
Constitution

Parties CATHOLIC EDUCATION WESTERN AUSTRALIA LIMITED (ACN 634 504 135)
A Company Limited by Guarantee

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Constitution of Catholic Education Western Australia Limited

PREAMBLE

Catholic Education Western Australia Limited is established by the Catholic Bishops of the State of Western Australia. Its purpose is to provide Catholic Education for all families who seek it for their children. Through its Catholic Schools, Catholic Education Western Australia Limited supports parents wanting their children to develop Christian values and to become active citizens who contribute to the development of Australian society. It is acknowledged that the day-to-day management and control of Catholic Schools vests in the school principals and is subject to oversight by a Bishop of Catholic Schools in his Diocese. The Company assumes a strategic role in ensuring that Catholic Education is delivered and managed by the Catholic Schools through the system of Catholic Education Western Australia in a responsible and effective manner, working within appropriate standards, regulations and Catholic Mission.

The Bishops have established the Catholic Education Commission of Western Australia as the Board of the Company. The Commission's task is to direct the Company to develop learning communities which fulfil the goals of the Catholic Schools as outlined in the Bishops' Mandate Letter. To fulfil its responsibilities, the Commission is mandated to exercise its delegated powers in accordance with this Constitution.

The Commission will be supported with its responsibilities by the Catholic Education Office of Western Australia, under the leadership of the Executive Director of Catholic Education.

Preliminary

1. Name of Company

The name of the Company is Catholic Education Western Australia Limited ACN 634 504 135.

2. Type of Company

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

3. Limited Liability of Members

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*.

Approved Authority has the meaning give to it in the Australian Education Act.

Approved System Authority has the meaning given to it in the Australian Education Act.

Australian Education Act means the *Australian Education Act 2013 (Cth)* and its regulations.

Bishop means a Roman Catholic Archbishop or Bishop for a Diocese for the time being or, if there is no Archbishop or Bishop, an Archdiocesan or Diocesan Administrator of a Diocese.

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

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 Education means the education system that consists of Catholic Schools and Early Years Learning and Care and Long Day Care Programs but excludes all other Catholic education providers in Western Australia (for example, Catholic tertiary education and/or adult education providers).

Catholic Schools means those schools in Western Australia which:

- (a) are registered as non-government schools under Part 4 of the School Education Act with the Department of Education Western Australia (by whatever name) of which the Company is the Governing Body;
- (b) a competent ecclesiastical authority or a public ecclesiastical juridic person directs or which an ecclesiastical authority recognises as such through a written document; and
- (c) are eligible to receive funding allocated under the Non-Government Schools Funding Agreement between the Minister for Education and Training in Western Australia (howsoever named) and the Company.

Chairman means the person appointed by the Members as the chairman of the general meeting of Members in accordance with **clause 20.1** and includes any assistant or acting chairman.

Commission means the Catholic Education Commission of Western Australia that acts as the Board of directors of the Company.

Commission Chair means the person appointed by the Members as the chairperson of the Commission under **clause 48.1**.

Commissioner means any person holding the position of a director of the Company.

Committee means a committee established in accordance with **clause 40**.

Company means Catholic Education Western Australia Limited.

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

Deputy Commission Chair means the person appointed by the Commissioners to hold that office under **clause 48.3**.

Diocese means any Roman Catholic diocese in Western Australia, which as at the date of this Constitution means the Archdiocese of Perth, and the Dioceses of Broome, Bunbury and Geraldton.

Early Years Learning and Care and Long Day Care Programs means the early childhood education and care programs provided or operated by Catholic Schools or other Catholic education centres that the Company controls and is responsible for.

Executive Director of Catholic Education means the Executive Director of Catholic Education in Western Australia appointed by a Special Resolution of the Members to perform certain duties and exercise certain power in accordance with **clause 39.1**.

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

Governing Body has the same meaning as given to that term in section 150 of the School Education Act.

Mandate Letter means the Mandate of the Catholic Education Commission of Western Australia promulgated and renewed by the Bishops of Western Australia from time to time.

Member means a Member of the Company and **Membership** has the corresponding meaning.

Member Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is a Member of the Company.

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

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

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.

School Education Act means the *School Education Act 1999 (WA)*.

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

Special Resolution means 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 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.

Charitable Purposes and Powers

5. Objects and Powers

5.1 The charitable objects for which the Company is established are to advance Catholic education and religion in Catholic Schools in Western Australia by:

- (a) providing leadership for the betterment and quality of Catholic Education in Western Australia;

- (b) coordinating Catholic Education in Western Australia;
- (c) developing, promulgating and evaluating Catholic School policy and programs;
- (d) acting on behalf of Catholic Education in Western Australia, including for all Catholic students not enrolled in Catholic Schools;
- (e) developing and evaluating Catholic School policy where the Bishops elect to adopt a joint policy and act for each Bishop in specified matters concerning the education of Catholic children in the Dioceses;
- (f) ensuring the adequate formation of Catholic education personnel so that they can fulfil their respective roles and responsibilities in Catholic educational institutions, as set out in the Bishops' Mandate Letter;
- (g) ensuring that the curricula in Catholic educational institutions fulfils the Catholic education goals, as set out in the Bishops' Mandate Letter;
- (h) fulfilling any other goals and functions that are set out in the Bishops' Mandate Letter;
- (i) acting as an Approved Authority and Approved System Authority (if applicable) in accordance with the Australian Education Act;
- (j) acting as the Governing Body for its Catholic Schools by assuming the role of overall governance and ultimate responsibility of its Catholic Schools and fulfilling its obligations under the School Education Act;
- (k) receiving from Federal and State Governments monies for Catholic Schools for distribution in the manner determined by the Company and the Federal and State Governments;
- (l) ensuring that funding for Catholic Schools in Western Australia is distributed in accordance with relevant legislation;
- (m) complying with Governmental obligations at both Federal and State levels with regards to Federal and State funding;
- (n) ensuring its Catholic Schools observe the registration standards and meet the other requirements for non-government schools;
- (o) responding to Federal and State educational issues;
- (p) liaising with other organisations for the benefit of Catholic Education in Western Australia;
- (q) providing representation on Federal and State bodies as appropriate and as requested; and
- (r) undertaking any other activities in furtherance of Catholic Education in accordance with Catholic teaching.

5.2 These objects will be realised by the Company in a manner consistent with the teachings, laws and customs of the Roman Catholic Church.

5.3 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 objects. 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; and/or
 - (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:
 - (a) the date the Special Resolution is passed; and
 - (b) the date when the modification or repeal takes effect as specified, or provided for, in the resolution.

Members/Bishops

8. Membership

- 8.1 The Members of the Company shall be:
 - (a) the Archbishop of Perth;
 - (b) the Bishop of Geraldton;
 - (c) the Bishop of Broome;
 - (d) the Bishop of Bunbury; and

- (e) any other person that is admitted as a Member by a unanimous decision of the Members, 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. Register of Members

9.1 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.

9.2 The Company must give current Members reasonable access to the Register of Members.

9.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

10. When a Person Stops Being a Member

A person immediately stops being a Member if:

- (a) they resign, by writing to the Secretary;
- (b) they 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 14.3**.

11. Membership Entitlements Not Transferable

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.

12. Entrance Fee and Subscriptions

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

13. Members' Rights

13.1 Members of the Company will be entitled:

- (a) to receive notice of and attend and vote at general meetings of the Company; and
- (b) to receive annual reports of the Company including financial reports in relation to each Financial Year.

13.2 All other rights, privileges and obligations of Members are in accordance with the Act.

14. Dispute Resolution

14.1 The Commission shall develop a dispute resolution procedure in relation to disputes (disagreements) under this Constitution between a Member or Commissioner and:

- (a) one or more Members;
- (b) one or more Commissioners; or
- (c) the Company.

14.2 The procedure 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.

14.3 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. Convening of General Meetings

15.1 Any 2 Members may whenever those Members think fit convene a general meeting of the Company in accordance with the Constitution.

- 15.2 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.

16. Annual General Meeting

- 16.1 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.
- 16.2 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 appointment of Commissioners; and
 - (e) the appointment and payment of auditors, if any.
- 16.3 Before or at the annual general meeting, the Commissioners must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- 16.4 The Chairman 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.

17. Notice of General Meetings

- 17.1 Notice of a general meeting must be given to each Member entitled to vote at the meeting.
- 17.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Chairman must endeavour to notify in writing each Member 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 Member entitled to receive notice of the meeting or failure of a Member to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

18. Right of Non-Members to Attend General Meeting

The Chairman of a general meeting may invite any person who is not a Member to attend and/or address a meeting.

19. Quorum

- 19.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- 19.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a Representative or proxy of more than one Member).
- 19.3 A majority of Members entitled to vote constitute a quorum for all general meetings.
- 19.4 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
- (a) 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 Chairman may by notice to the Members appoint; and
 - (b) 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.
- 19.5 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

20. Chairman

- 20.1 The Chairman shall be appointed by a majority of Members as soon as possible after registration of the Company.
- 20.2 The Chairman shall be entitled to preside as chairman at every general meeting.
- 20.3 Where a general meeting is held and:
- (a) there is no Chairman; or
 - (b) the Chairman is not present within 30 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as chairman of the meeting,
- the other Members present may choose another Member as chairman 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.
- 20.4 The rulings of the Chairman 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.

21. No Chairman's Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll, the Chairman 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.

22. Adjournment of Meetings

- 22.1 The Chairman 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 Chairman.
- 22.2 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.
- 22.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 22.4 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.

23. Circular Resolution of Members

- 23.1 Subject to **clause 23.2**, the Members may pass a resolution without a general meeting being held.

- 23.2 Circular resolutions cannot be used where the Act or this Constitution requires a meeting to be held.
- 23.3 A circular resolution is passed if a majority of Members or in the case of a Special Resolution at least 75% of all Members entitled to vote on the resolution, sign or agree to the circular resolution, in the manner set out in **clause 23.4** or **clause 23.5**.
- 23.4 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.
- 23.5 A circular resolution may be sent 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.

24. How Voting Is Carried Out

- 24.1 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 Chairman of the meeting; or
 - (b) 1 Member entitled to vote on the resolution.
- 24.2 Before a vote is taken, the Chairman must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 24.3 On a show of hands, the Chairman's decision is conclusive evidence of the result of the vote.
- 24.4 The Chairman 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.

25. Polls

- 25.1 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.
- 25.2 If a poll is demanded it must be taken in such manner and at such time and place as the Chairman of the meeting directs subject to **clause 25.5**.
- 25.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 25.4 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.
- 25.5 A poll demanded on the election of a Chairman or any question of adjournment of the meeting must be taken immediately.

25.6 The demand for a poll may be withdrawn.

26. Voting Rights

26.1 Other than a Special Resolution, a resolution of the Members must be passed by at least 50% of the Members.

26.2 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.

26.3 No person other than a Member shall be entitled to vote at a general meeting.

27. Right to Appoint Proxies

A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.

28. Appointing a Proxy

28.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised Officer or attorney of the corporation.

28.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:

- (a) the name and address of the Member;
- (b) the name of the Company;
- (c) the proxy's name or the name of the office of the proxy; and
- (d) the meetings at which the instrument of proxy may be used.

28.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

28.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by this **clause 28**.

28.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

29. Lodgement of Proxies

29.1 An instrument appointing:

- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or

- (b) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Commission may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be, at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

- 29.2 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.
- 29.3 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

30. Validity of Proxies

- 30.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
 - (a) the death or unsoundness of mind of the Member;
 - (b) the bankruptcy or liquidation of the Member; or
 - (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

unless the Company has received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Commission may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- 30.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

31. Voting By Proxy

- 31.1 When a vote in writing is held, a proxy:
 - (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

- 31.2 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.

Commission/Commissioners

32. Number of Commissioners

The Company must have no less than 3 and no more than 12 Commissioners.

33. Appointment of Commissioners

- 33.1 The initial Commissioners will be appointed by the Members of the Company.
- 33.2 In addition to the initial Commissioners, the Members may appoint a Commissioner by a resolution passed by the Members.
- 33.3 A person is eligible for appointment as a Commissioner of the Company if they:
- (a) support the philosophy, values and aims of the Catholic Church;
 - (b) are not subject to any ecclesiastical penalties;
 - (c) give the Company their signed consent to act as a director of the Company; and
 - (d) are not ineligible to be a director under the Act or the ACNC Act; and
 - (e) provide the Company with a working with children check and police clearance documentation.
- 33.4 When appointing a Commissioner, the Members must endeavour to achieve Commission composition reflecting the skills and diversity required for the full functioning of the Commission. These may evolve over time based on key opportunities or issues facing the Commission.
- 33.5 If the number of Commissioners is reduced to fewer than 3 or is less than the number required for a quorum, the continuing Commissioners must, immediately after they become aware of the situation, notify the Members of the same. The Members will appoint new Commissioners to increase the number of Commissioners to 3 (or higher if required for a quorum) as soon as practicable. For the avoidance of doubt, the continuing Commissioners are not entitled to appoint persons to fill the vacancies.

34. Term of Office

- 34.1 At each annual general meeting, any Commissioner appointed to fill a casual vacancy must retire.
- 34.2 Other than the initial Commissioners and a Commissioner appointed to fill a casual vacancy, a Commissioner's term of office starts at the end of the annual general meeting at which they are appointed and ends at the end of the annual general meeting at which they retire.

- 34.3 Each Commissioner other than those appointed *ex officio* must retire at least once every 4 years.
- 34.4 A Commissioner who retires under **clause 34.1** may be nominated for re-appointment, subject to **clause 34.5**.
- 34.5 A Commissioner who has held office for a continuous period of 8 years or more may only be re-appointed by a Special Resolution.

35. When a Commissioner Stops Being a Commissioner

A Commissioner stops being a Commissioner if they:

- (a) give written notice of resignation as a Commissioner 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);
- (b) die;
- (c) are removed as a Commissioner by a Special Resolution of the Members;
- (d) are absent for 2 consecutive Commission meetings without approval from the Commission Chair and the Commissioners resolve that his or her office be vacated;
- (e) become ineligible to be a director of the Company under the Act or the ACNC Act;
- (f) are subject to any ecclesiastical penalties; or
- (g) 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.

36. Negotiable Instruments

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 Commissioners. The Commissioners may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.

37. Power of Commissioners

All matters of governance, policy, strategic direction, conduct of the Company shall be vested in the Commission 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.

38. Reserved Powers

- 38.1 Notwithstanding **clause 37**, the Commission's decisions in relation to any of the following matters will not be effective without the consent of the Members:
- (a) change the philosophy, mission, vision or values of any Catholic School;
 - (b) authorise the opening or closure of any Catholic School;
 - (c) authorise the sale of any Catholic School; and
 - (d) do or implement or resolve to do any act or thing, if a notice in writing signed by one or more of the Members stating that in that Member's opinion the resolution is not in accord with the objects or philosophy of the Company is:
 - (i) tabled at the meeting of the Commission at which the matter is considered; or
 - (ii) sent to the Commission within 7 days of the Members receiving notice of that resolution.
- 38.2 The Member may give their consent required under **clause 38.1** by passing a Special Resolution.
- 38.3 Notwithstanding anything in this **clause 38**, the Commission acknowledge and respect the canonical authority of the Bishops to act in relation to education related matters in their respective Diocese. In this regard, any policy or decision relating to a Bishop's canonical right in relation to teaching and sanctifying is not to be effected unless a unanimous decision of the Bishops has been reached.
- 38.4 The Members shall appoint by passing a Special Resolution:
- (a) an Executive Director of Catholic Education; and
 - (b) a Director of Religious Education (by whatever name).

39. Executive Director of Catholic Education

- 39.1 The Commission may, on such terms and conditions and with such restrictions as they may think appropriate, delegate some or all day-to-day control, management and conduct of the Company to the Executive Director of Catholic Education 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.
- 39.2 The Commission shall set out in the employment contract of the Executive Director of Catholic Education with the Company:
- (a) the powers delegated to the Executive Director of Catholic Education in accordance with **clause 39.1**;
 - (b) the terms and condition of such delegation; and
 - (c) any restrictions on exercising the delegated powers.
- 39.3 Powers conferred under this clause may be exercised concurrently with the powers of the Commission in that regard and the Commission may from time to time withdraw, revoke or vary all or any of such powers.

- 39.4 The delegation must be recorded in the Company's minute book.
- 39.5 The Company may employ Officers and employees to work as an office for the purpose of assisting the Executive Director of Catholic Education in carrying out their executive responsibilities under this **clause 39**. The office (including the Executive Director of Catholic Education) shall be known as the Catholic Education Office of Western Australia.

40. Committee of Commissioners

- 40.1 The Commission may form and delegate any of its powers to a Committee consisting of such Commissioners and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Commissioner.
- 40.2 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 Commission. A power so exercised shall be taken to be exercised by the Commission.
- 40.3 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 Commission contained in this Constitution.
- 40.4 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 Commission 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 Commission meeting.

41. Payments to Commissioners

- 41.1 The Company may pay fees in an amount determined by the Members from time to time to a Commissioner for acting as a director of the Company.
- 41.2 The Company may:
- (a) pay a Commissioner for any services rendered to the Company in a professional or technical capacity, other than as a director of the Company, if the amount is no more than a reasonable fee for the work done and is determined by the Commission following the procedures as set out in **clause 42**; or
 - (b) reimburse a Commissioner for expenses properly incurred by the Commissioner in connection with the affairs of the Company.
- 41.3 Any payment made under **clause 41.2** must be approved by the Commissioners.
- 41.4 The Company may pay premiums for insurance indemnifying Commissioners, as allowed for by law (including the Act) and this Constitution.
- 41.5 The Company shall not pay the fee for acting as a director of the Company as determined in accordance with **clause 41.1** to a Commissioner who is also an employee of the Company or otherwise engaged by the Dioceses.

42. Conflicts of Interest

- 42.1 A Commissioner must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Commission (or that is proposed in a circular resolution):
- (a) to the other Commissioners; or
 - (b) if all of the Commissioners have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- 42.2 The disclosure of a conflict of interest by a Commissioner must be recorded in the minutes of the meeting.
- 42.3 Each Commissioner who has a material personal or other interest in a matter that is being considered at a meeting of the Commission (or that is proposed in a circular resolution) must not, except as provided under **clause 42.4**:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 42.4 A Commissioner may still be present and vote if:
- (a) their interest arises because they are a Member and the other Members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the Commissioner against liabilities that the Commissioner incurs as a director of the Company;
 - (c) their interest relates to an indemnity payment by the Company, or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the Commissioner to vote on the matter; or
 - (e) the Commissioners who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Commissioner, the nature and extent of the Commissioner's interest in the matter and how it relates to the affairs of the Company; and
 - (ii) says that those Commissioners are satisfied that the interest should not stop the Commissioner from voting or being present.

43. Duties of Commissioners

The Commissioners 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 Commissioner;
- (d) not to misuse information they gain in their role as a Commissioner;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 43**;
- (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.

44. When the Commissioners Meet

The Commissioners may decide how often, where and when they meet, provided that they shall meet together not less than 4 times each calendar year.

45. Calling Commission Meetings

- 45.1 A Commissioner may at any time and the Secretary upon the request of a Commissioner shall convene a Commission meeting by giving at least 48 hours' notice of the meeting to all Commissioners.
- 45.2 Notice of a Commission meeting need not be in writing.

46. Using Technology to Hold Commission Meetings

- 46.1 The Commissioners may hold Commission meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Commissioners.
- 46.2 The Commissioners' agreement may be a standing one.
- 46.3 A Commissioner may only withdraw their consent within a reasonable period before the meeting.

47. Quorum at Commission Meetings

- 47.1 Unless the Commissioners determine otherwise, the quorum for a Commission meeting is a majority (more than 50%) of Commissioners.
- 47.2 No business may be transacted at any Commission meeting unless a quorum of Commissioners is present at all times during the meeting.
- 47.3 Commissioners who are personally present (or in conference in accordance with **clause 46**) form a quorum. A Commissioner who is disqualified from voting on a matter pursuant to **clause 42** shall be counted in the quorum despite that disqualification.

- 47.4 All resolutions of the Commissioners passed at a Commission meeting where a quorum is present but where notice of the meeting has not been given as required to each Commissioner, or any act carried out pursuant to such resolution, shall, provided each Commissioner to whom notice was not given subsequently agrees to waive the same, are valid as if notice of the meeting had been duly given to all Commissioners.

48. Commission Chair

- 48.1 The Members shall appoint a Commission Chair from amongst the Commissioners for such term as the Members determine by a resolution of at least 75% of the Members present and entitled to vote.
- 48.2 The Commission Chair may be removed from the position of Commission Chair by a resolution of at least 75% of the Members present and entitled to vote.
- 48.3 The Commissioners shall appoint a Commissioner who is not also an employee of the Company as the Deputy Commission Chair from amongst themselves for such term as the Commissioners determine by passing a resolution.
- 48.4 The Commission Chair shall, if present, preside as chairperson of every Commission meeting.
- 48.5 If a Commission meeting is held and the Commission Chair is not present within 30 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then
- (a) the Deputy Commission Chair shall act as the chairperson of the meeting; and
 - (b) if the Deputy Commission Chair is not available or does not wish to chair the meeting, the other Commissioners present must elect another Commissioner to be the chairperson of the meeting.
- 48.6 The rulings of the Commission Chair on all matters relating to the order of business, procedures and conduct of Commission meetings shall be final and no motion of dissent from such rulings shall be accepted.

49. Voting

- 49.1 A resolution of the Commission must be passed by a majority of votes of the Commissioners present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Commissioners will for all purposes be taken to be a determination of the Commission.
- 49.2 Each Commissioner shall have one vote.
- 49.3 In case of an equality of votes at a Commission meeting, the Commission Chair does not have a casting vote in addition to a deliberative vote.

50. Resolutions By Commissioners

- 50.1 The Commission may pass a resolution by way of a circular resolution without a Commission meeting being held if all the Commissioners 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.
- 50.2 The resolution is passed when the last Commissioner signs.
- 50.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Commissioner shall for the purposes of this clause be taken to be in writing and signed by that Commissioner at the time of the receipt of the transmission by the Company in legible form.
- 50.4 The Company may send a circular resolution by email to the Commissioners and the Commissioners may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

51. Validation of Acts of Commissioners

All acts done:

- (a) at any Commission meeting; or
- (b) by any person acting as a Commissioner,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Commissioner 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 Commissioner and had been entitled to vote.

52. Minutes and Records

- 52.1 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.
- 52.2 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of Commission meetings (including meetings of any Committees); and
 - (b) circular resolutions of Commissioners.
- 52.3 The Commission must give the Members access to the Company's records for inspection, including records set out in **clauses 52.1, 52.2 and 55.1**.
- 52.4 The Commissioners must ensure that minutes of a general meeting or a Commission meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or

- (b) the chairperson of the next meeting.
- 52.5 The Commissioners must ensure that minutes of the passing of a circular resolution (of Members or Commissioners) are signed by the chairperson within a reasonable time after the resolution is passed.

53. Appointment and Role of Secretary

- 53.1 The Company must have at least one Secretary.
- 53.2 A Secretary must be appointed by the Commissioners (after giving the Company their signed consent to act as Secretary of the Company) and may be removed from that role by the Commissioners.
- 53.3 The Commissioners must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 53.4 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), Commission meetings and circular resolutions.

54. Execution of Documents

- 54.1 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 Commissioners of the Company, or
 - (b) a Commissioner and the Secretary.
- 54.2 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.

55. Financial and Related Records

- 55.1 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.
- 55.2 The Company must also keep written records that correctly record its operations.
- 55.3 The Company must retain its records for at least 7 years.
- 55.4 The Commissioners must take reasonable steps to ensure that the Company's records are kept safe.

56. Commissioners' Access to Documents

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

57. By-Laws

- 57.1 The Commissioners 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.
- 57.2 Commissioners must comply with by-laws as if they were part of this Constitution.

58. When Notice is Taken to be Given

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.

59. Winding Up

- 59.1 The Company may be dissolved by a Special Resolution of Members at a general meeting of Members. If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members unless the Members satisfies the criteria in **clause 59(a) to (c)**. The surplus will be given or transferred to one or more corporations or institutions which have:
- (a) 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**.

- 59.2 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.

60. Indemnity

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.

61. Payment of Indemnity Policy Premium

- 61.1 To the extent permitted by law, the Company may at the discretion of the Commission 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.
- 61.2 The Commission shall have the discretion to approve the terms and conditions of any such policy of insurance.
- 61.3 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 60** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

62. Indemnity to Continue

The indemnity granted by the Company, contained in **clause 60**, 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.