

Constitution

[*insert school name*] ACN [*insert*]

[*Optional clauses and text are presented in italics and can be deleted if not required. Instructions and notes are presented in shaded text and should be deleted after being considered.*]

MinterEllison

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Constitution of [*insert school name*] ACN [*insert*]

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1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under clause 38. [*delete if the School does not wish to make provision for Alternate Directors*]

Auditor means the Company's auditor.

Company means [*insert name of company that operates the School*].

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director includes any person occupying the position of director of the Company[, *and where appropriate includes an Alternate Director - delete if the School does not wish to make provision for Alternate Directors*].

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

Member means a member under clause 7 [*and includes Ordinary Members and Associate Members as described in clause 6 - delete if all members are equivalent; include if membership is divided into two classes*].

Representative means a person appointed as such under clause 10. [*delete if membership of the Company is limited to natural persons*]

Register means the register of Members of the Company.

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and

- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

Objects

4. Objects

[Note: While a company is no longer legally required to state its objects, the powers of the Board are here expressly constrained by these objects, by operation of clause 4.2 and 5.1. and therefore these should be carefully considered.]

- 4.1 The Company is established for the object of operating a [co-educational] school for children, irrespective of their social, religious or cultural background (**the School**), which:

[insert objects; for example:

- (a) *has a Christian foundation, maintained and promoted through religious instruction, worship, music and choir, moral training, sport and general discipline;*
- (b) *takes an active part in the community life of [name of local area]; and*
- (c) *if feasible, provides boarding facilities for pupils.]*

- 4.2 The Company may only exercise the powers granted in section 124(1) of the Corporations Act to:

- (a) carry out the Objects set out in this clause; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

Income and property of Company

5. Income and property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the Objects of the Company set out in clause 4.

- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

Membership

[For reasons of good governance, it is not recommended that membership of the Company be limited to the board of directors. However, to preserve efficient and stable management of the Company, it is recommended that the membership be reasonably limited.]

It is possible for the membership to be divided into two classes, of which only one class is empowered to vote on changes to the constitution. In this way, a broader cross-section of the school and local

community can be represented in the company, while the structure of the constitution is protected to some extent from arbitrary or unforeseen changes approved by the board or membership.

Two options for membership are presented here:

Option 1: Membership is limited, with all members having equal rights;

Option 2: Membership is limited to small or fixed number of ordinary members (entitled to vote on changes to the constitution) and a greater number of associate members (entitled to attend shareholder meetings and vote on ordinary resolutions but not to vote on special resolutions to amend the constitution).

For Option 1, delete clause 6 and delete all references to membership classes. For Option 2, retain clause 6 and all references to membership classes.]

6. Classes of membership [delete for Option 1, retain for Option 2]

- 6.1 A Member of the Company shall be either a Ordinary Member or an Associate Member.
- 6.2 Notwithstanding anything else in this Constitution, membership of the Company is limited to:
- (a) [insert number] Ordinary Members; and
 - (b) [insert number] Associate Members.
- 6.3 Associate Members, their proxies and their attorneys are not entitled to vote on a special resolution to modify or repeal this Constitution.

7. Admission

- 7.1 The Members of the Company are:
- (a) the initial [insert number] [Ordinary] Members of the Company listed in Annexure 1 to this Constitution; and
 - (b) any other eligible persons whom the Directors admit to membership in accordance with this Constitution.
- 7.2 A person is eligible to be admitted to membership if the person:
- (a) is a natural person [delete if companies or organisations will be considered for membership];
 - (b) has never been a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) nor ever been convicted of an indictable offence; and
 - (c) is not an undischarged bankrupt.

[Some schools may wish to insert other qualifications for membership here, such as being past or future students, parents or guardians, or living in a specified locality.]

- 7.3 Applications for membership of the Company must be in writing, signed by the applicant, [specify the class of membership for which the applicant is applying,] [be nominated and seconded by an existing member,] and be in a form approved by the Directors in their absolute discretion.
- 7.4 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
- (a) accept the application, if such acceptance will not lead to the membership exceeding the limits imposed by clause 6.2;

- (b) reject the application; or
 - (c) ask the applicant to give more evidence of eligibility or suitability for membership.
- 7.5 If the Directors ask for more evidence under clause 7.4, their determination of the application for membership is to be deferred until the evidence is given.
- 7.6 The Directors do not have to give any reason for rejecting an application for membership.
- 7.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

8. Ceasing to be a Member

- 8.1 A Member's membership of the Company will immediately cease:
- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and
 - (ii) who has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or
 - (c) if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) is a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or is convicted of an indictable offence; or
 - (iv) files or is the subject of a petition for bankruptcy.

9. Powers of attorney

- 9.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 9.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 9.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

10. Representatives [*delete if membership of the Company is limited to natural persons*]

- 10.1 Any corporation or organisation which is a Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and

- (b) remove a Representative.
- 10.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
 - (b) stand for election as an office bearer or Director; and
 - (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.
- 10.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 10.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 10.5 The appointment of a Representative may set out restrictions on the Representative's powers.

General meetings

11. Calling general meeting

- 11.1 Any Director may, at any time, call a general meeting.
- 11.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
 - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

12. Notice of general meeting

- 12.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 12.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 12.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.

- 12.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
- 12.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 49.1 entitled to receive notices from the Company.
- 12.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

13. Member

In clauses 14, 15, 17 and 21, **Member** includes a Member present in person or by proxy or attorney [*or by Representative* – delete if membership is limited to natural persons].

14. Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is any *[insert number]* Members.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

15. Chairperson

- 15.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 15.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no chairperson or deputy chairperson; or
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 15.3 If the Directors make no election under clause 15.2 when they are entitled to do so, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

15.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

16. Adjournment

16.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

16.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.1 if a general meeting has been adjourned for more than 21 days.

17. Decision on questions

17.1 Subject to the Corporations Act and clause 6.3 in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

17.2 A resolution put to the vote of a meeting is to be decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.

17.3 Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

17.4 The demand for a poll may be withdrawn.

17.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

18. Taking a poll

18.1 If a poll is demanded under clause 17.2, a poll will be taken when and in the manner that the chairperson directs.

18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

18.3 The chairperson may determine any dispute about the admission or rejection of a vote.

18.4 The chairperson's determination, if made in good faith, will be final and conclusive.

18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

18.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

19. Casting vote of chairperson

The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy or attorney [*or Representative* – *delete if membership is limited to natural persons*].

20. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

Votes of Members

21. Entitlement to vote

21.1 Subject to this Constitution, on a show of hands and on a poll every Member has one vote.

22. Objections

22.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

22.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

22.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

23. Votes by proxy

23.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

23.2 A proxy must be a Member.

23.3 A proxy may demand or join in demanding a poll.

23.4 A proxy or attorney may vote on a poll.

23.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

24. Document appointing proxy

24.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.

- 24.2 For the purposes of clause 24.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 24.3 A proxy's appointment is valid at an adjourned general meeting.
- 24.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 24.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney and [*subject to clause 6.3*], the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 24.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

25. Lodgement of proxy

- 25.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 25.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

26. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;

- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

Directors

27. Initial Directors

- 27.1 The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a Company and in Annexure 2 to the Constitution. Those persons hold office subject to this Constitution.
- 27.2 For the purpose of electing or appointing Directors to replace each initial Director, the initial Directors are deemed to have been elected or appointed in the capacity (by reference to clause 28.2) set out beside each of their names in Annexure 2 to this Constitution.
- 27.3 Notwithstanding clauses 29.2 and 29.4, the initial Directors are not eligible to be Directors for two years after the time set out beside each of their names in Annexure 2 to this Constitution. *[Delete this clause if clauses 29.2 and 29.4 are deleted]*

28. Appointment and removal of Directors

- 28.1 The Company shall have *[insert number – depending on the size of the Company, the school and the membership to be represented, a board of between 5 and 10 directors might be appropriate]* directors.
- 28.2 The directors must be *[Ordinary]* Members of the Company and shall comprise:

[There are infinite variations of qualifications for directors. Some schools merely require that Directors be members of the company. Others require that "old boy/girls" associations or parents and friends associations be appointed members. Some church-affiliated schools will have provision for appointment of clergy or appointees of a bishop.

For reasons of good governance, it is suggested that at least half the directors should be elected by the members of the company.]
- 28.3 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- 28.4 Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office or annul the suspension and reinstate the Director.

29. Retirement

- 29.1 All Directors, *[other than [insert any director or category of director that is exempt from the requirement to retire]]*, must retire from office at the conclusion of the *[insert – eg third]* annual general meeting after the Director was last elected or appointed.
- 29.2 Subject to clause 29.3, a retiring Director is eligible for re-election or re-appointment.
- 29.3 Subject to clause 29.4, any person (including the appointees) who has been a Director for *[insert – eg nine]* consecutive years is not eligible to be a Director for a period of *[insert – eg two]* years

after those [insert] years' service. [Delete this clause if the Company does not wish to impose a "maximum single term" on directors]

- 29.4 The Directors may, by a two-thirds majority, resolve that a person is eligible to be a Director if that person would otherwise not be eligible solely by operation of clause 29.3. [Delete this clause if the Company is willing to permit directors to hold a directorship permanently.]

30. Vacation of office

A person immediately ceases to be a Director if he or she:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company;
- (e) is absent from Directors' meetings for 6 consecutive months without leave of absence from the Directors;
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (g) is or becomes a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW); or
- (h) ceases to be a Member of the Company.

31. Casual Directors

- 31.1 Subject to clause 28.1, the Directors may appoint any person as a Director to fill a casual vacancy, other than to replace a Director appointed under clause **Error! Reference source not found.**

- 31.2 A person is only eligible for appointment to fill a casual vacancy in the following offices if:

[insert any qualifications necessary to be appointed to fill a casual vacancy in particular directorships, for example by reference to any eligibility criteria specified for the various directorships described in clause 28.2 above.]

- 31.3 A Director appointed under clause 31.1 ceases to be a Director at the conclusion of the next annual general meeting of the Company but is, subject to clause 29.3, eligible for re-election or re-appointment as a Director.

32. Powers and duties of Directors

- 32.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.

- 32.2 Without limiting the generality of clause 32.1, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company;

- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

33. Directors' meetings

- 33.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 33.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 33.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 33.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 33.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 33.6 Subject to clause 37, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 33.7 Clauses 33.4 to 33.5 apply to meetings of Committees as if all committee members were Directors.
- 33.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 33.9 A quorum for meetings of Directors is five Directors.
- 33.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 33.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

34. Decision on questions

- 34.1 Subject to clause 35, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 37, each Director has one vote.
- 34.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.

35. *Special Matters [delete if not required]*

- 35.1 *The Directors shall ensure that the Company does not undertake any of the matters set out below without a majority vote of at least 75% of the votes cast by Directors present and entitled to vote on the matter:*
 - (a) *the sale or purchase of assets having a value greater than [insert – eg \$100,000];*
 - (b) *the borrowing of, or entering into any borrowing arrangement in respect of, an amount in excess of [insert – eg \$50,000];*

- (c) *the adoption or material variation of any business plan;*
- (d) *the adoption or material variation of any operating budget;*
- (e) *the making of any loan, credit facility, guarantee, or any other type of financial accommodation to any person otherwise than in the ordinary course of business and in accordance with the terms of this Constitution;*
- (f) *departure from the accounting standards or principles prescribed by law for the preparation of its accounts or financial statements;*
- (g) *the incorporation of a subsidiary or entry into any partnership, joint venture or agency agreement;*
- (h) *any material commercial transaction between the Company and a related party of the Company (as defined in section 228 of the Corporations Act); and*
- (i) *subject to paragraph (b), the incurring of liabilities having a value greater than [insert – eg \$100,000].*

36. Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as 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;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company;
- (d) of any honorarium as contemplated by section 21A(3) of the *Education Act 1990* (NSW) and
- (e) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

37. Directors' interests

- 37.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 37.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 37.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

- 37.4 Subject to clause 35, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 37.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 37.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

38. **Alternate Directors** [*delete if Company does not wish Directors to be able to appoint alternates*]

- 38.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.
- 38.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 38.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 38.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 38.5 The appointment of an Alternate Director:
- (a) may be revoked at any time by the appointor or by the other Directors; and
 - (b) end automatically when the appointor ceases to be a Director.
- 38.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

39. Remaining Directors

- 39.1 The Directors may act even if any of the directors' positions are vacant.
- 39.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
 - (b) call a general meeting.

40. Chairperson

- 40.1 The Directors may by simple majority appoint, remove and replace a Director as chairperson of Directors' meetings and may determine the period for which the chairperson shall hold office (save that any chairperson shall cease to be chairperson if they cease to be a Director).
- 40.2 If no chairperson is appointed or if the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 40.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

41. Delegation

- 41.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees (each a **Committee**).
- 41.2 The Directors may at any time revoke any delegation of power to a Committee.
- 41.3 At least one member of each Committee must be a Director.
- 41.4 A Committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 41.5 A Committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 41.6 Meetings of any Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

42. Written resolutions

- 42.1 The Directors may pass a resolution without a Director's 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. The resolution is passed when the last Director signs.
- 42.2 For the purposes of clause 42.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 42.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 42.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

42.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

43. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

44. Minutes and Registers

44.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 42;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 37.

44.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

44.3 The Company must keep all registers required by this Constitution and the Corporations Act, including a register of Members (**Register**).

45. Appointment of attorneys and agents

45.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with clause 45.2 to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Directors.

45.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any company;
- (b) the members, directors, nominees or managers of any company or firm; or

- (c) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 45.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 45.4 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

46. Secretary

- 46.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 46.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 46.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Inspection of records

47. Inspection of records

- 47.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 47.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

48. Service of notices

- 48.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
 - (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 48.2 A notice sent by post is taken to be served:
 - (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 48.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
 - (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and

- (b) on the day after its despatch.
- 48.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 48.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 48.
- 48.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 48.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 48.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

49. Persons entitled to notice

- 49.1 Notice of every general meeting must be given to:
 - (a) every Member;
 - (b) every Director; and
 - (c) any Auditor.
- 49.2 No other person is entitled to receive notice of a general meeting.

Audit and accounts

50. Audit and accounts

- 50.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 50.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

Winding up

51. Winding up

- 51.1 If the Company is wound up:
 - (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year,
undertakes to contribute to the property of the Company for the:
 - (c) payment of debts and liabilities of the Company (in relation to clause 51.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (d) adjustment of the rights of the contributories amongst themselves,
the amount of \$2.00.

51.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to a corporation to which income tax deductible gifts can be made and which, by its constitution, is:

- (a) required to pursue similar charitable purposes to those pursued by the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors (other than in circumstances contemplated by clause 36),

such corporation to be determined by the Members at or before the winding up and, in default, by application to the Supreme Court of New South Wales for determination.

Indemnity

52. Indemnity

52.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); and
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

52.2 The amount of any indemnity payable under clauses 52.1(a) or 52.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

52.3 For the purposes of this clause, **officer** means:

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

Annexure 1 – Founding Members

1. Founding members

For the purpose of clause 6 of this Constitution, the founding Members of the Company are the following 15 [*Ordinary*] Members:

	Name	Address	Class of membership [delete if not relevant]
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Annexure 2 – Initial Directors

2. Initial Directors

For the purpose of clause 27 of this Constitution, the initial Directors of the Company, the capacity (by reference to clause 28.2) in which they serve and the time beyond which they may not, for a period of two years, serve as Directors, are:

	Name	Capacity (by reference to clause 28.2) in which Director deemed to be appointed	Time beyond which initial Director may not, for two years, serve as a Director
1.		[insert – eg '(a) – old girl's representative]	[eg 'conclusion of the third annual general meeting of the Company.']
2.		[eg '(b) – elected parishioner']	
3.		[eg '(c) – appointed by the Board']	
4.			
5.			
6.			
7.			
8.			
9.			

[Ensure the number of initial directors matches number of directors required by clause 28.1.]