

# Constitution

WaterAid Australia Limited “Company”

A Company Limited by Guarantee

ACN 107 296 346

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## Purpose of Company

### 1.1 Objects

The principal object of the Company is to pursue the following charitable purpose: to relieve poverty and suffering of persons in poor areas of the world through improvement of water supplies, sanitation, related hygiene education activities and advice on related health and policy matters.

In support of its principal object, the Company may:

- (a) provide or assist in the provision of the relief of poverty and suffering by the means mentioned in its principal object either directly to the persons concerned, or in co-operation with other agencies and organisations;
- (b) obtain and provide information relevant to attainment of its principal object;
- (c) assist in or make provision for the education and information of local communities;
- (d) make provision for or assist in the planning, building, and maintenance of water supply and sanitation systems;
- (e) support the introduction, adaptation, development and application of technologies appropriate to attainment of its principal object;
- (f) support the location and assessment of sources of safe water;
- (g) undertake, promote or assist research into relief of poverty and disease caused by water supply, sanitation and hygiene factors, and publication of the results;
- (h) assist in or make provision for the training of persons to further the principal object;
- (i) assist persons financially or otherwise in attainment of the principal object;
- (j) contribute moneys to persons, organisations or agencies on terms which will ensure those moneys are used to promote the principal object;
- (k) enter into contractual arrangements to promote the principal object;
- (l) wherever possible, undertake cooperative activities with other Australian and foreign overseas aid agencies; and
- (m) do anything else necessary or desirable in furtherance of the principal object.

### 1.2 Application of income for objects only

The profits (if any) or other income and the property of the Company, however derived, must be applied solely towards the promotion of the objects of the Company as set out in article 1.1. No part of those profits or that income or property may be paid or transferred to the Members, either directly or indirectly by way of dividend, bonus or otherwise.

### **1.3 Payment by the Company in good faith**

Subject to article 6.6, article 1.2 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:

- (a) of remuneration for services to the Company; or
- (b) for goods supplied in the ordinary course of business; or
- (c) of interest at a rate not exceeding the rate fixed for the purposes of this article 1.3 by the Company in general meeting on money borrowed from an officer or Member; or
- (d) of reasonable rent for premises let by an officer or Member.

### **1.4 Application of property on winding up**

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:

- (a) having objects similar to the objects of the Company;
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution; and
- (c) being an institution accepted as a deductible gift recipient under sub-division 30-B, section 30-100 of the Income Tax Assessment Act 1997 by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation.

The institution is to be determined by the Members at or before the time of dissolution.

### **1.5 Charitable Fundraising Act**

Funds raised by means of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991 (NSW) and corresponding state legislation (as applicable) must be maintained in accordance with those Acts.

### **1.6 WaterAid International**

It is acknowledged that the Company may be required to enter into a Member Licence Agreement or similar with WaterAid international in order to be a federated member of WaterAid international and to better pursue its objects. Without in any way limiting the powers of the Directors, the Directors are expressly authorised to enter into said agreement(s).

## **2 Membership**

### **2.1 Serving Directors are Members**

The Directors are Members:

- (a) for so long as they are Directors; and

- (b) subject to this Constitution.

## **2.2 Other Members**

The Directors may, subject to this Constitution, admit the following persons as Members:

- (a) Water Industry entities;
- (b) persons that demonstrate a commitment to the objectives and vision of the Company.

## **2.3 Admission as a Member and fees**

The Directors may admit any person as a Member under article 2.2 if the person agrees to be bound by this Constitution and the Directors, in their discretion, approve the admission. The Directors may:

- (a) prescribe a form for application for membership; and
- (b) impose such fees on Members

as they from time to time determine.

## **2.4 Ceasing to be a Member**

A Member ceases to be a Member on:

- (a) resignation; or
- (b) death; or
- (c) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
- (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
- (e) the termination of the person's membership by the Directors in accordance with this Constitution; or
- (f) if a corporation, being dissolved or otherwise ceasing to exist, having a liquidator or provisional liquidator appointed to it, or being unable to pay its debts; or
- (g) ceasing to satisfy the requirements of membership (if any).

## **2.5 Resignation**

A Member may by written notice to the Company resign their membership with immediate effect or with effect from a specified date occurring not more than three months after the service of the notice.

## **2.6 Termination**

The Directors may by written notice to the Member terminate their membership with immediate effect or with effect from a specified date occurring not more than six months after service of the notice.

## **2.7 Limited liability**

The Members have no liability as Members except as set out in article 16.

# **3 General Meetings**

## **3.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the ACNC Governance Standards.

## **3.2 Power to convene general meeting**

The Directors may convene a general meeting when they think fit.

## **3.3 Members have power to convene general meeting**

If there are not sufficient Directors for a quorum, a Director or any four or more Members may convene a general meeting of the Company at the cost of the Company.

## **3.4 Notice of general meeting**

Twenty one (21) days' notice of a general meeting of Members must be given.

## **3.5 Non-receipt of notice of general meeting**

The non-receipt of notice of a general meeting, or the accidental omission to give notice of a general meeting to a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

## **3.6 Directors and Chief Executive Officer entitled to attend general meetings**

The Directors and the Chief Executive Officer are entitled to receive notice of and attend all general meetings and speak at those meetings.

A Director is not entitled to vote at a general meeting except in their capacity as a Member. The Chief Executive Officer is not entitled to vote at a general meeting.

## **3.7 Cancellation or postponement of general meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors, they may, when they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them. This article does not apply to a meeting convened by a single Director, by Members, by the Directors on the request of Members, or by meetings convened by the Court.

## **3.8 Written notice of cancellation or postponement of general meeting**

Written notice of cancellation or postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice



must be given at least three days before the date for which the meeting is convened and must specify the reason for cancellation or postponement.

### **3.9 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting; and
- (b) a place for the holding of the meeting, which may be either the same as or different to the place specified in the notice convening the meeting.

### **3.10 Notice period for postponed general meeting**

The number of clear days from when a notice postponing the holding of a general meeting is given to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the meeting required to be given by this Constitution.

### **3.11 Business at postponed general meeting**

The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.

### **3.12 Non-receipt of notice of cancellation or postponement of a general meeting**

The accidental omission to give notice of the cancellation or postponement of a meeting to, or the non-receipt of any such notice by any person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.

### **3.13 Proxy or attorney at postponed general meeting**

The date of the postponed general meeting is substituted for and applies to the exclusion of the date specified in the instrument of proxy or power of attorney if:

- (a) by the terms of an instrument appointing them, a proxy or attorney is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy or power of attorney.

However, this may not be done if the Member appointing the proxy or attorney gives to the Company at its Registered Office written notice to the contrary at least 48 hours before the time to which the holding of the meeting has been postponed.

## **4 Proceedings at general meetings**

### **4.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 4 means a person who is:

- (a) a Member; or

- (b) a proxy; or
- (c) attorney.

#### **4.2 Number for a quorum**

Subject to article 4.5, four Members present in person or by proxy or attorney is a quorum at a general meeting.

#### **4.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the Chair of the meeting on their own motion or at the request of a Member, proxy or attorney who is present declares otherwise.

#### **4.4 Quorum and time**

If within 15 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by, or on requisition of, Members is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

#### **4.5 Adjourned meeting**

At a meeting adjourned under article 4.4(b), two persons each being a Member, proxy or attorney present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **4.6 Appointment and powers of the Chair of general meeting**

If the Directors have elected one of their number as Chair, that person is entitled to preside as Chair at a general meeting.

#### **4.7 Absence of the Chair at general meeting**

If a general meeting is held and:

- (a) a Chair has not been elected by the Directors; or
- (b) the elected Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as Chair of the meeting (in order of precedence):

- (c) the Deputy Chair (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;

- (f) a Member chosen by a majority of the Members present in person or by proxy or attorney.

#### **4.8 Conduct of general meetings**

The Chair of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the ACNC Governance Standards and related ACNC guidance material, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chair under this article is final.

#### **4.9 Adjournment of general meeting**

The Chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting. The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising this discretion, the Chair may, but need not, seek the approval of the Members present. Unless required by the Chair, a vote may not be taken or demanded by the Members present in respect of any adjournment;
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **4.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **4.11 Notice of adjournment**

If a meeting is adjourned for more than 14 days, notice of the adjournment must be given in accordance with article 3.4.

#### **4.12 Questions decided by majority**

- (a) With the exception of amendments to this Constitution, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.
- (b) Members may amend this Constitution by passing a special resolution. The special resolution must be passed by at least 75% of the votes cast by Members entitled to vote.

#### **4.13 Equality of votes - no casting vote for the Chair**

If there is an equality of votes, whether on a show of hands or on a poll, the Chair of the general meeting is not entitled to a casting vote in addition to any votes to which the Chair is entitled as a Member or proxy or attorney of a Member.

#### **4.14 Declaration of results**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the Chair 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. Neither the Chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### **4.15 Poll**

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the Chair and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **4.16 Objection to voting qualification**

Objection may not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken. Every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is valid.

#### **4.17 The Chair to determine any poll dispute**

If there is a dispute as to the admission or rejection of a vote, the Chair of the meeting must decide it and the Chair's decision made in good faith is final and conclusive.

## **5 Votes of Members**

### **5.1 Voting rights**

Subject to the rights and any restrictions attached to or affecting any class of Members and to any other restrictions in this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as proxy or attorney of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as proxy or attorney of a Member has one vote for each Member that the person represents.

## **5.2 Right to appoint proxy**

A Member entitled to attend at a meeting of the Company or of any class of Members is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and to vote at the meeting and may be appointed in respect of more than one meeting.

## **5.3 Right to appoint attorney**

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

To be effective, an instrument appointing an attorney under this clause, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

# **6 Directors**

## **6.1 Number of Directors**

- (a) The number of Directors is to be not less than five (5) nor greater than ten (10).
- (b) Up to six (6) Directors shall be elected by resolution at annual general meetings. The Board may provide recommendations to the annual general meeting on Director nominations based on good governance principles including the need to maintain a balance of skills, experience that is appropriate for the Company and which may also include consideration of a connection with the Aid and Development Sector or Water Industry.
- (c) The Directors may appoint as Directors, up to four (4) persons who have specific knowledge skills and experience required by the Board.
- (d) The Directors appointed pursuant to paragraph (c) need not be elected at an annual general meeting. The Directors may at any time remove such persons as a Director and may appoint another suitably qualified person in their place.

## **6.2 Term of appointment**

- (a) Directors shall be elected/appointed for a three (3) year term.
- (b) The Directors may appoint a Director to serve a second consecutive term of three (3) years.
- (c) No Director of the Board shall serve more than two (2) consecutive terms of three (3) years except that the Board of Directors may appoint a Director to serve a third term of three (3) years or less if it is satisfied there is a particular need for that Director's knowledge, skills and experience on the Board of Directors.

## **6.3 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

#### **6.4 Casual vacancy**

The Directors may at any time appoint a person to be a Director to fill a casual vacancy.

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

#### **6.5 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which the retirement is to take effect.

#### **6.6 Remuneration of Directors**

A Director may not be paid any remuneration for services as a Director. However, a Director may be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the affairs of the Company.

#### **6.7 Directors' remuneration must be approved**

Apart from a reimbursement payment under article 6.6, any payment to a Director must be approved by the Directors.

#### **6.8 Directors' interests**

(a) Subject to articles 6.8(d)-(f) below regarding disclosure of and voting on matters involving a conflict of interest, a Director may:

- (i) hold any office or place of profit in the Company, except that of auditor;
- (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (iii) enter into a contract or arrangement with the Company;
- (iv) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
- (v) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (vi) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- (vii) sign or participate in the execution of a document by or on behalf of the Company.

(b) A Director may do any of the above despite the fiduciary relationship of the Director's office:

- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this article is also a reference to each related body corporate of the Company.
- (d) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):
  - (i) to the other Directors, or
  - (ii) if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- (e) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (f) Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under article 6.8(g):
  - (i) be present at the meeting while the matter is being discussed, or
  - (ii) vote on the matter.
- (g) A Director may still be present and vote if:
  - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
  - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company;
  - (iii) their interest relates to a payment by the Company under article 15 (Indemnities), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
  - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
    - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **6.9 Directors' duties**

The Directors must comply with their duties as directors under legislation (including the Corporations Act) and common law. The Directors must also comply with the duties described in ACNC Governance Standard 5, namely:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the company set out in article 1.1;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in article 6.8;
- (f) to ensure that the financial affairs of the Company are managed responsibly, and
- (g) not to allow the Company to operate while it is insolvent.

## **6.10 Vacation of office**

A Director stops being a director if he or she:

- (a) becomes medically unfit to perform his or her duties as a Director; or
- (b) resigns office by notice in writing to the Company; or
- (c) is not present personally or by proxy or Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors; or
- (d) breaches the Company's Code of Conduct and/or Child Safeguarding Policy; or
- (e) becomes ineligible to be a Director of the Company under the Corporations Act or the ACNC Act; or
- (f) is removed as a Director by a resolution of the Members; or
- (g) dies.

# **7 Powers and duties of Directors**

## **7.1 Directors to manage Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by this Constitution, required to be exercised by the Company in general meeting.



## **7.2 Specific powers of Directors**

Without limiting the generality of article 7.1 the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

## **7.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.

## **7.4 Provisions in power of attorney**

A power of attorney granted under article 7.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

## **7.5 Minutes**

The Directors must direct minutes of meetings to be made and kept.

# **8 Proceedings of Directors**

## **8.1 Directors meetings**

The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit and must meet at least twice per calendar year.

The Chief Executive Officer shall have the right to attend and speak at Directors' meetings but shall not have the right to vote.

## **8.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors on reasonable notice.

## **8.3 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

## **8.4 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy. If that person is also a Director, they have one vote as a Director in that capacity.

## **8.5 No Chair's casting vote**

The Chair of the meeting does not have a casting vote.

## **8.6 Quorum**

Until otherwise determined by the Directors, four Directors present in person or by proxy is a quorum.

## **8.7 Two Directors can constitute a quorum**

Notwithstanding article 8.6, a quorum is present during the consideration of a matter at a meeting of the Directors only if at least two Directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.

## **8.8 Effect of vacancy**

The continuing Directors may act despite a vacancy in their number. However, if their number is reduced below the minimum fixed by article 6.1(a), the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or for calling a general meeting.

## **8.9 Appointment of Alternate Director**

A Director may appoint a person approved by a majority of the other Directors, to be an Alternate Director in the Director's place for a period that the Director thinks fit.

## **8.10 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

## **8.11 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and may perform all the duties of the appointor that the appointor has not exercised or performed.

## **8.12 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them.

## **8.13 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 6.6.

## **8.14 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

## **8.15 Appointment or termination in writing**

An appointment or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

#### **8.16 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

#### **8.17 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings.

#### **8.18 Convening meetings**

A Director and the Secretary on the request of a Director must, convene a meeting of the Directors.

#### **8.19 Chair and Deputy Chair**

The Directors must elect a Chair and may elect a Deputy Chair. The Chair and Deputy Chair will hold office for a period of three (3) years and the terms of Chair and Deputy Chair should not be coincident.

The Chair must be willing and able to sit on the International Board.

The Chief Executive Officer cannot be elected as Chair or Deputy Chair.

#### **8.20 Removal of the Chair by the Directors**

The Chair or Deputy Chair may be removed by a resolution of the Directors of which not less than 14 days' notice has been given to the Directors.

#### **8.21 The Chair to preside over Directors' meeting**

The Chair is entitled to preside at meetings of the Directors. If the Chair 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 following may preside (in order of entitlement):

- (a) the Deputy Chair; or
- (b) a Director chosen by a majority of the Directors present.

#### **8.22 Directors' committees**

Directors:

- (a) must establish one or more committees to be responsible for governance, nominations, selection and remuneration; and
- (b) may establish one or more other committees at their discretion.

The Directors may delegate any of their powers to committees consisting of the Directors and other persons that they think fit, including persons who may be independent of the Board, and may revoke that delegation.

#### **8.23 Powers delegated to Directors' committees**

A committee to which any powers have been delegated under article 8.22 must exercise those powers in accordance with any directions of the Directors. These powers are then taken to have been exercised by the Directors.

#### **8.24 Directors' committee meetings**

Subject to article 8.23, the meetings and proceedings of a committee consisting of two or more Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are applicable.

#### **8.25 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

#### **8.26 Meeting by use of technology**

A Directors' meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent a reasonable time before the meeting.

#### **8.27 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are valid even if it is afterwards discovered that there was some defect in the appointment, election or qualification of any of them or that any of them were disqualified or had vacated office.

### **9 Chief Executive Officer**

#### **9.1 Appointment**

The Directors may appoint a Chief Executive Officer. The Directors may give a Chief Executive Officer any of the powers conferred on them by this Constitution, subject, at the Director's discretion, to:

- (a) any time period;
- (b) specific purposes;
- (c) any other terms and restrictions.

All or any of those powers may be given collaterally with or to the exclusion of the powers of the Directors and may be revoked or varied by the Directors.

For the avoidance of doubt, the person appointed as Chief Executive Officer (other than in an interim capacity) shall not be a Director.

The remuneration of the Chief Executive Officer shall be determined by the Directors from time to time.

## **9.2 Termination**

Only the Directors shall have the power to terminate the appointment of the Chief Executive Officer

## **10 Secretary**

### **10.1 Appointment of Secretary**

There must be at least one Secretary who is to be appointed by the Directors.

The Chief Executive Officer shall be the Secretary unless the Directors agree otherwise.

### **10.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **10.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions and with the powers, duties and authorities, as determined by the Directors.

## **11 Advisory Council**

### **11.1 Appointment of Advisory Council**

The Directors may appoint to an Advisory Council, any person or persons who the Directors believe have expertise and experience from which the Directors may require advice from time to time.

### **11.2 Referral of matters to Advisory Council**

The Directors may convene meetings of the Advisory Council and refer to the Advisory Council from time to time matters on which the Directors require advice.

## **12 [Deleted]**

## **13 Inspection of records**

### **13.1 Inspection by Members**

The Directors may, in accordance with ACNC Governance Standard 2, determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

### **13.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

## **14 Service of documents**

### **14.1 Document includes notice**

In Part 14 ("Service of documents"), a reference to a document includes a notice.

### **14.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number or electronic address nominated by the Member.

### **14.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and is taken to have been received on the fifth business day after the date of its posting for addresses in Australia and on the tenth business day after the date of its posting for addresses outside Australia.

### **14.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

## **15 Indemnity**

### **15.1 Indemnity of officers, Auditors and agents**

Every person who is or has been:

- (a) a Director; or
- (b) a Secretary,

is entitled to be indemnified out of the property of the Company against:

- (c) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (d) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (e) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (f) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

## **15.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

## **16 Winding up**

Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member or within one year after they cease to be a Member. This contribution is for:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves,

and the amount is not to exceed \$10.

## **17 Accounts**

The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the ACNC Act and the Charitable Fundraising Act 1991 (NSW) and corresponding state legislation (as applicable).

## **18 Relief Fund**

### **18.1 Establishment of the Relief Fund**

The Company may establish and operate an overseas relief fund known as the "WaterAid Australia Overseas Aid Fund" (**Relief Fund**).

## **18.2 Exclusive purpose of the Relief Fund**

The exclusive purpose for the establishment of the Relief Fund is to provide relief to the people of countries declared by the Minister for Foreign Affairs to be a developing country.

## **18.3 Rules and objects of the Relief Fund**

The purpose of the relief fund is to solicit and receive gifts towards the carrying out of the objects of the Relief Fund.

The moneys of the Relief Fund are to aid the principal objects of the Company (as stated in article 1.1) insofar as those principal objects provide relief to the peoples of countries declared by the Minister for Foreign Affairs to be a developing country.

## **18.4 Gifts to the Relief Fund to be kept separate**

An account will be established to receive all gifts received by the Relief Fund. This account must only include any money or property which is a gift to the Relief Fund or which is received because of such gifts including, without limitation, interest received on any monies in the account.

## **18.5 Receipts to issue in the name of the Company**

Receipts issued for gifts must include:

- (a) the name "WaterAid Australia Overseas Aid Fund" on behalf of "WaterAid Australia Limited";
- (b) the Australian Business Number of the Company;
- (c) the fact that the receipt is for a gift;
- (d) the amount of the gift.

## **18.6 Public invited to contribute**

The general public will be invited to make gifts to the Relief Fund for the purposes of carrying out the objects of the Relief Fund.

## **18.7 Management committee and responsible persons**

The Relief Fund shall be administered by a committee of at least 3 members (**Relief Fund Management Committee**).

The members of the Relief Fund Management Committee are to be selected by the Directors.

The Directors must ensure that a majority of these committee members have a degree of responsibility to the general community by reason of their occupation or standing in the community.

The term of appointment of the members of the Relief Fund Management Committee is three years.



### 18.8 The Relief Fund is to be non-profit

The assets and income of the Relief Fund shall be applied solely in the furtherance of the objects of the Relief Fund and no portion shall be distributed directly or indirectly to any individual except as bona fide compensation for services rendered or expenses incurred on behalf of the Relief Fund.

### 18.9 Winding up

In the event of the Relief Fund being wound up, any surplus assets remaining after the payment of liabilities of the Relief Fund shall be transferred to another organisation or fund with similar purpose to which income tax deductible gifts can be made.

### 18.10 Statutory notification

The Relief Fund Management Committee must notify the Australian Taxation Office of any alterations made to this article 18 of the Constitution

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## 19 Definitions and interpretation

### 19.1 Definitions

In this Constitution unless the contrary intention appears:

**ACNC Act** means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth).

**ACNC Governance Standards** means the Australian Charities and Not-for-Profits Commission Governance Standards as amended from time to time.

**Advisory Council** means the council of senior representatives of the Water Industry and Aid and Development Sector to be appointed under article 11.1.

**Aid and Development Sector** means not for profit organisations, excluding this Company, who are signatories to the ACFID Code of Conduct, who are based in Australia and who are involved in provision of aid and development projects to developing countries and/or have expertise in overseas aid and development issues.

**Alternate Director** means a person appointed as an alternate director by a Director in accordance with article 8.9.

**Article** means an article of this Constitution.

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

**Chair** means the chair of the board of directors of the Company and **Deputy Chair** means the deputy chair of the board.

**Chief Executive Officer** means a person appointed as Chief Executive Officer under Part 9.

**Company** means "WaterAid Australia Limited".

**Constitution** means this constitution as it is amended from time to time.

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

**Director** means a director of the Company.

**Directors** means all or some of the directors of the Company acting as a board.

**International Board** means the Board of Trustees of WaterAid International

**Member** means a member of the Company.

**Part** means a Part of this Constitution.

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

**Secretary** means a person appointed as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**WaterAid International** means the company limited by guarantee and a charity whose principal place of business is at Durham Street, London, SE11 5JD, United Kingdom.

**Water Industry** means the Australian water industry, including small and large utilities and business, water industry associations and other participants involved with the Australian water industry, who are based in Australia.

## 19.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- (e) a reference to an article is a reference to one of the articles;
- (f) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised from time to time and at any time.

## 19.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) "section" means a section of the Corporations Act.

#### **19.4 Headings**

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

#### **19.5 Powers**

Powers conferred on the Company, the Directors, a committee of Directors, a Director or a Member may be exercised at any time and from time to time.