this Constitution.

**"Institution of the Church"** means an institution as defined in Uniting Church Regulation 3.7.4.7(a)(i) and a body of the Church as defined in clause 3 of the Uniting Church Constitution.

**"Member"** means a person or body corporate who or which is a member of the Company pursuant to this Constitution.

**"Mission Council"** means the Wesley Mission Church Council which is a joint Church Council formed pursuant to clause 24 of the Uniting Church Constitution.

**"Moderator"** means the Moderator for the time being of the Synod and includes any person for the time being authorised by Synod to perform or carry out the duties of Moderator.

**"Notice"** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**"Objects"** means the objects of the Company set out in Clause 4.

**"Office"** means the registered office for the time being of the Company.

**"Principal Object"** has the meaning described in Clause 4 (a).

**"Property"** means property of whatsoever nature, whether real or personal, and includes money, investments and rights relating to property.

**"Property Trust"** means the corporation named The Uniting Church in Australia Property Trust (NSW) constituted by the Uniting Church Act.

**"Real Property"** means land and whatever by nature or by annexation or by affixing is part of land or is the means of its enjoyment and includes any rights to or interest in or affecting land.

**"Register"** means the Register of Members kept pursuant to the Corporations Act.

**"Secretary"** means a person appointed as the Secretary of the Company pursuant to Clause 25 of this Constitution.

**"State"** means the State of New South Wales.

**"Superintendent"** means the Superintendent Minister of Wesley Mission.

**"Synod"** means the Synod of the Church known as the Synod of New South Wales and the Australian Capital Territory.

**"Synod By-Laws"** means the By-Laws made by the Synod pursuant to the Uniting Church Constitution and the Uniting Church Regulations.

**"Synod Property Board"** means the body appointed by the Synod pursuant to Uniting Church Regulation 4.2.1.

**"Synod Property Officer"** means the Synod Property Officer as referred to in the Uniting Church Regulations.

**"Synod Standing Committee"** means the Committee of the Synod of that name duly constituted under the Uniting Church Regulations.

**"Uniting Church Act"** means the Uniting Church in Australia Act 1977 (NSW) as amended or replaced from time to time.

**"Uniting Church Constitution"** means the Constitution of the Church that was adopted by the First Assembly at Sydney on 22nd June 1977 as amended from time to time.

**"Uniting Church Laws"** means the Uniting Church Act, the Uniting Church Constitution, the Uniting Church Regulations, the Synod By-Laws and all policies and decisions of the Church more particularly referred to in Clause 7 of this Constitution.

**"Uniting Church Regulations"** means the Church Regulations promulgated by the Assembly pursuant to the Uniting Church Constitution and the Uniting Church Act.

**"Uniting Financial Services"** means the agency of that name within the Synod.

**"Uniting Resources"** means the Board of Finance and Property of the Synod established under the Synod By-Laws.

**"Wesley Mission"** means the Wesley Mission Parish Mission of the Church.

- (b) In this Constitution unless the contrary intention appears:
- (i) headings are for convenience only and do not affect the construction or interpretation of this Constitution;
  - (ii) the singular includes the plural (and vice versa); and a word indicating a particular gender includes the other genders;
  - (iii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (iv) a reference to month is a reference to a calendar month;
  - (v) a reference to year is a reference to a calendar year;
  - (vi) a reference to writing includes any mode of representing and reproducing words, figures, drawings or symbols in a visible form;
  - (vii) a reference to legislation includes but is not limited to a modification or a re-enactment of it, a legislative provision substituted for it and includes a regulation, statutory instrument or by-law under it;
  - (viii) if a period of time runs to or from a given date, act or event, then the time is calculated exclusive of the date, act or event;
  - (ix) any expression in a provision of this Constitution that is defined by a particular provision of the Corporations Act has the same or equivalent meaning as in the Corporations Act;
  - (x) references in this Constitution to particular councils or officers of the Church or bodies within the Church include references to the council, officers or bodies that from time to time have the same or similar responsibilities or functions within the Church;

- (xi) references to members or members-in-association of the Church are references to persons who are members or members-in-association of the Church under Clauses 5, 6 or 7 of the Uniting Church Constitution and, in the case of members, are recognised by the Church Council of a Congregation or Parish Mission as being within the pastoral responsibility of the Church;
- (xii) a reference to Uniting Church Laws includes but is not limited to a modification or change or replacement of any Uniting Church Laws from time to time;
- (xiii) if any provision in this Constitution contravenes the Corporations Act or any other law, it shall not apply only to such extent as is necessary for compliance with the Corporations Act or the other law as the case may be; and
- (xiv) a reference to the appointment of a person to an office or membership of the Company shall be taken to be a reference to the decision of the appointing body to make the appointment with or subject to the prior or subsequent consent of the person; and a reference to an election of one or more persons to office or membership shall be taken to be a reference to a selection of a person or persons by a process that includes voting.

#### **4. Objects**

The Objects for which the Company is established are:

- (a) (Principal Object) to conceive develop and deliver such services and programs as will provide direct relief of poverty, sickness, suffering, distress, adversity, disability, destitution and helplessness in New South Wales and other parts of Australia and are inspired by and are an integral part of the Christian "Word and Deed Ministry" of Wesley Mission.
- (b) in delivering such services and programs, to act for any or all of the purposes of the Church as set out from time to time in the Uniting Church Constitution; and
- (c) in delivering such services and programs, to promote and support the interests and works of the Church and further its ethos and polity as set out in the Basis of Union and Uniting Church Laws.

#### **5. Powers**

- (a) Solely for the purposes of carrying out the Objects and not otherwise, the Company has the power to do all such things as necessary, incidental or conducive to the attainment of the Objects and, for that purpose and not otherwise, the Company has the legal capacity of an individual with all consequential powers as conferred by section 124 of the Corporations Act.
- (b) As between the Company, the Members and the Church, the Company is, or is deemed to be:
  - (i) an Institution of the Church for the purposes of the Uniting Church Regulations and in particular Regulation 3.7.4.7;
  - (ii) a body of the Church within the definition of 'body' in clause 3 of the Uniting Church Constitution; and

- (iii) a responsible body within the definition of the term 'responsible body' in Regulation 4.1 of the Uniting Church Regulations

and shall be subject to the relevant requirements and restrictions imposed by Uniting Church Laws on the Company as an Institution of the Church and as a body or responsible body within the Church so far as they do not contravene the Corporations Act.

## **6. Income and Property**

- (a) All Real Property used by the Company or acquired for the purposes of and use by the Company, shall be owned by the Property Trust. The Company shall be responsible for management and administration of the Real Property and shall exercise and fulfil its responsibility under the Uniting Church Regulations (including Regulations 4.6.1 to 4.6.4 inclusive) as the "responsible body" for the Real Property.
- (b) The Company shall not without the prior approval of the Synod Property Board acquire:
  - (i) any item of Property which is not Real Property, having a cost or value greater than the amount prescribed from time to time by the Synod Property Board for the purpose of this subparagraph (i); or
  - (ii) in a financial year, items of Property, which are not Real Property, having an aggregated cost or value at time of acquisition greater than the amount prescribed from time to time by the Synod Property Board for the purposes of this subparagraph (ii).
- (c) The income and Property of the Company, however derived, must be applied solely towards the promotion of the Objects.
- (d) Subject to Clause 8 no portion of the income and Property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to Members or Directors of the Company, except as remuneration in good faith for services rendered or expenses incurred on behalf of the Company.
- (e) If the Company is a registered community housing provider, then upon winding up of the Company all remaining Community Housing Assets in a participating jurisdiction will be transferred to another registered community housing provider or to a housing agency in the jurisdiction in which the asset is located. In such an event the Company will take all available steps to procure such transfer of all community Housing Assets being Real Property vested in The Uniting Church in Australia Property Trust (NSW) upon or after the Company becoming a registered community housing provider pursuant to Clause 6(a) of this constitution for which the Company is the responsible body for the Real Property. A Community Housing Asset has the same meaning as that term in the Community Housing Providers (Adoption of National Law) Act 2012.

## **7. Uniting Church**

- (a) Without limiting any other provisions of this Constitution, and to the fullest extent allowed by law, the Company must, and its Directors and Members must, at all times adhere to and each of them is bound by, all requirements of the Church including, without limitation, as set out in:
  - (i) the Uniting Church Constitution;

- (ii) the Uniting Church Regulations;
  - (iii) the Synod By-Laws;
  - (iv) the Uniting Church Act; and
  - (v) all policies and competent decisions of councils, bodies or officers of the Church made from time to time pursuant to any of the foregoing (i) to (iv) or to a responsibility exercised by the council, body or officer of the Church relating or applying to the Company as an Institution of the Church or a body or responsible body of the Church so far as they do not contravene the Corporations Act.
- (b) As at the date this Constitution is adopted, the requirements under Clause 7(a) include (without limitation but to the extent they apply in any case):
- (i) Sales Proceeds Policy and any other Synod property policies;
  - (ii) the use of services provided by Uniting Financial Services;
  - (iii) participation in the Synod Insurance Program;
  - (iv) ethical investments requirements;
  - (v) financial reporting requirements;
  - (vi) human resources, occupational health and safety and workers compensation policy and procedures; and
  - (vii) risk management policy
- (c) The Company, its Directors and Members must, at all times, co-operate and work with councils of the Church and bodies within the Church to better achieve the purposes of both the Company and the Church as far as they do not conflict with the Corporations Act.
- (d) All requirements of the Church and obligations of the Company to the Church under this Constitution or Uniting Church Laws may be acted upon and enforced by The Uniting Church in Australia (Australian Capital Territory) Property Trust in its capacity as a Member.
- (e) The Company acknowledges that, although it is a separate legal entity with limited liability:
- (i) objects and purposes shared with the Church and its structural, governance and administrative links with the Church mean that it will be identified with the Church; and
  - (ii) its obligations to the Church are reasonable and proper for the ministry and reputation of the Church and for the purpose of enabling the Synod, the Synod Property Board and the Synod Property Officer to exercise their prudential responsibilities under Uniting Church Laws.
- (f) The Company must not establish or participate in any corporation without first obtaining approval of the Synod or any person or body authorised by the Synod to grant approval on its behalf.



- (g) The Company must not institute or defend legal proceedings without the prior approval of the Synod Standing Committee or the Moderator of the Synod or, in case of urgency, the Synod Property Officer in each case.

## **8. Payments to Directors and Members**

- (a) Payments may be made to a Director or a Member:
  - (i) for out-of-pocket expenses incurred on behalf of the Company including, in the case of a Director, in carrying out the duties of a Director, where the payments do not exceed an amount previously approved by the Board;
  - (ii) for any service rendered to the Company in a professional or technical capacity, where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
  - (iii) of any amount reasonably expended on or in connection with the promotion and setting up of the Company;
  - (iv) of consideration for goods supplied in the ordinary and usual course of business;
  - (v) of interest on money lent to the Company at a rate not exceeding the rate of interest charged by Uniting Financial Services from time to time on overdrawn accounts held with it by depositors at the relevant time. If there is no such rate, then the applicable rate shall be the rate of interest certified by the Company's principal bankers as the rate which they would charge the Company if its account were overdrawn at that time; or
  - (vi) of reasonable and proper rent for premises leased to the Company.
- (b) All payments for out-of-pocket expenses to Directors and Members must be approved by the Board of Directors.
- (c) No Director other than the Chief Executive Officer may be an employee of the Company or appointed to a salaried office of the Company. Non-Executive Directors may be paid fees up to a maximum set by the Synod Governance and Oversight Committee, or an alternate body as determined by Synod Standing Committee.

## **9. Liability of Members Limited**

The liability of the Members is limited.

## **10. Guarantee by Members**

Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up whilst he or she is a Member or within one year after he or she ceased to be a Member. This contribution is for payment of the debts and liabilities of the Company contracted before he or she ceased to be a Member and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves. Such amount as may be required will not exceed \$20.00.

## 11. Winding Up

- (a) The Company shall not resolve by special resolution passed at a General Meeting, to wind up the Company unless:
- (i) the Synod Standing Committee and the Mission Council have been given 35 days' notice of the proposed resolution to wind up the Company; and
  - (ii) the Synod Standing Committee and the Mission Council have given prior approval for the Company to be wound up.
- (b) If the Company is wound up or if the Company's endorsement as a deductible gift recipient is revoked, the following assets remaining after provision is made for the Company's liabilities to be met must be paid or transferred to an organisation, fund, authority or institution to which income tax deductible gifts can be made:
- (i) gifts of money or property for the Principal Object of the Company;
  - (ii) contributions made in relation to an eligible fundraising event held for the Principal Object of the Company; and
  - (iii) money received by the Company because of such gifts and contributions.
- (c) If the Company is wound up, after payment of all liabilities, any surplus Property [other than the assets referred to in clause 11(b)] must be paid or transferred to another organisation, fund, authority or institution of the Church. Preferably that organisation, fund, authority or institution will have objects similar to those of the Company.
- (d) Provision for or payment of the Company's liabilities under clause 11(b) or clause 11(c) is to be made firstly from Property other than the assets referred to in clause 11(b) and only then from the assets referred to in clause 11(b).
- (e) The organisation, fund, authority or institution to which surplus assets or Property are to be paid or transferred under clause 11(b) or clause 11(c) will be such organisation, fund, authority or institution as is selected by the Synod Standing Committee or the Synod or, in the absence of a selection within reasonable time, by the Supreme Court of New South Wales.

## 12. Financial Records

Financial records must be kept in accordance with the Uniting Church Laws, the Corporations Act and the Charitable Fundraising Act as well as any other relevant legislation.

## 13. Members

- (a) The full names, addresses and occupations of the first Members are:

Names	Addresses	Occupations
The Uniting Church in Australia (Australian Capital Territory) Property Trust		
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- (b) Thereafter, the Members will include The Uniting Church in Australia (Australian Capital Territory) Property Trust and also other persons each of whom:
  - (i) is elected or appointed by the Synod Standing Committee; and
  - (ii) signs an application for membership in such form as may be prescribed by the Company, including an acknowledgment by the applicant that the applicant agrees to and is bound by this Constitution.
- (c) All Members of the Company other than The Uniting Church in Australia (Australian Capital Territory) Property Trust must be members or members-in-association of the Church.
- (d) The Company must give written notice of their membership to new Members and enter their name in the Register.
- (e) The rights of a Member are not transferable whether by operation of law or otherwise.
- (f) The Uniting Church in Australia (Australian Capital Territory) Property Trust must remain a Member unless and until it ceases to be so pursuant to Clauses 14 or 15 of this Constitution or upon the winding up of the Company.
- (g) The Company will have a minimum of ten (10) Members and a maximum of twenty (20) Members at any time.
- (h) The term of membership of each Member other than The Uniting Church in Australia (Australian Capital Territory) Property Trust shall be three (3) years from the date of election or appointment or, in the case of first Members, from the date of incorporation of the Company and each person shall be eligible for re-election or re-appointment after expiry of a term of membership.

**14. Cessation of Membership**

- (a) A Member shall cease to be a Member if the person's term of membership expires or if the Member:
  - (i) dies;
  - (ii) retires or resigns pursuant to Clause 15 or is expelled pursuant to Clause 16;

- (iii) receives notice from the General Secretary that the membership of that Member has been terminated in accordance with Clause 14(b);
  - (iv) ceases to be a member or member-in-association of the Church; or
  - (v) becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally.
- (b) The General Secretary, at the direction of the Synod Standing Committee may, at any time and without giving any reason for doing so, terminate the membership of any Member by giving written notice of termination to the Company. A copy of the notice must also be given in writing to the Member.
- (c) The Company must record a cessation of membership in the Register.

## **15. Resignation of a Member**

- (a) A Member may at any time resign as a Member of the Company by giving notice in writing to the Secretary.
- (b) Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Secretary except where the Member is the sole Member in which case the resignation takes effect on the appointment or election of a new Member.

## **16. Expulsion of a Member**

- (a) Subject to Clauses 16(b) and 16(c) the Company may expel a Member by a resolution of a General Meeting to that effect if:
- (i) a Member is in breach of a provision of this Constitution; or
  - (ii) any act or omission of a Member is, in the opinion of the General Meeting, unbecoming of a Member or prejudicial to the interests or reputation of the Company.
- (b) The Company must not expel a Member pursuant to Clause 16 (a) unless:
- (i) at least 5 Business Days' Notice has been given to the Member stating the date, time and place at which the expulsion of that Member is to be considered by the General Meeting, and the nature of the alleged event giving rise to the proposed expulsion; and
  - (ii) the affected Member is given the opportunity of explaining to the General Meeting, orally or in writing, why the Member should not be expelled.
- (c) The Uniting Church in Australia (Australian Capital Territory) Property Trust cannot be expelled as a Member.

## **17. General Meetings**

- (a) Annual General Meetings of the Company must be held in accordance with the Corporations Act and at such places and times as may be determined by the Board of Directors.
- (b) The Board may at any time and must, on the request of either the Moderator or Members with at least five (5) per cent of the votes that may be cast at a General Meeting, call a General Meeting.

- (c) The request for a General Meeting pursuant to Clause 17(b) must:
- (i) be in writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Moderator or the requisitioning Members as the case may be; and
  - (iv) be given to the Company.

Separate copies of the document setting out the request may be used for signing by the requisitioning Members if the wording is identical in each copy.

- (d) The Board must call the meeting within 21 days after the request is given to the Company. The meeting must be held not later than two months after the request is given to the Company.
- (e) If the Board does not call a meeting within 21 days after the request is given to the Company, the Moderator or the requisitioning Members may themselves call and arrange to hold the meeting.
- (f) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act or in accordance with this Clause 17.
- (g) Subject to the provisions of the Corporations Act relating to special resolutions and agreements for shorter notice:
- (i) except as provided in subparagraph (ii), at least 21 days' Notice of any General Meeting; or
  - (ii) at least 35 days' Notice of any General Meeting at which a special resolution to wind up the Company or to amend this Constitution is to be proposed (exclusive of the day on which the Notice is served or taken to be served, and exclusive of the day for which Notice is given),

must be given to such persons as are entitled to receive Notices of a General Meeting.

- (h) A Notice of General Meeting must:
- (i) set out the place, date and time for the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - (ii) state the general nature of the business to be transacted at the meeting;
  - (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
  - (iv) contain a statement that a Member has the right to appoint a proxy.
- (i) The accidental omission to give any notice to or non-receipt of a notice by any Member does not invalidate any resolution passed at or the proceedings of any General Meeting.

## 18. Proceedings at General Meetings

- (a) No business may be transacted at a General Meeting (except an election of the chairperson of the meeting, when necessary pursuant to Clause 18(e)) unless a quorum for a General Meeting is present at the time when the meeting proceeds to business.
- (b) No resolution may be passed at any General Meeting unless a quorum of Members is present at the time when the resolution is put to the vote of the meeting.
- (c) A quorum for a General Meeting is 50% in number of the Members (rounded up when there is not a whole number) entitled to vote on a resolution at that meeting, attending in person or by proxy, and must include The Uniting Church in Australia (Australian Capital Territory) Property Trust (by appointed representative or proxy).
- (d) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, is dissolved; in any other case it stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the chairperson may determine. If at the adjourned meeting:
  - (i) The Uniting Church in Australia (Australian Capital Territory) Property Trust (by appointed representative or proxy) is present then, despite Clause 18(c), the requirements for a quorum for that meeting will be deemed satisfied (and if it is the only Member present, it shall be entitled to cast one vote on a show of hands and on a poll); and
  - (ii) The Uniting Church in Australia (Australian Capital Territory) Property Trust (by appointed representative or proxy) is not present and a quorum as required under clause 18(c) is not present within half an hour from the time appointed for the meeting, the meeting is dissolved.
- (e) The Chairperson of the Board of Directors must preside as the chair of every General Meeting of the Company, or if there is no Chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present must elect by majority vote one of their number to be chairperson of the meeting, or if none of the Directors present is willing to act, the Members must elect by majority vote one of their number to be chairperson of the meeting.
- (f) The chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her.
- (g) The chairperson may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.
- (h) (i) Each Member other than The Uniting Church in Australia (Australian Capital Territory) Property Trust who is present at a General Meeting

either in person or by proxy shall be entitled to cast one vote on a show of hands and on a poll.

- (ii) The total number of votes that Members other than The Uniting Church in Australia (Australian Capital Territory) Property Trust are entitled to cast pursuant to subparagraph (i) shall be taken to be one quarter of the votes that can be cast on the matter.
  - (iii) The vote that The Uniting Church in Australia (Australian Capital Territory) Property Trust or its representative or proxy shall be entitled to cast both on a show of hands and on a poll shall be a weighted vote equivalent to three times the total number of the votes that other Members are entitled to cast pursuant to subparagraph (i).
- (i) Subject to paragraph (h), at any General Meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (i) by the chairperson; or
  - (ii) by at least one fifth (rounded up to the next whole number) of the Members present in person or by proxy; or
  - (iii) by The Uniting Church in Australia (Australian Capital Territory) Property Trust.
- (j) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
- (k) If a poll is duly demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll is the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith.
- (l) A Member may vote in person or by proxy.
- (m) A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or trustee or by such other person as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy.
- (n) An instrument appointing a proxy must be in writing under the hand of the appointor or of his or her attorney duly authorised in writing.
- (o) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (p) An instrument appointing a proxy may specify that the proxy is to abstain from voting in respect of a particular resolution and, where an instrument of proxy so provides, the proxy may not vote in respect of that resolution.





Director – ██████████

Director – ██████████

Director – ██████████

Director – ██████████

Director and Chief Executive Officer - ██████████

each of whom shall have been appointed by the Synod Standing Committee.

All Directors other than a Director who is the Chief Executive Officer must retire at the first annual General Meeting but are eligible for re-appointment.

- (d) Thereafter the Board of Directors is to consist of Directors appointed by the Synod Standing Committee.
- (e)
  - (i) An appointment of a Director (including an appointment made to fill a casual vacancy), other than a Chief Executive Officer who is appointed a Director will take effect on the date at which the notice of appointment is lodged with the Secretary.
  - (ii) A notice of appointment by the Synod Standing Committee (including in the case of an appointment to fill a casual vacancy) should be signed by the appointee and the General Secretary and lodged with the Secretary.
- (f)
  - (i) The office of a Director who is the Chief Executive Officer becomes vacant when the person ceases to be the Chief Executive Officer.
  - (ii) The office of a Director who is the Chief Executive Officer commences when the person commences in the role of Chief Executive Officer.
  - (iii) In all other cases, unless a Director's office becomes vacant earlier pursuant to this Clause 19, a Director holds office until the conclusion of the Annual General Meeting at which the Director must retire.
- (g) A retiring Director is eligible for re-appointment provided that Clause 19(a) is satisfied.
- (h)
  - (i) At each annual General Meeting other than the first annual General Meeting one-third of the Directors for the time being (not including a Director who is the Chief Executive Officer) or, if their number is not three or a multiple of three, then the number nearest one-third must retire from office.
  - (ii) The Directors to retire at an annual General Meeting other than the first annual General Meeting are those who have been longest in office since their appointment. As between persons who became Directors on the same day, those to retire must (unless they otherwise agree among themselves) be determined by lot.

- (i) If the office of a Director becomes vacant at a time other than by reason of expiry of a term of office at the conclusion of an annual General Meeting of the Company, there is a casual vacancy.
- (j) The Company may, by resolution of which Notice pursuant to section 203D of the Corporations Act has been given, remove any Director before the expiration of his or her period of office.
- (k) The office of a Director becomes vacant when the Director retires from office pursuant to paragraph (h) or if the Director:
  - (i) becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally;
  - (ii) becomes prohibited from being a director of a Company by reason of any order made under the Corporations Act;
  - (iii) ceases to be a Director by operation of the Corporations Act;
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) resigns his or her office by notice in writing to the Company;
  - (vi) is absent from three consecutive meetings of the Board of Directors without permission of the Board of Directors and the Board resolves that the Director's office be vacated;
  - (vii) dies;
  - (viii) is removed from office in accordance with Clause 19(j) or 19(l); or
  - (ix) holds any office of profit under the Company otherwise than as provided by Clause 8.
- (l) The General Secretary, at the direction of the Synod Standing Committee may, at any time and without giving reason for doing so, remove any Director from office before the expiry of his or her term of office as Director.
- (m) No person who is an employee of the Company nor of Wesley Mission (other than the Chief Executive Officer) may be appointed as a Director of the Company. This section 19(m) does not apply to Directors seeking re-appointment.

## 20. Powers and Duties of the Board

- (a) Subject to the Corporations Act and to any other provision of this Constitution, the business and affairs of the Company are to be managed by the Board of Directors. The Board may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting, subject to any directions which may be given by the Company in General Meeting (provided that these directions are not inconsistent with the Corporations Act or this Constitution). No direction given by the Company in a General Meeting will invalidate any prior act of the Board which would have been valid if that direction had not been given.
- (b) Without limiting the generality of Clause 20(a), but subject to the other provisions of this Constitution and particularly Clauses 5(b) and 7, the Board of Directors may exercise all the powers of the Company:
- (i) to borrow and raise money;
  - (ii) to charge any Property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
  - (iii) to determine who is entitled on behalf of the Company to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts and documents;
  - (iv) to pay the costs, charges and expenses incidental to the promotion, management and regulation of the Company; and
  - (v) to make, amend and repeal regulations, not being inconsistent with the Corporations Act or this Constitution or Uniting Church Laws, in relation to the affairs of the Company.
- (c) The Board of Directors must cause minutes to be made of:
- (i) all appointments of officers and employees;
  - (ii) the names of the Directors present at all meetings of the Company and of the Board of Directors; and
  - (iii) all proceedings at all meetings of the Company and of the Board of Directors.
- Such minutes must be signed by the chairperson of the meeting at which the proceedings were held, or by the chairperson of the next succeeding meeting.
- (d) The Board of Directors will:
- (i) ensure that there is close collaboration between the Company and other bodies of the Church, particularly those providing similar services to the services provided by the Company; and
  - (ii) minimise competition between, or duplication of, services provided by the Company and those provided by other bodies within the Church.

## **21. Responsibilities of the Board of Directors**

The Board shall have the following specific responsibilities:

- (a) ensuring that the functions, duties and processes of the Board are carried out in accordance with this Constitution;
- (b) carrying out and compliance with the Uniting Church Laws and the principles, beliefs and values of the Church to the fullest extent that does not contravene the Corporations Act or any other laws;
- (c) ensuring that the policies, procedures and actions of the Company are consistent with the Uniting Church Laws and the Corporations Act;
- (d) overseeing and monitoring all training, education and learning activities of the Company and specifically the performance of the Company in relation to any accrediting bodies for the delivery of certified and nationally accredited training and the issuing of qualifications, statements and certification of the completion of training and/or education;
- (e) monitoring the performance of the Chief Executive Officer;
- (f) appointment of the Secretary of the Company;
- (g) approving all commercial activities of the Company;
- (h) approving the vision, purpose and strategic direction of the Company as well as the annual budget and business plan of the Company;
- (i) approving and monitoring systems of control and accountability of the Company including general overview of any controlled entities;
- (j) overseeing and monitoring the assessment of risk in all activities of the Company;
- (k) furnishing an annual report and statement of accounts to the Synod Standing Committee as well as the annual General Meeting and the Mission Council;
- (l) reporting to the Synod Standing Committee in relation to all of the activities of the Company, and obtaining the consent of the Synod or Synod Standing Committee, Presbytery and relevant or other officers or bodies of the Church having authority to make determinations of this nature, in all cases as required under the Uniting Church Laws;
- (m) appointing an audit committee consisting of at least 2 Directors;
- (n) the care and preservation of all Property used by the Company and all Property otherwise related to the activities of the Company; and
- (o) assessing resource issues relevant to the implementation of programs of the Company.

## **22. Specific Duties of Board Members**

In addition to their responsibilities at law each Director is responsible and accountable for compliance by the Company with its Objects and with the policies, principles, beliefs and values of the Church and with Uniting Church Laws so far as they do not contravene the law and the requirements of any Governmental body having authority in the matter and must:

- (a) exercise his or her powers and discharge his or her duties in compliance with the Corporations Act;
- (b) act always in the best interests of the Company as a whole and such obligation shall be observed in priority to any duty which a Member may owe any other person or entity;
- (c) always act in good faith, honestly and for a proper purpose;
- (d) exercise appropriate care and diligence;
- (e) prevent the Company from carrying on its business while it is unable to pay its debts;
- (f) not improperly use his or her position to gain an advantage for himself or herself or for some other person or company; and
- (g) comply with the Corporations Act in relation to the disclosure of the Director's interest.

### **23. Proceedings of the Board of Directors**

- (a) The Board of Directors may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. The Chairperson may at any time and the Secretary must on the requisition of the Chairperson convene a meeting of the Board of Directors.
- (b) Subject to this Constitution questions arising at any meeting of the Board are to be decided by a majority of votes. Each Director present at a meeting or participating in a meeting by the use of technology consented to under Clause 23(n) is entitled to one vote. A determination by a majority of the Directors present is for all purposes taken to be a determination of the Directors.
- (c) The quorum necessary for the transaction of the business of the Board of Directors shall be 50% of the number of the Directors, rounded up should there be an unequal number.
- (d) The Secretary shall promptly notify the General Secretary of any vacancy occurring on the Board.
- (e) The continuing Directors may act, notwithstanding any vacancy in the Board, for so long as their number is not reduced below six (6).
- (f) A Director may not vote in respect of any contract or proposed contract with the Company in which he or she is interested, and if the Director does so vote his or her vote is not to be counted.
- (g) The Board of Directors may delegate any of its powers and/or functions (but not this power of delegation and not being duties imposed on the Board of Directors as the directors of the Company by the Corporations Act or the law) to one or more committees consisting of such Directors and/or Members of the Company as the Board of Directors thinks fit. Any committee so formed must conform to any regulations that may be given by the Board of Directors and subject thereto has power to co-opt any Member of the Company and each member of a committee shall have one vote on each matter to be decided at a meeting of the committee.

- (h) The Board of Directors may appoint one or more advisory committees consisting of such Director or Directors or other persons as the Board of Directors thinks fit. Such advisory committees will act in an advisory capacity only. They must conform to any regulations that may be given by the Board of Directors and subject thereto have power to co-opt. Each member of an advisory committee has one vote on each matter to be decided at a meeting of the advisory committee.
- (i) Subject to Clause 23(g) and (h) every committee or advisory committee may meet and adjourn as it thinks proper. Questions arising at any meeting are to be determined by a majority of votes of the committee members present at the meeting.
- (j) All acts done by the Board of Directors or a committee or a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or committee, or that the Directors or any of them were disqualified, as valid as if every such person had been duly appointed and was qualified to be a Director or committee member.
- (k) If all of the Directors have signed a document containing a statement that they are in favour of a resolution of the Board of Directors in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Board of Directors held on the day on which and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at time at which, the document was last signed by a Director.
- (l) For the purpose of Clause 23(k), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (m) A reference in Clause 23(k) to all of the Directors does not include a reference to a Director who, at a meeting of the Board of Directors, would not be entitled to vote on the resolution.
- (n) A meeting of the Board of Directors may be called or held using any technology consented to by all Directors, allowing all persons participating in the meeting to hear each other at the same time. Any Director participating in such a meeting is for the purposes of this Constitution taken to be personally present at the meeting.

The consent of a Director to the use of technology may be a standing consent.

A Director may only withdraw consent to the use of technology within a reasonable period before the meeting.

## **24. Chairperson of the Board of Directors**

- (a) The Directors must elect a Chairperson from amongst the Directors and may determine the period during which the Chairperson is to hold office. The office of Chairperson becomes vacant:
  - (i) upon the holder ceasing to be a Director; or
  - (ii) upon the holder resigning in writing to the Secretary.

- (b) The Chairperson may be removed by a resolution of the Board of Directors of which not less than 14 days' Notice has been given.
- (c) Upon the office of Chairperson becoming vacant the Directors shall elect a replacement as soon as possible.
- (d) The Chairperson is to preside at meetings of the Board of Directors. If the Chairperson is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the Directors may elect another person to chair that meeting.
- (e) The Chief Executive Officer must not be appointed to the office of Chairperson.

## **25. Secretary of the Board**

- (a) The Board of Directors must in accordance with section 204D of the Corporations Act appoint at least one Secretary. The Secretary shall be appointed for such term and upon such conditions as the Board thinks fit including any conditions relating to removal of the Secretary from office before expiry of the term of office.
- (b) The Secretary may be, but is not required to be, a Member or Director of the Company.
- (c) The Secretary shall be responsible for:
  - (i) the convening of Board meetings as determined by the Board and as described above;
  - (ii) ensuring that a person is appointed to keep minutes of Board meetings; and
  - (iii) the custody of minutes and records of the Board and of the Company where appropriate.

## **26. Chief Executive Officer**

- (a) The [REDACTED] will be the first Chief Executive Officer. The Board of Directors will appoint each subsequent Chief Executive Officer after consultation with the Mission Council and the Synod Standing Committee concerning the proposed appointment.
- (b) The person who holds the office of Superintendent may be appointed as Chief Executive Officer by the Board of Directors pursuant to paragraph (a).
- (c) The Chief Executive Officer must exercise the powers delegated to him or her in accordance with any directions of the Board.
- (d) If the Superintendent is the Chief Executive Officer and ceases to be the Superintendent he or she will thereupon cease to be the Chief Executive Officer unless the Board of Directors or Company in General Meeting decides otherwise.
- (e) The Board of Directors may terminate the appointment of the Chief Executive Officer.

- (f) At or after the time of appointment of a Chief Executive Officer, the Chief Executive Officer may be appointed a Director by the Synod Standing Committee.

## **27. Delegates**

- (a) The Board of Directors may, subject to the Corporations Act, delegate any of its powers (other than this power of delegation) to a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms as the Board of Directors resolves. The Board of Directors may revoke or vary any power so delegated.
- (b) The delegate must exercise the powers delegated in accordance with any directions of the Board of Directors.

## **28. Inspection of Books and Provision of Information**

- (a) Subject to Clause 28(c), the Board of Directors may determine whether and to what extent, and at what time and places and under what conditions, the books of the Company or any of them will be open to the inspection of Members other than Directors.
- (b) A Member other than a Director and The Uniting Church in Australia (Australian Capital Territory) Property Trust has no right to inspect any document of the Company except as provided by the Corporations Act or authorised by the Board or by the Company in General Meeting.
- (c) The Uniting Church (Australian Capital Territory) Property Trust by its representative or authorised agent has an absolute right to inspect the books of the Company at any time and without notice.
- (d) The Company will, when requested by the Executive Director of Uniting Resources or an authorised representative of the Executive Director, provide all such information as may be requested and in a timely manner, to enable the Executive Director to be reasonably satisfied that the Company is complying with its statutory, contractual and/or Church obligations.

## **29. Audit**

- (a) A properly qualified Auditor or Auditors must be appointed in respect of the Company and of any associated or controlled entities and his or their duties regulated in accordance with the Corporations Act.
- (b) The Auditors will conduct a yearly audit of the accounts and report to the annual General Meeting of the Company and to the Synod Standing Committee in accordance with the provisions of the Corporations Act and within 90 days of the end of each financial year.
- (c) The Auditor's report shall be provided to the Board of Directors, the Company's audit committee, Synod Standing Committee and the Mission Council.

## **30. Notice**

- (a) A Notice may be given by the Company to any Member either personally or by sending it to him or her by post at the address supplied by him or her to the Company for the giving of notices and as recorded in the Company's Register.



- (b) Where a Notice is sent by post, service of the Notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the Notice and to have been effected, in the case of a Notice of a General Meeting on the day after the date of its posting and in any other case at the time at which the letter would have been delivered in the ordinary course of post.
- (c) Notwithstanding the foregoing, if a Member has supplied to the Company a facsimile number or email address for the service of notices on the Member, then any Notice may be served by the Company on that Member by facsimile or email (as applicable).
- (d) A Notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) or sent by email is taken to be served:
  - (i) either immediately upon completion of sending (if such completion is within business hours in the place where the addressee's facsimile machine or receiving computer equipment is located); or
  - (ii) at 9.00 am next occurring during business hours at such place.

For the purposes of this Clause, "business hours" means from 9.00 am to 5.00 pm on the day on which major trading banks are open for business at the place or in the postal district where the addressee's facsimile machine or computer equipment is located.
- (e) Notice of every General Meeting must be given in any manner permitted by the Corporations Act or this Constitution to:
  - (i) every Member and Director except those Members or Directors for whom the Company has no registered address or other address for the giving of notices;
  - (ii) the Auditor or Auditors for the time being of the Company; and
  - (iii) the General Secretary.
- (f) No other person is entitled to receive Notices of General Meetings.

### **31. Indemnity**

Except to the extent that it is prohibited from doing so by the Corporations Act, the Company indemnifies every person who is or has been a Director or Secretary of the Company against:

- (a) any liability (other than a liability for legal costs) incurred in that capacity; and
- (b) any liability for legal costs incurred in connection with proceedings relating to, or in defending an action for liability incurred in that capacity.

### **32. Insurance, Investments, Borrowings and Loans**

As far as it is legally able to do so, the Company must:

- (a) arrange all public liability, professional Indemnity and any other appropriate insurances through the relevant instruments of the Synod; and
- (b) comply with Synod requirements of bodies of the Church relating to investments, borrowings and loans.

### **33. Amendment of Constitution**

This Constitution may be amended by special resolution of the Company in General Meeting if and only if:

- (a) the Synod Standing Committee and the Mission Council are given at least 35 days' notice of that General Meeting;
- (b) prior approval of the proposed resolution to amend the Constitution has been given by the Synod Standing Committee.