

Constitution

SDS Legal Ltd

ACN 637 226 521

(Company)

**A company limited by guarantee and
registered as a charity with
the Australian Charities and Not-for-profits Commission**

Adopted on 27 November 2019

Table of contents

Preliminary	4
1. Name of the company.....	4
2. Type of company	4
3. Limited liability of members.....	4
4. The guarantee	4
5. Definitions	4
Charitable purposes and powers	4
6. Object.....	4
7. Powers	4
8. Not-for-profit.....	4
9. Amending the constitution.....	5
Members	5
10. Membership	5
11. Register of members.....	5
12. Who can be a member.....	6
13. How a member is appointed	6
14. When a person becomes a member	6
15. When a person stops being a member	6
16. Sole member’s resolution in writing	6
17. Resolutions of members	6
General meetings of members	7
18. General meetings.....	7
Directors	7
19. Number of directors.....	7
20. Election and appointment of directors	7
21. Election of chairperson	8
22. When a director stops being a director.....	8
23. Legal practitioner director.....	8
Subject to the LPU Law:.....	8
Powers of directors.....	9
24. Powers of directors.....	9
25. Delegation of directors’ powers	9
26. Payments to directors.....	9
27. Execution of documents.....	9
Duties of directors	10
28. Duties of directors	10
29. Conflicts of interest.....	10
Directors’ meetings.....	11
30. When the directors meet	11
31. Calling directors’ meetings	11
32. Chairperson for directors’ meetings	11
33. Quorum at directors’ meetings	11
34. Using technology to hold directors’ meetings	11
35. Passing directors’ resolutions.....	11
36. Circular resolutions of directors	12
Secretary.....	12

Constitution of SDS LEGAL LTD

37.	Appointment and role of secretary.....	12
Minutes and records.....		12
38.	Minutes and records	12
39.	Financial and related records and company seal.....	13
By-laws		13
40.	By-laws.....	13
Notice		14
41.	What is notice.....	14
42.	Notice to the company.....	14
43.	Notice to members	14
44.	When notice is taken to be given	14
LPU Law		15
45.	Provision of legal services	15
46.	Termination of provision of legal services.....	15
47.	Requirements relating to advertising.....	15
48.	Relationship of the LPU Law to this constitution.....	15
Financial year.....		15
49.	Company's financial year.....	15
Indemnity, insurance and access		15
50.	Indemnity.....	15
51.	Insurance.....	15
52.	Professional indemnity insurance.....	16
53.	Directors' access to documents.....	16
Winding up		16
54.	Surplus assets not to be distributed to members.....	16
55.	Distribution of surplus assets	16
Definitions and interpretation		16
56.	Definitions	16
	<i>Diocese</i> means the Anglican Church of Australia in the Diocese of Sydney.....	17
57.	Reading this constitution with the Corporations Act	17
58.	Interpretation.....	17

Preliminary

1. Name of the company

The name of the **company** is SDS Legal Ltd (the **company**).

2. Type of company

The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 56 and 58.

Charitable purposes and powers

6. Object

The **company's** object is to advance the purposes of the **Diocese** through the provision of legal (and related) services to –

- (a) entities forming part of the **Diocese**,
- (b) Anglican entities outside the **Diocese**, and
- (c) entities which are affiliated with the **Diocese**,

and to do such other things as are incidental or conducive to the attainment of these purposes, including making contributions or grants conducive to the attainment of these purposes.

7. Powers

7.1 Subject to clause 8, the company has the following powers, which may only be used to carry out the purposes set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

7.2 Subject to clause 8 and to section 103 of the **LPU Law**, the **company** may provide any service and conduct any business that the **company** may lawfully provide or conduct and that is in pursuit of the purposes set out in clause 6.

8. Not-for-profit

8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 55.

- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, including (for members who are directors) payments authorised under clause 26.1,
 - (b) paying to a member a commercial rate of interest on money borrowed from the member,
 - (c) paying to a member a reasonable rent for premises let by the **member**,
 - (d) paying any such amounts to a firm of which the member is a partner, or
 - (e) making a payment to a member in carrying out the purposes set out in clause 6.

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it would cause the company to no longer be a charity.

Members

10. Membership

- 10.1 The sole member of the **company** upon incorporation is **SDS**.
- 10.2 If at any time there is no member, the directors must as soon as practicable appoint up to three people who support the purposes set out in clause 6 to be members, any of whom may be a director.

11. Register of members

- 11.1 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
 - i. name,
 - ii. address,
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name,
 - ii. address,
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 11.2 The **company** must give current members access to the register of members.
- 11.3 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

12. Who can be a member

Before a person is appointed to be a member of the company they must, in writing:

- (a) consent to become a member, and
- (b) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

13. How a member is appointed

A person who is eligible to become a member of the company under clause 12 may be appointed by the directors (including, without limitation, under clause 10.2).

14. When a person becomes a member

Other than **SDS**, a person becomes a member when they are entered on the register of members.

15. When a person stops being a member

A person immediately stops being a member if they:

- (a) are wound up,
- (b) die,
- (c) resign, by writing to the secretary, or
- (d) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

16. Sole member's resolution in writing

If the **company** has only one member, that member may pass a resolution by recording it in writing and signing the record.

17. Resolutions of members

- 17.1 Subject to clause 17.3, the directors may put a resolution to the members as a resolution to be passed without a **general meeting** being held (**circular resolution**).
- 17.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has been or will be put to members, and set out the wording of the resolution.
- 17.3 Circular resolutions cannot be used:
 - (a) for a resolution to remove an auditor, appoint a director or remove a director, or
 - (b) where the **Corporations Act** or this constitution requires a meeting to be held.
- 17.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 17.5 or clause 17.6.
- 17.5 Members may sign:
 - (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 17.6 The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, as long as the text of the resolution is included in their reply and is the same in each reply.

- 17.7 A circular resolution is passed when the last member signs or otherwise agrees to the resolution in the manner set out in clause 17.4 or clause 17.5.

General meetings of members

18. General meetings

If the **company** has more than one member, a **general meeting** may be convened and held in accordance with Parts 2G.2 and 2G.3 of the Corporations Act (including the replaceable rules in those Parts) as those Parts would apply if item 9 in the table in section 111L of the Corporations Act did not apply to the **company**.

Directors

19. Number of directors

- 19.1 The directors of the company are:
- (a) the members of the board of **SDS** from time to time subject to their consent, and
 - (b) any person appointed under subclause 19.2.
- 19.2 The company must at all times have at least one director who is an **Australian legal practitioner** and an **authorised principal**. If there is at any time no member of the board of **SDS** qualified and willing to act as the authorised principal, **SDS** is to appoint one additional person who is qualified and willing as a director of the company.

20. Election and appointment of directors

- 20.1 The initial directors are the people who are directors of the **company** on the date that this constitution is adopted.
- 20.2 Apart from the initial directors and directors appointed under clause 20.5, the members may appoint a director by a resolution passed in a **general meeting**.
- 20.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 20.4 A person is eligible for election as a director of the **company** if they:
- (a) are nominated by a member entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
 - (b) give the **company** their signed consent to act as a director of the **company**, and
 - (c) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 20.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director (subject to clause 19) if that person:
- (a) gives the **company** their signed consent to act as a director of the **company**, and
 - (b) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 20.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of

increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

21. Election of chairperson

The directors must elect a director as the **company's elected chairperson**.

22. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**,
- (b) retire and are not re-elected at the same **general meeting**,
- (c) die,
- (d) are mentally incapacitated,
- (e) are removed as a director by a resolution of the members,
- (f) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**, or
- (g) are a **legal practitioner director** and ceases being an **Australian legal practitioner** or **authorised principal**.

23. Legal practitioner director

Subject to the LPU Law:

- (a) if at any time the **company** has only one **legal practitioner director** and that director ceases to be a director or ceases to be an **Australian legal practitioner** or **authorised principal** that vacancy must be filled not later than 7 days after that cessation,
- (b) each **legal practitioner director** of the **company** is responsible for the management of the legal services provided by the **company**,
- (c) each **legal practitioner director** of the **company** must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the **company**:
 - i. in accordance with the professional obligations of **Australian legal practitioners** and other obligations imposed by or under the **LPU Law** or the legal profession rules, and
 - ii. so that those obligations of **Australian legal practitioners** who are officers or employees of the **company** are not affected by other officers or employees of the **company**,
- (d) if it is reasonably apparent to a **legal practitioner director** of the **company** that the provision of legal services by the **company** will result in breaches of the professional obligations of **Australian legal practitioners** or other obligations imposed by or under the **LPU Law** or the legal profession rules, the **legal practitioner director** must take all reasonable action available to the director to ensure that:
 - i. the breaches do not occur, and
 - ii. appropriate remedial action is taken in respect of breaches that do occur,and
- (e) a **legal practitioner director** of the **company** must ensure that all reasonable action available to the **legal practitioner director** is taken to deal with any unsatisfactory professional conduct or professional misconduct of an **Australian legal practitioner** employed by the **company**.

Powers of directors

24. Powers of directors

- 24.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 24.2 Subject to clause 24.3, and except as otherwise required by the **Corporations Act**, the **LPU Law** or any other applicable law, the directors:
- (a) may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members,
 - (b) have power to manage the business of the **company**, and
 - (c) may exercise every right, power or capacity of the **company** to the exclusion of the **company** in **general meetings**.
- 24.3 The directors must not do or omit to do anything that would prevent the proper discharge of the obligations of the **legal practitioner director** as provided under clause 23 or in accordance with Part 3.7 of the **LPU Law**.
- 24.4 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 25, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 24.5 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

25. Delegation of directors' powers

- 25.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 25.2 The delegation must be recorded in the **company's** minute book.

26. Payments to directors

- 26.1 Subject to clause 26.2, the **company must not make any payment** to a director for acting as a director.
- 26.2 The **company** may reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 26.3 Any payment made under clause 26.2 must be approved by the directors.
- 26.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

27. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**, or
- (b) a director and the secretary,
- (c) such other person or persons as the directors by resolution authorise to sign such a document from time to time.

Duties of directors

28. Duties of directors

- 28.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are (as at the date that this constitution is adopted):
- (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 purposes set out in clause 6,
 - (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 clause 28.2,
 - (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.
- 28.2 Subject to clause 24.3, and except as otherwise required by the **Corporations Act**, the **LPU Law** or any other applicable law, a director is authorised to act in the best interests of **SDS** as long as:
- (a) **SDS** is the sole member of the **company** at the time the director so acts,
 - (b) the director acts in good faith in the best interests of **SDS**; and
 - (c) the **company** is not insolvent at the time the director so acts and does not become insolvent because of the director's act.

29. Conflicts of interest

- 29.1 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):
- (a) to the other directors, or
 - (b) 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.
- 29.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 29.3 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 clause 29.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 29.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest,
 - (b) 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** (see clause 51),

- (c) their interest relates to a payment by the **company** under clause 50 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**,
- (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - i. 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
 - ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

30. When the directors meet

The directors may decide how often, where and when they meet.

31. Calling directors' meetings

- 31.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors, and the secretary must do so on written request of a director.
- 31.2 A director or the secretary may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

32. Chairperson for directors' meetings

- 32.1 The **elected chairperson** is entitled to chair directors' meetings.
- 32.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
 - (a) not present within 10 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chairperson of the meeting.

33. Quorum at directors' meetings

- 33.1 Unless the directors determine otherwise, the quorum for a directors' meeting is at least half of the directors.
- 33.2 A quorum must be present for the whole directors' meeting.

34. Using technology to hold directors' meetings

- 34.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 34.2 The directors' agreement may be a standing (ongoing) one.
- 34.3 A director may only withdraw their consent within a reasonable period before the meeting.

35. Passing directors' resolutions

- 35.1 A directors' resolution must be passed by a majority of the votes cast by the directors present and entitled to vote on the resolution.
- 35.2 The chairperson does not have a casting vote.
- 35.3 All acts done at a meeting of the directors, or by a person acting as a director, are taken as valid as if the relevant person had been duly appointed or had duly

continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a director or of the person so acting, or
- (b) a person acting as a director was disqualified or was not entitled to vote.

36. Circular resolutions of directors

- 36.1 The directors may pass a circular resolution without a directors' meeting being held.
- 36.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 36.3 or clause 36.4.
- 36.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 36.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, as long as the text of the resolution is included in their reply and is the same in each reply.
- 36.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 36.3 or clause 36.4.

Secretary

37. Appointment and role of secretary

- 37.1 The **company** must have at least one secretary, who may also be a director.
- 37.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 37.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration and the powers, duties and authorities of the secretary (if any) in addition to clause 37.4 and any statutory requirements.
- 37.4 The role of the secretary includes:
 - (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

38. Minutes and records

- 38.1 The **company** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of **general meetings**,
 - (b) minutes of circular resolutions of members,
 - (c) a copy of the record of a sole member's resolution,
 - (d) a copy of a notice of each **general meeting**, and

- (e) a copy of a members' statement distributed to members under section 249P of the **Corporations Act**.
- 38.2 The **company** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 38.3 To allow members to inspect the **company's** records:
 - (a) the **company** must give a member access to the records set out in clause 38.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 38.2 and clause 39.1.
- 38.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
 - (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 38.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

39. Financial and related records and company seal

- 39.1 The **company** must make and keep written financial records that:
 - (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 39.2 The **company** must also keep written records that correctly record its operations.
- 39.3 The **company** must retain its records for at least 7 years.
- 39.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.
- 39.5 The directors must provide for the safe custody of any seal of the **company**.
- 39.6 If the **company** has a common seal or duplicate common seal:
 - (a) it may be used only by the authority of the directors, and
 - (b) every document to which it is affixed must be signed by a director and be countersigned by another director, the secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

By-laws

40. By-laws

- 40.1 The directors may pass a resolution to make, alter or repeal by-laws to give effect to this constitution.
- 40.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

41. What is notice

41.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 42 to 44, unless specified otherwise.

42. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office,
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notices to be provided,
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
- (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

43. Notice to members

43.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person,
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices,
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any),
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

43.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

44. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the business day it is delivered,
- (b) sent by post, is taken to be given on the business day after it is posted with the correct payment of postage costs,
- (c) sent by email, fax or other electronic method, is taken to be given on the business day it is sent, and
- (d) given under clause 43.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

LPU Law

45. Provision of legal services

Subject to section 104 of the **LPU Law**, before the **company** starts to engage in legal practice in New South Wales, it must give to the Law Society of New South Wales written notice, in the approved form, of its intention to do so.

46. Termination of provision of legal services

Subject to section 104 of the **LPU Law**, the **company** must, within the prescribed period after it ceases to engage in legal practice in New South Wales, give to the Law Society of New South Wales a written notice, in the approved form, of that fact.

47. Requirements relating to advertising

Any restriction imposed by or under the **LPU Law** or any other Act or imposed with respect to the legal profession rules in connection with advertising by **Australian legal practitioners** applies to the **company**.

48. Relationship of the LPU Law to this constitution

Subject to section 112 of the **LPU Law**, the provisions of the **LPU Law** that apply to the **company** prevail, to the extent of any inconsistency, over this constitution.

Financial year

49. Company's financial year

The **company's** financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

50. Indemnity

- 50.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 50.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 50.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 50.4 The indemnity is a continuing obligation and is enforceable by a former officer even though that person is no longer an officer of the **company**.

51. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract

insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

52. Professional indemnity insurance

The **company** and each insurable **Australian legal practitioner** who is a **legal practitioner director** or officer or employee of the **company**, must comply with the obligations of an insurable **Australian legal practitioner** under Part 4.4 of the LPU Law with respect to insurance policies and payments to or on account of the Fidelity Fund.

53. Directors' access to documents

- 53.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 53.2 If the directors agree, the **company** must give a director or former director access to:
- (a) specified documents, including documents provided for or available to the directors, and
 - (b) any other documents referred to in those documents.

Winding up

54. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 55.1.

55. Distribution of surplus assets

- 55.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities or funds:
- (a) with charitable purposes similar to, or inclusive of, the purposes set out in clause 6, and
 - (b) which is prohibited either under its constitution or by operation of law from distributing any income and **surplus assets** to its members to at least the same extent as under this constitution .
- 55.2 The decision as to the charities or funds to be given the **surplus assets** must be made by a resolution of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Standing Committee of the Synod of the Diocese to make this decision.

Definitions and interpretation

56. Definitions

In this constitution:

ACNC Act means the Australian Charities and Not-for-profits Commission Act 2012 (Cth)

Australian legal practitioner has the same meaning given by section 6 of the **LPU Law**

authorised principal has the same meaning given by section 6 of the **LPU Law**

company means the **company** referred to in clause 1

Corporations Act means the Corporations Act 2001 (Cth)

Diocese means the Anglican Church of Australia in the Diocese of Sydney.

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 21

general meeting means a meeting of members under clause 0

SDS means Sydney Diocesan Services (formerly Sydney Diocesan Secretariat), a body incorporated under the Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW).

legal practitioner director means a director of the **company** who is an **Australian legal practitioner** and **authorised principal**

LPU Law means the Legal Profession Uniform Law (NSW)

registered charity means a charity that is registered under the **ACNC Act**

special resolution means in the case of a sole member's resolution in writing or a circular resolution of members a resolution that is expressed to be a special resolution, or in the case of a resolution passed at a **general meeting** a resolution:

- i. of which notice has been given as set out in section 249L(1)(c) of the Corporations Act, and
- ii. that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution, and

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including any costs of winding up.

57. Reading this constitution with the Corporations Act

- 57.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**, except as expressly provided otherwise in this constitution.
- 57.2 While the **company** is a **registered charity**:
- (a) the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts; and
 - (b) where a particular provision of the Corporations Act referred to in s 111L(1) includes a reference to the Australian Securities & Investments Commission (**ASIC**) including a reference to lodge any document with, or seek consent or approval from **ASIC**, that particular provision does not apply to the Company to the extent that s 111(L) of the Corporations Act is in force.
- 57.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 57.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

58. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression,
- (b) words referring to a gender include the other gender,
- (c) the singular includes the plural and vice versa, and

Constitution of SDS LEGAL LTD

- (d) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).