



Constitution

Catholic Schools NSW Limited
(ACN 619 593 369)
A Company Limited by Guarantee

Date 21 July 2017

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PREAMBLE

The apostolate of Catholic education has the person of Jesus Christ as its' origin and continues his ministry and mission in the world by seeking to prepare students for their earthly vocation as good citizens in society and their ultimate vocation of eternal life with God.

Since the beginnings of Catholic schooling in Australia different governance arrangements were developed by the Bishops, priests and religious to sustain and foster the apostolate. At the start of the 21st century the apostolate had grown to comprise nearly 600 schools in 11 territorial dioceses in New South Wales serving approximately 1 in 5 students in the State.

The size and complexity of the apostolate in each diocese, the civil compliance requirements of Federal and State governments and a desire for a more collaborative style of ministry has now led the Archbishops and Diocesan Bishops of Sydney, Canberra and Goulburn, Armidale, Bathurst, Broken Bay, Lismore, Maitland-Newcastle, Parramatta, Wagga Wagga, Wilcannia Forbes and Wollongong to establish a company known as Catholic Schools NSW Limited to further sustain and foster Catholic education into the future through excellence in governance practice.

While each Bishop has operational responsibility for the Catholic schools in his diocese and autonomy regarding teaching and sanctifying in them, he mandates Catholic Schools NSW Ltd to ensure compliance of his diocesan school system in relation to Federal and State Government funding and legislative requirements and reporting against a range of efficiency and effectiveness indicators relating to the provision of Catholic education.

Catholic Schools NSW Ltd as a company established by the Bishops and responsible to them is therefore the Province entity for Catholic education in NSW. The entity seeks the benefit of Catholic schools in NSW regardless of location or need. Among the many means of seeking that benefit is the encouragement and fostering of greater collaboration at different levels among all Christ's faithful who share actively in the apostolate of Catholic education throughout NSW.

"Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you." Lk.28:20

1. NAME OF COMPANY

- 1.1 The name of the Company is Catholic Schools NSW Limited (ACN 619 593 369).

2. TYPE OF COMPANY

- 2.1 The Company is a non-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. LIMITED LIABILITY OF MEMBERS

- 3.1 Each Member must contribute an amount not more than \$10.00 (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) payment of debts and liabilities of the Company;
 - (b) payment of the costs, charges and expenses of winding up; and
 - (c) any adjustment of the rights of the contributories among Members.

4. DEFINITIONS

- 4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*.

Act means the *Corporations Act 2001*.

Bishop means a Bishop or Diocesan administrator of the Province and includes the 11 Diocesan Bishops, the Eastern Bishops, the Military Ordinary and auxiliary Bishops in NSW.

Board means the Board of Directors.

Board Chair means the person holding that office under **clause 46** of this Constitution and includes any assistant or acting board chair.

Business Day means a day on which banks are open for business in Sydney.

Canon Law means the Code of Canon Law promulgated by Pope John Paul II on 25 January 1983 and any other universal or particular legislation promulgated by the competent ecclesiastical authority.

Catholic Schools means those schools in NSW which a competent ecclesiastical authority or a public ecclesiastical juridic person directs or which an ecclesiastical authority recognises as such through a written document.

Catholic School Agencies means the Catholic Education Offices (by whatever name) operated by Dioceses in the Province of Sydney or the Archdiocese of Canberra-Goulburn and Religious Institutes or other Public Juridic Persons managing Catholic Schools in NSW.

Chief Executive Officer means a person appointed to the position of Chief Executive Officer for the Company pursuant to **clause 38**.

Committee means a committee established in accordance with **clause 37**.

Company means Catholic Schools NSW Limited.

Constitution means this constitution as amended or supplemented from time to time by a Special Resolution of the Members in a general meeting.

Diocesan Bishop means the local Ordinary responsible for governing a Diocese in the Province of Sydney or the Archdiocese of Canberra-Goulburn from time to time.

Director means any person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Financial Year means the financial year of the Company ending on 31 December.

Initial Phase means the period commencing from incorporation of the Company for the following 12 months.

Member means a Member of the Company.

Members' Chair means the person holding that office under **clause 21** of this Constitution and includes any assistant or acting members' chair.

Office means the registered office for the time being of the Company which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

Province means the Province of Sydney and the Archdiocese of Canberra and Goulburn.

Register means the register of Members to be kept pursuant to the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Special Resolution means:

- (a) a resolution
 - a. of which notice has been given in accordance with the Act; and
 - b. that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution; or
- (b) a circular resolution passed by at least 75% of the members entitled to vote on the resolution.

4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;

- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 4.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.
- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. OBJECTS & POWERS

- 5.1 The charitable objects for which the Company is established are to act as an overarching entity for the purpose of advancing education and religion in Catholic Schools in NSW and ensuring that Catholic Schools meet their compliance requirements and can measure their activities in such a way as to maximise the educational and faith outcomes of students. The objects and activities of the Company shall respect and adhere to Church law.
- 5.2 The Company will achieve these objects by:
- (a) acting as an Approved System Authority in accordance with the Australian Education Act (**AEA**) and its Regulations;
 - (b) ensuring that funding for NSW Catholic Schools is distributed in accordance with relevant legislation;
 - (c) complying with Governmental obligations at both Federal and State level with regards to Federal and State funding;
 - (d) assisting the Bishops to comply with Church law and policies regarding Catholic education;

- (e) supporting Catholic School Agencies;
 - (f) liaising with Catholic School Agencies, particularly in relation to grant administration;
 - (g) liaising and developing cooperative links with other groups for the advancement of education;
 - (h) acting as a facilitator for opportunities to collaborate with Catholic School Agencies on education related matters and fostering a culture whereby educational leadership can meet and engage in common areas where joint approaches can be developed;
 - (i) responding to the needs of parents, students and school communities relating to the activities of the Company;
 - (j) acting as an advocate for Catholic Schools with:
 - (i) Governments;
 - (ii) Parliaments;
 - (iii) NSW State Education Standards Authority;
 - (iv) other education bodies;
 - (v) employer groups;
 - (vi) the media; and
 - (vii) the general public.
 - (k) developing reporting frameworks for use by Catholic School Agencies and Members in relation to efficiency and effectiveness;
 - (l) assisting Catholic School Agencies and Members in the development of education policies, research materials, benchmarking and information sharing which contribute to the:
 - (i) enhancement of the quality of education in Catholic Schools; and
 - (ii) maintenance of the Catholic identity in education,
 - (m) establishing any other entities to assist in the fulfilment of the Company's objects; and
 - (n) undertaking any other activities in furtherance of or ancillary to the above objects.
- 5.3 These objects will be realised by the Company in a manner consistent with the teachings, laws and customs of the Roman Catholic Church.
- 5.4 The Company can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Company set out in **clause 5.1**; and

- (b) do all things incidental or convenient in relation to the attainment of an object under **clause 5.1**.

6. NOT-FOR-PROFIT

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 5.1**.
- 6.2 No income or assets of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company unless it is paid, transferred or distributed in carrying out the Company's business. However nothing in this Constitution will prevent payment in good faith to a Member:
 - (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to the Company;
 - (c) of reasonable and proper rent for premises leased by any Member to the Company,

for carrying out the Company's charitable purposes.

7. AMENDING THE CONSTITUTION

- 7.1 The Members may amend this Constitution by passing a Special Resolution.
- 7.2 Any modification or repeal of this Constitution takes effect on the latter of the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

8. MEMBERSHIP

- 8.1 The Members of the Company shall be:
 - (a) the Archbishop of Sydney;
 - (b) the Archbishop of Canberra and Goulburn;
 - (c) the Bishop of Armidale;
 - (d) the Bishop of Bathurst;
 - (e) the Bishop of Broken Bay;
 - (f) the Bishop of Lismore;
 - (g) the Bishop of Maitland–Newcastle;
 - (h) the Bishop of Parramatta;

- (i) the Bishop of Wagga Wagga;
- (j) the Bishop of Wilcannia-Forbes;
- (k) the Bishop of Wollongong; and
- (l) any other person or entity that is admitted as a Member by at least 75% of the Members listed at **clause 8.1(a) to 8.1(k)**, who shall be admitted on any terms and conditions determined by the Members.

8.2 In this clause, 'person' means an individual or incorporated body.

9. APPLICATION FOR MEMBERSHIP

- 9.1 Every application for Membership of the Company must:
- (a) be lodged with the Secretary and must set forth the name and address of the applicant; and
 - (b) state that the applicant agrees to comply with the terms of the Company's Constitution.
- 9.2 Applications for Membership of the Company must be made in writing on a form approved by the Members for that purpose and signed by the applicant.
- 9.3 At the next meeting of members after an application for Membership has been received, the Members will in their absolute discretion:
- (a) determine the admission or rejection of the applicant; or
 - (b) decide to call on the applicant to supply any further information that they consider reasonably necessary.
- 9.4 An applicant will be admitted to Membership of the Company by a Special Resolution of the Members is passed to admit the applicant.
- 9.5 If an application for Membership is approved in accordance with **clause 9.4**, the Secretary must, as soon as practicable, notify the applicant in writing of their approval for Membership.
- 9.6 If an application for Membership is rejected in accordance with **clause 9.4**, the Secretary must, as soon as practicable, notify the applicant in writing that their application has been rejected.

10. REGISTER OF MEMBERS

- 10.1 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 (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); 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 (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); and
 - (iv) dates the Membership started and ended; and
 - (v) any terms and conditions in accordance with **clause 8.1(I)**.
- 10.2 The Company must give current Members reasonable access to the Register of Members.
- 10.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

11. WHEN A PERSON STOPS BEING A MEMBER

- 11.1 A person immediately stops being a Member if:
- (a) they resign, by writing to the Secretary; or
 - (b) are subject to an ecclesiastical penalty which in the unanimous opinion of the other Members declared by resolution is such that should cause them to cease to be a Member; or
 - (c) they are deemed to have resigned or ceased to be a Member pursuant to **clause 15.3**.

12. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

- 12.1 A right privilege or obligation which a person has by reason of being a Member of the Company:
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates on cessation of the person's Membership.

13. ENTRANCE FEE AND SUBSCRIPTIONS

- 13.1 There shall be no entrance fee, annual fee or subscription payable by any Member to the Company.

14. MEMBERS' RIGHTS

- 14.1 Members of the Company will be entitled to:
- (a) receive notice of and attend and vote at general meetings of the Company; and
 - (b) receive annual reports of the Company including financial reports in relation to each Financial Year.
- 14.2 All other rights, privileges and obligations of Members are in accordance with the Act.

15. DISPUTE RESOLUTION

- 15.1 The Board shall develop a dispute resolution procedure in relation to disputes (disagreements) under this Constitution between a Member or Director and:
- (a) one or more Members;
 - (b) one or more Directors; or
 - (c) the Company.
- 15.2 The policy shall include an informal process which may include fraternal consultation and the early identification of non-compliance to address emerging issues before they escalate. Should the informal process fail to resolve the dispute, then a staged process should be implemented.
- 15.3 If the staged dispute resolution process is completed without a satisfactory resolution, subject to unanimous agreement of the Members (excluding the Member in question, if relevant), a Member may be deemed to have resigned or ceased to be a Member from the date of that resolution.
- 15.4 Any dispute resolution policy shall be a state-wide policy for the purposes of **clause 34.1(a)**.

16. CONVENING OF GENERAL MEETINGS

- 16.1 Any 3 Directors may whenever those Directors think fit convene a general meeting of the Company in accordance with the provisions of the Act.
- 16.2 2 Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.

- 16.3 A general meeting of the Company may be convened at 2 or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting, including to hear and be heard.

17. ANNUAL GENERAL MEETING

- 17.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the Company; and
 - (b) after the first annual general meeting, at least once in every calendar year.
- 17.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors; and
 - (e) the appointment and payment of auditors, if any.
- 17.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- 17.4 The Members' Chair of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

18. NOTICE OF GENERAL MEETINGS

- 18.1 Notice of a general meeting must be given to:
- (a) each Member entitled to vote at the meeting;
 - (b) each Director; and
 - (c) the auditor (if any).
- 18.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 18.3 Subject to **clause 18.4**, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or

- (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 18.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed; or
 - (c) remove an auditor.
- 18.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) any other information required under the Act.
- 18.6 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 18.7 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

19. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

- 19.1 The Members' Chair of a general meeting may invite any person who is not a Member to attend and/or address a meeting.

20. QUORUM

- 20.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.

- 20.2 When determining whether a quorum is present, a person will be counted once in respect of each capacity in which he qualifies as a Member.
- 20.3 A majority of Members entitled to vote constitute a quorum for all general meetings.
- 20.4 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
- (a) the meeting if convened upon the requisition of Members shall be dissolved;
 - (b) in any other case:
 - (i) the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.
- 20.5 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

21. MEMBERS' CHAIR

- 21.1 The Members' Chair shall be the Metropolitan of the Province.
- 21.2 The Members' Chair shall be entitled to preside as chairperson at every general meeting.
- 21.3 Where a general meeting is held and:
- (a) there is no Members' Chair; or
 - (b) the Members' Chair is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Members' Chair of the meeting;
 - (c) the other Members present may choose another Member as Members' Chair of the meeting by two-thirds majority, or if their number is not 3 or a multiple of 3, then the nearest number to one-third.
- 21.4 The rulings of the Members' Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

22. NO CHAIRPERSON'S CASTING VOTE

- 22.1 In the case of an equality of votes whether on a show of hands or on a poll, the Members' Chair of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

23. ADJOURNMENT OF MEETINGS

- 23.1 The Members' Chair of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs,
- to a time and place as determined by the Members' Chair.
- 23.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 23.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 23.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

24. CIRCULATING RESOLUTION OF MEMBERS

- 24.1 Subject to **clause 24.3**, the Directors may put a resolution to the Members to pass a resolution without a general meeting being held.
- 24.2 The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- 24.3 Circular resolutions cannot be used where the Act or this Constitution requires a meeting to be held.
- 24.4 A circular resolution is passed if a majority of Members, or in the case of a Special Resolution at least 75% of all the Members, entitled to vote sign or agree to the circular resolution in the manner set out in **clause 24.5** or **clause 24.6**.
- 24.5 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.
- 24.6 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

25. HOW VOTING IS CARRIED OUT

- 25.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
- (a) the Members' Chair of the meeting; or
 - (b) at least two Members entitled to vote on the resolution.
- 25.2 Before a vote is taken, the Members' Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 25.3 On a show of hands, the decision of the Members' Chair is conclusive evidence of the result of the vote.
- 25.4 The Members' Chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

26. POLLS

- 26.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- 26.2 If a poll is demanded it must be taken in such manner and at such time and place as the Members' Chair of the meeting directs subject to **clause 26.5**.
- 26.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 26.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 26.5 A poll demanded on the election of a Members' Chair or any question of adjournment of the meeting must be taken immediately.
- 26.6 The demand for a poll may be withdrawn.

27. VOTING RIGHTS

- 27.1 Other than a Special Resolution or a resolution pursuant to **clause 34** which requires at least 75% of votes, a resolution of the Members must be passed by at least 50% of votes of the Members who vote on the resolution.

- 27.2 Each Member entitled to vote has one vote. For example, if a Bishop is a Diocesan Bishop of one Diocese and an administrator of one or more other Dioceses, he will have a vote in respect of each Diocese.
- 27.3 No person other than a Member shall be entitled to vote at a general meeting.

28. NUMBER OF DIRECTORS

- 28.1 Except during the Initial Phase, the Company must have at least 8 and no more than 10 Directors.
- 28.2 During the Initial Phase the Members shall appoint a Board comprising of no less than 3 Directors, to be known as the initial Directors for a founding term of 1, 2 or 3 years. The founding term shall not be counted for the purposes of **clause 30**. The initial Directors shall:
- (a) give the Company their signed consent to act as a Director of the Company;
 - (b) support the philosophy, values and aims of the Catholic Church;
 - (c) are not subject to any ecclesiastical penalties; and
 - (d) not be ineligible to be a Director under the Act or the ACNC Act.
- 28.3 The Board may comprise of a Bishop.

29. ELECTION AND APPOINTMENT OF DIRECTORS

- 29.1 In accordance with **clause 28.1**, after the Initial Phase the Members shall elect no less than 8 and no more than 10 Directors by a resolution passed in a general meeting.
- 29.2 A person is eligible for election as a Director of the Company if they:
- (a) give the Company their signed consent to act as a Director of the Company;
 - (b) support the philosophy, values and aims of the Catholic Church;
 - (c) are not subject to any ecclesiastical penalties; and
 - (d) are not ineligible to be a Director under the Act or the ACNC Act or **clause 29.6**.
- 29.3 When electing a Director, the Members must endeavour to achieve Board composition with the following skill sets:
- (a) accounting or other finance related discipline;
 - (b) education;
 - (c) civil law;

- (d) Canon Law;
 - (e) governance;
 - (f) advocacy;
 - (g) government relations;
 - (h) Church administration; and
 - (i) general business skills.
- 29.4 When electing a Director, the Members shall also have regard to the diversity of the Board and should consider whether the Board is comprised of an adequate mix of genders. A Majority of Directors must in the opinion of the Members be practising Catholics who actively participate in the life of the Church.
- 29.5 When electing Directors, the Members must ensure the Board is comprised of at least 2 persons who in accordance with **clause 29.3(b)** who between them understand and have experience across the breadth of the education experience across the State of New South Wales. In accordance with **clause 29.1**, the Members may elect not more than 1 Bishop.
- 29.6 Diocesan Financial Administrators and Diocesan Directors of Catholic School Agencies shall not be eligible for election as a Director.
- 29.7 Except during the Initial Phase where the minimum number of Directors must be no less than 3, if the number of Directors is reduced to fewer than 8, the continuing Directors may act for the purpose of calling a general meeting to increase the number of Directors to not less than 8, but for no other purpose.

30. TERM OF OFFICE

- 30.1 Directors shall be elected for terms of office as resolved by the Members. The usual term will be 3 years but Members may appoint Directors for terms of 1, 2 or 3 years to allow for a staggering of retirements or for other reasons.
- 30.2 At each annual general meeting any Director appointed to fill a casual vacancy must retire.
- 30.3 Other than a Director appointed during the Initial Phase or a Director appointed to fill a casual vacancy, a Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 30.4 A Director whose term expires is eligible for re-election, subject to **clause 30.5**.
- 30.5 A Director who has held office for a continuous period of 9 years or more may only be re-appointed or re-elected by a Special Resolution.

31. WHEN A DIRECTOR STOPS BEING A DIRECTOR

- 31.1 A Director stops being a Director if they:
- (a) cease to be eligible to hold the position to which they are elected;
 - (b) give written notice of resignation as a Director to the Office of Company and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company);
 - (c) die;
 - (d) are removed as a Director by a Special Resolution of the Members;
 - (e) are absent for 3 consecutive Board meetings without approval from the Directors;
 - (f) become ineligible to be a Director of the Company under the Act or the ACNC Act;
 - (g) are subject to any ecclesiastical penalties; or
 - (h) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health.

32. NEGOTIABLE INSTRUMENTS

- 32.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least 2 Directors. The Directors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.

33. POWER OF DIRECTORS

- 33.1 All day-to-day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.

34. RESERVE POWERS AND REVIEW

- 34.1 In accordance with **clause 34.2** but excluding the matters in **clause 34.3**, the approval of the Members shall be required as a pre-requisite to any decision of the Board becoming effective in respect of the following reserve powers:
- (a) adoption or amendment of any state-wide policy or program (excluding those which are necessary for compliance with obligations under the AEA, the Education Act NSW 1990 or any other statutory obligations) where such

policy or program would require a Diocese to comply to a direction of the Company and where prior agreement has not been reached with all Dioceses;

- (b) approval of the strategic plan, business plan and annual budget of the Company and code of conduct of the Board and any variation to them;
- (c) approval of any funding model (each which must be presented by the Board to the Members) in relation to the distribution of government grants including but not limited to recurrent and capital funding;
- (d) undertaking acts of extraordinary administration as determined by a Special Resolution of the Members from time to time; and
- (e) appointment of the chief executive officer.

34.2 All powers vested in the Member by **clause 34.1** must be exercised only by way of a Special Resolution of the Members.

34.3 Notwithstanding **clause 34.1**, the Board acknowledge and respect the canonical authority of the Diocesan Bishops to act in relation to education related matters in their respective Diocese. In this regard, any policy or decision relating to a Diocesan Bishop's canonical right in relation to teaching and sanctifying is not to be effected unless a unanimous decision of the Diocesan Bishops has been reached.

34.4 Corporate Review

- (a) On the 5th anniversary of the incorporation of the Company (and at any other time upon unanimous request of the Members), the Board shall carry out or cause to be carried out, a review of the Company.
- (b) The purpose of any review is to assess the effectiveness, sustainability, ongoing viability and relevance of the Company in light of its objects.
- (c) Copies of the review shall be provided to Members and shall be considered by the Members at a general meeting. The Members may vote to take any action in relation to the review. This may include amending the Constitution (in accordance with **clause 7**) or winding up the Company (in accordance with **clause 57**).

35. DELEGATION OF DIRECTORS' POWERS

35.1 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, on such terms and conditions and with such restrictions as it may think expedient.

35.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

35.3 The delegation must be recorded in the Company's minute book.

36. CONSULTATION WITH STAKEHOLDERS

- 36.1 The Board recognises the importance of Diocesan Directors of Catholic School Agencies, as each relates to their respective Bishop, and shall foster a collaborative relationship with them in seeking to achieve the objects of the Company. The Board shall meet with the Diocesan Directors of Catholic School Agencies collectively at least twice per annum.
- 36.2 Where appropriate, the Board should consult with various stakeholder groups which might without limitation include parent groups, principals associations, indigenous groups, peak bodies, the Conference of Leaders of Religious Institutes, the Association of Ministerial Public Juridic Persons and disability and special needs experts.

37. COMMITTEE OF DIRECTORS

- 37.1 The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. There must be a Director appointed as a member of each such Committee. The Board will determine who should chair each Committee. The chair of the committee need not be a Director.
- 37.2 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 37.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 37.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

38. CHIEF EXECUTIVE OFFICER

- 38.1 The Board will appoint a person with appropriate experience to be the Company's chief executive officer (the "Chief Executive Officer"), by whatever title the Board determines from time to time, for the period and on the terms (including as to remuneration) the Board sees fit. Such appointment shall not be effective until ratified by a resolution of the Members in accordance with **clause 34.1(e)**. When appointing a Chief Executive Officer the Board must appoint a person who in their opinion is a practicing Catholic who actively participates in the life of the Church.
- 38.2 The Chief Executive Officer:
- (a) will be subject to the governance oversight of the Board including any code of conduct;

- (b) will have the powers and responsibilities from time to time delegated to him or her by the Board for the day to day running of the Company;
 - (c) shall engage staff as appropriate;
 - (d) will not be a Director or Member of the Company and if he or she is already a Director or Member will resign as such during his or her period in office; and
 - (e) may attend meetings of the Board, except where the Board otherwise requests, but will not have any vote at those meetings.
- 38.3 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on an executive officer any of the powers that the Directors can exercise.
- 38.4 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the Board.
- 38.5 The Board may revoke or vary:
- (a) an appointment; or
 - (b) any of the powers conferred on a Chief Executive Officer.
- 38.6 Notwithstanding the powers of the Board in **clause 38.5(a)**, the Members may revoke the appointment of any Chief Executive Officer.
- 38.7 If a Chief Executive Officer becomes incapable of acting in that capacity the Board may appoint any other person, not being a Director, to act temporarily as Chief Executive Officer.

39. PAYMENTS TO DIRECTORS

- 39.1 Subject to compliance with the terms of any applicable laws, the Directors may, if the Members resolve by ordinary resolution, be paid reasonable remuneration for their services the aggregate annual sum that is fixed by the Members from time to time. If a sum is voted by the Members, it will be divided amongst the Directors as the Members decide.
- 39.2 This clause does not limit any payment for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service.
- 39.3 The Directors shall be entitled to be paid or reimbursed for all travelling and other expenses reasonably incurred by them in connection with any meeting of the Directors, any meeting of a committee, general meetings of the Company and otherwise in connection with fulfilment of their duties as a Director.
- 39.4 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

40. CONFLICTS OF INTEREST

- 40.1 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 Board meeting (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.
- 40.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 40.3 A general notice given to the Board by a Director that the Director is an Officer, a Member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.
- 40.4 Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a Circular Resolution) must not, except as provided under **clauses 40.5**:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 40.5 A Director may still be present and vote if:
- (a) their interest arises because they are a Member of the Company, and the other Directors 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 58**);
 - (c) their interest relates to a payment by the Company under **clause 59** (indemnity), or any contract relating to an indemnity that is allowed under the 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.

41. DUTIES OF DIRECTORS

- 41.1 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:
- (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 **clause 5.1**;
 - (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 this **clause 41**;
 - (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.

42. WHEN THE DIRECTORS MEET

- 42.1 The Directors may decide how often, where and when they meet, provided that they shall meet together not less than 6 times each calendar year.

43. CALLING BOARD MEETINGS

- 43.1 A Director may at any time and the Secretary upon the request of a Director shall convene a Board meeting by giving at least 24 hours' notice of the meeting to all Directors.
- 43.2 Notice of a Board meeting need not be in writing.

44. USING TECHNOLOGY TO HOLD BOARD MEETINGS

- 44.1 The Directors may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 44.2 The Directors' agreement may be a standing one.

- 44.3 A Director may only withdraw their consent within a reasonable period before the meeting.

45. QUORUM AT BOARD MEETINGS

- 45.1 Unless the Directors determine otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.
- 45.2 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.
- 45.3 Directors who are personally present (or in conference in accordance with **clause 44**) form a quorum. A Director who is disqualified from voting on a matter pursuant to **clause 40** shall be counted in the quorum despite that disqualification.
- 45.4 All resolutions of the Directors passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Directors.

46. BOARD CHAIR

- 46.1 The Members shall elect a Board Chair from amongst the Directors for such term as the Members determine by a resolution of at least 75% of Members present and entitled to vote. The Members must elect a Board Chair who in their opinion is a practicing Catholic who actively participates in the life of the Church.
- 46.2 The Board Chair shall, if present, preside as chairperson of every Board meeting.
- 46.3 If a Board meeting is held and the Board Chair is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Board Chair of the meeting.

47. VOTING

- 47.1 A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- 47.2 Each Director shall have one vote.
- 47.3 In case of an equality of votes at a Board meeting, the Board Chair does not have a casting vote in addition to a deliberative vote.

48. RESOLUTIONS BY DIRECTORS

- 48.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if all the Directors 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. For this purpose, signatures can be contained in more than one document.
- 48.2 The resolution is passed when the last Director signs.
- 48.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
- 48.4 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, including the text of the resolution in their reply.

49. VALIDATION OF ACTS OF DIRECTORS

- 49.1 All acts done:
- (a) at any Board meeting; or
 - (b) by any person acting as a Director,
- shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

50. MINUTES AND RECORDS

- 50.1 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
 - (b) circular resolutions of Members;
 - (c) a copy of a notice of each general meeting.
- 50.2 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
 - (b) circular resolutions of Directors.

- 50.3 To allow Members to inspect the Company's records:
- (a) the Company must give a Member reasonable access to the records set out in **clause 50.1**; and
 - (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in **clause 50.2** and **clause 53.1**.
- 50.4 The Directors must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:
- (a) the Board Chair of the meeting; or
 - (b) the Board Chair of the next meeting.
- 50.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by the Board Chair within a reasonable time after the resolution is passed.

51. APPOINTMENT AND ROLE OF SECRETARY

- 51.1 The Company must have at least one Secretary, who may also be a Director.
- 51.2 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 from that role by the Directors.
- 51.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 51.4 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), Board meetings and circular resolutions.

52. EXECUTION OF DOCUMENTS

- 52.1 Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, 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.
- 52.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

53. FINANCIAL AND RELATED RECORDS

- 53.1 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.
- 53.2 The Company must also keep written records that correctly record its operations.
- 53.3 The Company must retain its records for at least 7 years.
- 53.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

54. DIRECTORS' ACCESS TO DOCUMENTS

- 54.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 54.2 If the Directors agree, the Company must give a Director or former Director access to:
- (a) certain documents, including documents provided for or available to the Directors; and
 - (b) any other documents referred to in those documents.

55. BY-LAWS

- 55.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 55.2 Directors must comply with by-laws as if they were part of this Constitution.

56. WHEN NOTICE IS TAKEN TO BE GIVEN

- 56.1 Written notice under this Constitution may be:
- (a) delivered in person, or left at a the recipient's address, and is taken to be given on the day it is delivered;
 - (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs;
 - (c) sent by email, fax or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

57. WINDING UP

- 57.1 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members unless the Member satisfies the criteria in **clauses 57.1(a) to (c)** inclusive. The surplus will be given or transferred to one or more institutions or corporations which have:
- (a) has charitable objects which are similar to the objects of the Company as set out in **clause 5.1**;
 - (b) a governing document which requires its income and property to be applied in promoting its objects; and
 - (c) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 6**.
- 57.2 The identity of the corporation(s) or institution(s) is to be determined by a Special Resolution of the Members at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

58. INDEMNITY

- 58.1 To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:
- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
 - (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

59. PAYMENT OF INDEMNITY POLICY PREMIUM

- 59.1 To the extent permitted by law, the Company may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of sections 182 or 183 of the Act.

59.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

59.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

60. INDEMNITY TO CONTINUE

60.1 The indemnity granted by the Company, contained in **clause 58**, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.