

Constitution

Edmund Rice Education Australia Victorian
Schools Ltd

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Table of contents

Preamble	1
1. Name.....	1
2. Purpose and Powers	1
3. Not-For-Profit.....	1
4. Membership	2
4.1 General.....	2
4.2 Board decisions subject to Member or Holy See approval	2
4.3 Reporting to the Member	3
4.4 Notice of the Annual Report or meeting with Member	4
4.5 Resolutions of the Member	4
4.6 Meetings with the Member	4
4.7 Representative	4
4.8 Liability of Member	4
5. Appointment and Removal of Directors.....	4
5.1 Number of Directors	4
5.2 Eligibility	4
5.3 Appointment of Directors.....	5
5.4 Term of office	5
5.5 Ceasing to be a Director.....	5
5.6 Effect of casual vacancy	5
5.7 Defects in appointment of Directors	6
6. Board Decision Making.....	6
6.1 Convening Board meetings	6
6.2 Notice of Board meetings	6
6.3 Quorum for Board meetings	6
6.4 Use of virtual meeting technology in Board meetings.....	6
6.5 Chairperson of Board meetings	6
6.6 Voting at Board meetings	6
6.7 Resolutions without meetings	7
6.8 Provision of documents to the Member	7
7. Directors' Powers and Duties	7
7.1 Role and Powers of the Board.....	7
7.2 Delegation.....	7
7.3 Duties of Directors	8
7.4 Chief Executive Officer.....	8

7.5	Establishment of committees	8
7.6	Policies.....	8
8.	Office Bearers	8
8.1	Appointment of Office Bearers.....	8
8.2	Company Secretary	8
9.	Indemnities and Insurance	9
10.	Disputes	9
11.	Administration	10
11.1	Minutes and records	10
11.2	Common seal.....	10
11.3	Execution of documents	10
12.	Records, Accounting and Audit.....	10
12.1	Accounts and other records of the Company.....	10
12.2	Audit	10
12.3	Financial year	10
13.	Amending this Constitution	11
14.	Notices	11
15.	Winding up.....	11
15.1	Approval of Holy See required	11
15.2	Contribution of the Member on winding up	11
15.3	Distribution of assets on closure of a School or the winding up, deregistration or dissolution of the Company	11
16.	Interpretation	12
16.1	Definitions.....	12
16.2	Interpretation	13
16.3	Exclusion of replaceable rules	14

Preamble

This preamble is for reference only and does not form part of this Constitution.

The Congregation of Christian Brothers (previously known as the Brothers of the Christian Schools of Ireland) was founded by the Blessed Edmund Rice in Ireland in 1802.

Edmund Rice Education Australia was established by the Christian Brothers in 2007 to ensure the continuation of the Charism of Blessed Edmund Rice in the educational mission of the Catholic Church, especially through its schools governed and conducted in the Edmund Rice tradition.

Edmund Rice Education Australia was constituted, in accordance with the norms of Canon Law, as a Public Juridic Person within the Catholic Church and carries on its mission in the name of the Church.

Edmund Rice Education Australia is regulated by its own Statutes approved by the Holy See on 20 September 2012. The members of Edmund Rice Education Australia, also referred to in the Statutes as the 'Council', are the college or group of persons holding ultimate responsibility for ensuring that all schools and other apostolic activities of Edmund Rice Education Australia are conducted in conformity with the beliefs, teachings and laws of the Church.

Edmund Rice Education Australia, for the purposes of having recognition in civil law, established a body corporate known as Trustees of Edmund Rice Education Australia incorporated pursuant to the provisions of the *Roman Catholic Church Communities Lands Act 1942* (NSW) (**TEREA**). The members of Edmund Rice Education Australia are also the members of TERE.

TEREA has established the Company to own and operate the Educational Bodies in Victoria listed in Schedule 1 (**the Victorian Educational Bodies**).

1. Name

The name of the Company is Edmund Rice Education Australia Victorian Schools Ltd (**the Company**).

2. Purpose and Powers

- (a) The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Charity.
- (b) The Purpose of the Company is to support and advance Catholic education in the Edmund Rice tradition in fulfilment of the mission of Jesus Christ, including by:
 - (i) owning, governing, conducting and operating the Victorian Educational Bodies in the Charism of Blessed Edmund Rice; and
 - (ii) ensuring the safety and wellbeing of all children in all of the operations of the Company.
- (c) In pursuing the Purpose, the Company may without limitation:
 - (i) own, govern, operate or control any educational facilities and any real property, and any other school, pre-school, after-school, sporting, arts, recreational, boarding and related facilities;
 - (ii) provide, operate or manage any services that are related or ancillary to the operation of the educational facilities, including any school services, pre-school and out-of-school hours services, programs, camps or activities, wellbeing services, child-minding services, boarding services and other children's or student services; and
 - (iii) provide, operate or manage any other facilities or services or any other activities that are related or ancillary to the above or the advancement of Catholic education in the tradition of Blessed Edmund Rice.
- (d) The Company has all of the powers of an individual and a company under the Act, which it may only exercise:
 - (i) in furtherance of the Purpose; and
 - (ii) in accordance with the beliefs, teaching and laws of the Church.

3. Not-For-Profit

- (a) The income and property of the Company must be applied solely towards the Purpose.
- (b) Government Funding received in respect of a School must be applied solely towards the

conduct of that School or otherwise in accordance with the specific terms and conditions that apply to the Government Funding.

- (c) To the extent that income or property relates to, or is generated in, the conduct of a School, it must be applied by the Company in a manner that will not result in the School ceasing to be operated on a not-for-profit basis for the purposes of ETRR 2017, the *Australian Education Act 2013* (Cth) and *Australian Education Regulations 2013* (Cth) and any other legislation or regulatory requirement relevant to the not-for-profit status of the Company.
- (d) No part of the income or property of the Company may be paid or transferred directly or indirectly to the Member or Directors by way of dividend, bonus, profit distribution or any other payment, other than as provided for in clause 3(e).
- (e) The Company must not be a party to or allow a School to be a party to a Prohibited Agreement or Arrangement with the Member, a School or any other person or entity.
- (f) Clause 3(d) does not stop the Company from making a payment (provided it is not a Prohibited Agreement or Arrangement) with prior approval of the Board:
 - (i) to the Member for goods or services provided or rendered to the Company or expenses properly incurred at fair and reasonable rates or at rates more favourable to the Company;
 - (ii) for indemnifying, or of premiums for insurance indemnifying current or former Directors to the extent allowed for by law and this Constitution; or
 - (iii) to a Director:
 - (A) for goods or services provided or rendered to the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (B) as reimbursement for out-of-pocket expenses properly incurred in performing a duty as Director.

4. Membership

4.1 General

- (a) TERE A is the sole Member of the Company.
- (b) The rights of the Member are not transferable.

4.2 Board decisions subject to Member or Holy See approval

- (a) The prior written approval of the Member must be obtained before any Board decision takes effect to:
 - (i) appoint, re-appoint, suspend or remove the Chief Executive Officer;
 - (ii) consolidate or merge the Company with any other organisation;
 - (iii) change the financial year;
 - (iv) mortgage, transfer, assign or encumber any land (subject always to clause 4.2(b)(ii));
 - (v) acquire or sell land (subject always to clause 4.2(b)(ii));
 - (vi) incur building and capital infrastructure expenditure greater than \$20,000,000 in a single transaction;
 - (vii) enter into a loan agreement to borrow (or which allows the borrowing of) or any renewal or extension of such an agreement of greater than \$20,000,000;
 - (viii) enter into a land or building lease for a term greater than three years or a value greater than \$3,000,000;
 - (ix) establish any subsidiary or other new entity, joint venture or partnership, excluding joint arrangements or partnerships with other schools;
 - (x) cease to operate any Victorian Educational Body, establish any new Victorian Educational Body or incorporate any Victorian Educational Body;
 - (xi) change the name of a Victorian Educational Body; or
 - (xii) cease to operate the Company.
- (b) The following actions of the Company also require the approval of the Holy See (which

approval may only be obtained through the Member):

- (i) the suppression (within the meaning of that term under Canon Law) of the Company; and
 - (ii) the sale, lease, mortgage, encumbrance, disposition, or other form of alienation of the stable patrimony of EREA subject to Canon Law in excess of any amount established by the Holy See from time to time.
- (c) If there is a doubt as to whether a Board decision requires approval under this clause 4.2 the ruling of the Member will be final and conclusive.
- (d) Where approval of the Member is required under this clause 4.2, the Member must:
- (i) make a decision within two months of the Board requesting the approval in writing (and if no decision is given within such time period, the approval shall be deemed to have been given);
 - (ii) have regard to the Purpose; and
 - (iii) provide reasons to the Company in writing if the Member does not approve the matter.
- (e) Where approval of the Holy See is required under this clause 4.2 and the Holy See does not approve the matter, the Member must request from the Holy See, and provide to the Company in writing, the reasons for not approving the matter.

4.3 Reporting to the Member

- (a) The Company is not required to hold any general meeting while it has a sole Member.
- (b) The Board must report to the Member annually in relation to the following matters:
 - (i) provision of the annual financial statements, Board's report and any auditor's report;
 - (ii) attestation of compliance with:
 - (A) with respect to Schools - the Minimum Standards and Requirements for School Registration in Victoria under the ETR Act and the Australian Government accountability requirements under the *Australian Education Act 2013* (Cth) and the *Australian Education Regulations 2013* (Cth);
 - (B) with respect to registered boarding premises - the Minimum Standards and Requirements for School Boarding Premises Registration in Victoria under the ETR Act;
 - (C) the Company's child safeguarding standards and Policies;
 - (D) each School's not-for-profit status; and
 - (E) any other requirements reasonably required by the Member.
 - (iii) anticipated Board vacancies and any recommendations regarding Director appointments;
 - (iv) any recommended auditor appointment;
 - (v) fixing of the auditor's remuneration;
 - (vi) any questions for determination by the Member;
 - (vii) report of the Chair, which must include a report as to:
 - (A) furtherance of the Purpose;
 - (B) the strategic plan of the Company and each of the Victorian Educational Bodies (including financial forecasts);
 - (C) progress in the wellbeing, safety, nurturing and development of students; and
 - (D) how the charism of Edmund Rice is lived within the Victorian Educational Bodies.

(the **Annual Report**)

- (c) The Board must provide any delegation schedule (or update to an existing delegation schedule) for the operation of the Company to the Member for noting by the Member when adopted or updated by the Board.
- (d) The Board must provide the following to the Member for noting by the Member, in respect of

each Victorian Educational Body:

- (i) every five years (or on request by the Member) – a Renewal Report;
 - (ii) every five years (or on request by the Member) – a Mission Sustainability Review; and
 - (iii) when adopted or updated by the Board - - a Capital Master Plan.
- (e) The Board must promptly notify the Member of:
- (i) any legal or regulatory action taken against the Company (provided that notification would not breach any legal obligation of the Board or Company to any third party); and
 - (ii) any suspension or removal of a Principal.

4.4 Notice of the Annual Report or meeting with Member

Notice of the Annual Report or meeting (if the Company Secretary is asked to convene a meeting in accordance with clause 4.6) and any questions for determination by the Member must be given:

- (a) to the Member's Representative; and
- (b) to every Director and any auditor for the time being of the Company.

4.5 Resolutions of the Member

The Representative may pass a resolution in relation to any question for determination by the Member by signing a minute of the resolution.

4.6 Meetings with the Member

- (a) The Board must meet with the Member at least twice annually, including to present and discuss the Annual Report.
- (b) Any of:
 - (i) a Director;
 - (ii) the Member's Representative; or
 - (iii) the auditor appointed by the Member;
 may ask the Company Secretary to convene a meeting between any of the Member, the Board and the auditor.
- (c) The Company Secretary must convene a meeting as soon as practicable and within 30 days after any request is made pursuant to clause 4.6(b).

4.7 Representative

- (a) The role of the Representative is to:
 - (i) communicate the decisions of the Member to the Company; and
 - (ii) exercise all powers of the Member (unless the Member specifies otherwise).
- (b) The Representative (or their nominee) may attend and speak at Board meetings but is not a Director and may not vote.

4.8 Liability of Member

The Member's liability is limited to the Guaranteed Amount of \$10.

5. Appointment and Removal of Directors

5.1 Number of Directors

- (a) Subject to clause 5.1(b), the Company must have at least five and no more than eight Directors who are appointed by the Member.
- (b) The Member may vary the minimum and maximum number of Directors by written notice to the Board, provided the minimum is at least five.

5.2 Eligibility

Any natural person committed to the Purpose is eligible to be a Director provided the person:

- (a) has consented in writing to be a Director;
- (b) is not an employee of the Company;

- (c) supports the Purpose of the Company;
- (d) is considered by the Member to be suitable to participate in the educational mission of Edmund Rice Education Australia as a Director of the Company;
- (e) is a “fit and proper person” within the meaning of Schedule 4 of the ETRR 2017;
- (f) is not and has not been a registrable offender for the purpose of the *Sex Offenders Registration Act 2004* (Vic) (or any equivalent provision under similar legislation);
- (g) has a current WWC clearance for the purpose of the *Worker Screening Act 2020* (Vic) (or any equivalent provision under similar legislation);
- (h) has not been refused a WWC clearance or given a WWC exclusion for the purpose of the *Worker Screening Act 2020* (Vic) (or any equivalent provision under similar legislation);
- (i) has suitable qualifications, skills and experience to discharge the obligations arising from being a member for a school governing body for the purposes of the ETRR and ETR Act and the functions of a Director, as determined by the Board and Member from time to time; and
- (j) is not ineligible to be a Director under:
 - (i) the Act; or
 - (ii) the ACNC Legislation.

5.3 Appointment of Directors

- (a) The Member may appoint a person to be a Director by resolution.
- (b) The Member must consider any recommendations by the Board when appointing Directors.

5.4 Term of office

- (a) The term of office of a Director appointed by the Member:
 - (i) is three years (unless a different period is specified in the resolution);
 - (ii) commences on the date of appointment; and
 - (iii) expires at the end of the period specified in the resolution or if there is no period specified then at the conclusion of the third year following their appointment.
- (b) A Director may be appointed for more than one term of office, provided that they do not serve continuously for more than nine years.
- (c) If an individual ceases to be a Director for a period of at least one year, they may be appointed for a further term of office, in which case their initial term of office will not be taken into account for the purpose of clause 5.4(b).

5.5 Ceasing to be a Director

A person stops being a Director, and a casual vacancy is created, if they:

- (a) resign by written notice to the Company;
- (b) are removed by resolution of the Member;
- (c) are absent without leave of the Board, from:
 - (i) three consecutive Board meetings; or
 - (ii) four Board meetings over 12 months;
- (d) die, are bankrupt or become subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
- (e) have a material personal interest in a matter that relates to the affairs of the Company and fails to declare the nature of the interest as though required by section 191 of the Act;
- (f) are or become a registerable offender for the purposes of the *Sex Offenders Registration Act 2004* (Vic) or any equivalent legislation in any other Australian or offshore jurisdiction; or
- (g) cease to meet the eligibility requirements set out in clauses 5.2(b), 5.2(e) 5.2(g) or 5.2(j) above.

5.6 Effect of casual vacancy

If the number of Directors is less than the minimum number fixed under clause 5.1, then:

- (a) the Board must notify the Member;
- (b) the Board may continue to act, provided the number of Directors is at least three; and
- (c) if the number of Directors is less than three, the remaining Directors may, except in an emergency, act only to request that the Member increases the number of Directors.

5.7 Defects in appointment of Directors

An act done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting or taking the relevant step.

6. Board Decision Making

6.1 Convening Board meetings

- (a) A Director may convene or ask the Company Secretary to convene a Board meeting in accordance with this clause 6.
- (b) The Board must meet as often as the Directors deem it necessary in order to carry out their role and in any event at least six times a year.

6.2 Notice of Board meetings

- (a) Written notice of Board meetings must be given to every Director and the Representative at least 48 hours prior to the meeting (unless the Board unanimously waives this requirement).
- (b) A notice of a Board meeting:
 - (i) must specify the place, day and time of the meeting;
 - (ii) if virtual meeting technology is to be used, must provide sufficient information about the technology to allow the Directors to participate by means of technology; and
 - (iii) does not need to specify the nature of the business to be transacted at the meeting.

6.3 Quorum for Board meetings

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum of Directors for Board meetings is a majority of the total number of Directors.
- (c) A Director on a leave of absence approved by the Board should not be included when calculating the total number of Directors for the purposes of this clause.

6.4 Use of virtual meeting technology in Board meetings

- (a) The Board may hold its meetings using any virtual meeting technology that is agreed to by the Board.
- (b) The use of any virtual meeting technology must give the Director a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
- (c) The Board's agreement may be a standing one.
- (d) A Director participating through the use of virtual meeting technology will be deemed to be present at the meeting in person.

6.5 Chairperson of Board meetings

- (a) The Chair will preside as chairperson at Board meetings.
- (b) If the Chair is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting then:
 - (i) the Deputy Chair will be the chairperson; and
 - (ii) if the Deputy Chair is not present or is not willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

6.6 Voting at Board meetings

- (a) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote.

- (b) The chairperson does not have a casting vote. If the votes cast on a motion are equal the motion will be lost.

6.7 Resolutions without meetings

- (a) A Board resolution may be passed without a meeting if all of the Directors entitled to vote on the resolution sign a notice stating that they are in favour of the resolution.
- (b) The resolution is passed at the time when the last Director necessary to constitute unanimous consent in favour of the resolution signs.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution;
 - (ii) the notice may be distributed by any means;
 - (iii) separate documents containing the written consent of the Directors that they are in favour of the resolution will be treated as together constituting one document; and
 - (iv) the resolution fails if it has not achieved unanimous consent within 48 hours after the notice was given.

6.8 Provision of documents to the Member

The Board must provide the following documents to the Representative:

- (a) minutes of the Board meeting - within fourteen (14) days following the relevant meeting; and
- (b) the results of a Board resolution without a meeting – within fourteen (14) days after the resolution is passed.

7. Directors' Powers and Duties

7.1 Role and Powers of the Board

- (a) The Directors are responsible for the governance and strategic direction of the Company and furthering the Purpose.
- (b) The Board is the governing body of the Victorian Educational Bodies.
- (c) The Board must ensure that the Company complies with:
 - (i) all legal and regulatory requirements including the ETR Act and ETRR 2017;
 - (ii) this Constitution; and
 - (iii) to the extent not inconsistent with the Purpose or this Constitution, the Charter, Formation, Renewal Process (Mission Component) and Foundations documents (as amended and approved by the Member from time to time).
- (d) The Board must ensure that the Company's accounts are prepared in a manner that enables the Member to prepare consolidated accounts for the Company and the Member.
- (e) The Board may exercise all powers of the Company not required by the Act or this Constitution to be exercised by the Member or the Holy See.
- (f) The Board cannot remove a Director or auditor.

7.2 Delegation

- (a) The Board may delegate any of its powers and functions (other than those which by law must be dealt with directly by the Board) to one or more Directors, a Committee, the Chief Executive Officer, a Principal of a Victorian Educational Body, an employee or any other person.
- (b) The Board may revoke or vary any delegation.
- (c) A delegation made under this clause:
 - (i) must be by instrument of delegation; and
 - (ii) may be subject to such conditions and/or limitations as to the performance or exercise of any of the specified functions, powers and authorities delegated or as to time or other circumstances as may be specified in the resolution, instrument of delegation or terms of reference.
- (d) Notwithstanding any delegation made under this Constitution the Board may continue to perform or exercise all or any of the functions, powers and authorities delegated.

7.3 Duties of Directors

Directors must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.

7.4 Chief Executive Officer

The Board may (subject to clause 4.2(a)(i)) appoint a Chief Executive Officer to be responsible for the education, care and welfare of students and the management and general administration of Company business, subject to the Board's supervision and lawful direction.

7.5 Establishment of committees

- (a) The Board may establish committees.
- (b) A committee may include, or be comprised of, non-Directors.
- (c) The meetings and proceedings of committees are:
 - (i) subject to any terms of reference and/or delegation established for the committee by the Board; and
 - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

7.6 Policies

- (a) The Board may make or approve Policies for the:
 - (i) general conduct, management and good governance of the Company and its operations, including approval of all Policies related to the registration of the Victorian Educational Bodies; and
 - (ii) the business of the Board.
- (b) The Board may repeal, revoke, alter, amend or otherwise modify a Policy or part of a Policy.
- (c) The Board's power to make Policy is subject to the requirement that all Policies are consistent with the beliefs, teaching and laws of the Church.

8. Office Bearers

8.1 Appointment of Office Bearers

- (a) The Chair will be appointed by the Member from among the Board as required.
- (b) From time to time as required, the Board must elect the Deputy Chair from among the Board for a term of office of up to three years (as the Board deems fit).
- (c) The Board may appoint other positions (if any) as determined by the Board.
- (d) Office Bearers of the Company hold office until the earlier of:
 - (i) their written resignation from that office;
 - (ii) the end of the third year following their appointment; or
 - (iii) the end of their term as Director.
- (e) An Office Bearer may be elected for more than one successive term.
- (f) The Board may, subject to the approval of the Member, remove or suspend a person from holding any Office Bearer position by resolution passed at a Board meeting provided:
 - (i) the resolution is passed by not less than two-thirds of the Directors present; and
 - (ii) at least 21 days' notice in writing of the resolution has been given to the Company Secretary and to the person who is the subject of the resolution.

8.2 Company Secretary

- (a) The Directors must appoint at least one Company Secretary, who may also be a Director.
- (b) The Company Secretary is to be appointed on such terms and conditions as the Board deems fit.
- (c) A person may not be appointed as Company Secretary unless the person:
 - (i) consents in writing to being appointed as Company Secretary;

- (ii) is at least 18 years of age; and
- (iii) is resident in Australia.
- (d) The Board may suspend or remove a Company Secretary.

9. Indemnities and Insurance

- (a) The Company indemnifies every present and past Director and officer of the Company and member of any committee established under clause 7.5 to the full extent permitted by law against all losses and liabilities (including costs and expenses) incurred as a result of their position as a Director, an officer of the Company or member of a committee of the Board.
- (b) This indemnity:
 - (i) is a continuing obligation and is enforceable even if the person has ceased to be an officer of the company;
 - (ii) is not subject to any requirement to first incur an expense or make a payment; and
 - (iii) operates only to the extent that the relevant loss or liability is not covered by insurance.
- (c) The Company may, to the extent permitted by law, pay or agree to pay, a premium in respect of a contract insuring its Directors or officers of the Company and any member of a committee of the Board.
- (d) Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any Director or officer of the Company or any member of a committee of the Board, provided that such terms are not inconsistent with this clause 9.
- (e) Nothing in this clause 9 limits the Company's ability to indemnify or pay for insurance for any person not expressly covered by this clause nor affects any other right or remedy that a Director, an officer of the Company or member of a committee of the Board may have in respect of any loss or liability (including costs and expenses).
- (f) Where the Board considers it appropriate, the Company may:
 - (i) give a former Director or officer of the Company or any member of a committee of the Board access to certain papers, including documents provided or available to such person and other papers referred to in those documents; and
 - (ii) bind itself in any contract with any such person or any former Director, officer or member of a committee of the Board to give the access.

10. Disputes

- (a) The Member is responsible for resolving disputes and complaints between Directors or between Director(s) and the Chief Executive Officer which are referred to the Member by the Board or the Chief Executive Officer or that the Member otherwise becomes aware of (**Disputes**).
- (b) The Member, having consulted appropriate parties, may:
 - (i) dismiss a Dispute;
 - (ii) investigate or otherwise deal with a Dispute in such manner as the Member determines (including, in the sole discretion of the Member, referring the matter to mediation); and/or
 - (iii) make such other decision with respect to a Dispute as the Member so determines.
- (c) If the Member refers a Dispute to mediation:
 - (i) the parties must attempt in good faith to settle the dispute by mediation;
 - (ii) the mediator must be:
 - (A) chosen by the agreement of those involved; or
 - (B) if the parties cannot agree, chosen by the president of the Law Institute of Victoria;
 - (iii) the mediator must not have a personal interest in the Dispute and must not be biased towards anyone involved in the Dispute; and
 - (iv) the mediator must, in conducting the Dispute:

- (A) ensure the parties are afforded natural justice, including a reasonable chance to be heard and to review any written statements; and
- (B) not determine the Dispute.
- (d) A Director must not commence a formal legal proceeding (except for interlocutory relief) in relation to a Dispute unless and until they have complied with this clause.
- (e) The Member's determination of a Dispute is final.

11. Administration

11.1 Minutes and records

- (a) The Board must ensure that:
 - (i) minutes of all meetings convened pursuant to clause 4.6, Board meetings and committee meetings; and
 - (ii) records of resolutions passed by the Member, Directors and committees without a meeting;

are recorded and kept with the Company's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).
- (b) The Company must ensure that minutes of a Board or meeting convened pursuant to clause 4.6 are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

11.2 Common seal

The Company does not have a common seal.

11.3 Execution of documents

- (a) The Company may execute documents by the signature of:
 - (i) two Directors;
 - (ii) one Director and the Company Secretary; or
 - (iii) such other persons appointed by the Board for that purpose.
- (b) A document may be signed by electronic means in accordance with the Act.

12. Records, Accounting and Audit

12.1 Accounts and other records of the Company

The Board must:

- (a) ensure that proper financial records are kept in accordance with all legal and regulatory requirements;
- (b) ensure that records of its operations are kept;
- (c) take reasonable steps to ensure that the Company's records are kept safe; and
- (d) ensure that appropriate provision is made for the retention of records, with regard to the nature of the record and all relevant legal and regulatory requirements.

12.2 Audit

- (a) The Member must appoint an auditor of the Company.
- (b) The auditor is entitled to attend any meeting with the Member convened pursuant to clause 4.6 and to be heard by the Member on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company must give any auditor all communications provided to the Member;
 - (i) under clause 4.3; and
 - (ii) in connection with any meeting convened pursuant to clause 4.6.

12.3 Financial year

The financial year will begin on 1 January and end on 31 December, unless the Board passes a resolution to change the financial year (subject to clause 4.2(a)(iii)).

13. Amending this Constitution

- (a) This Constitution may only be amended or replaced:
 - (i) by resolution of the Member in accordance with the Act; and
 - (ii) if required, with the prior approval of the Holy See pursuant to clause 4.2(b).
- (b) The Member must not pass a resolution that amends this Constitution if passing it causes the Company to no longer be a Charity or cease to meet the requirements for registration as a proprietor of Victorian schools.
- (c) A resolution to amend this Constitution has no effect unless the Member has provided a copy of the proposed amendments to the Board and consulted with the Board at least thirty days prior to any alteration (unless the Board has waived the consultation period).

14. Notices

- (a) The Company may give notices (subject to any election or request received from the Member in accordance with the Act) and any communications personally, by post, email or other electronic means.
- (b) Notices to the Company may be given personally, by post, email or other electronic means.
- (c) Notices are deemed to be received:
 - (i) in the case of a properly addressed and posted notice, five Business Days after the date of posting; and
 - (ii) in the case of a notice sent by email or other electronic means, at the time of sending.
- (d) The non-receipt of notice or a failure to give notice, does not invalidate any thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) the individual waives notice before or after the meeting (including by attending the meeting); or
 - (iii) the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.
- (e) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

15. Winding up

15.1 Approval of Holy See required

The Company may only be wound up in accordance with the Act and with the prior written approval of the Holy See as required by 4.2(b)(i).

15.2 Contribution of the Member on winding up

If required, the Member must contribute an amount (not more than the Guaranteed Amount) to the assets of the Company if it is wound up while they are a Member, or within one year of the Member ceasing to be a Member, for the:

- (a) payment of the debts and liabilities of the Company incurred before they ceased to be a Member; and/or
- (b) costs, charges and expenses of winding up.

15.3 Distribution of assets on closure of a School or the winding up, deregistration or dissolution of the Company

- (a) If on the closure of a School or the winding up, deregistration or dissolution of the Company, there is a surplus of assets (whether income or capital) remaining after satisfying all the Company's liabilities and expenses, the surplus must:
 - (i) not be paid or distributed to the Member in their capacity as Member; and
 - (ii) in the event of the closure of a School:
 - (A) if the Company operates any other School(s), be used for that School(s); and
 - (B) if the Company no longer operates any School - be transferred to an entity that

satisfies the requirements of clause 15.3(a)(iii); or

- (iii) in the event of the winding up, deregistration or dissolution of the Company, be given or transferred to an entity or entities operating within Australia which:
 - (A) provides educational services to school-age children; or
 - (B) has similar charitable Purposes(s) to those of the Company as described in this Constitution; and
 - (C) prohibits the distribution of profit or gain to its members in their capacity as members.
- (b) The identity of the recipient entity under Clause 15.3(a)(iii):
 - (i) must be the Member, provided the Member meets the requirements of Clause 15.3(a)(iii); and
 - (ii) if the Member does not meet requirements of Clause 15.3(a)(iii), will be decided by the Member on or before any closure, winding up, deregistration or dissolution. If the Member fails to decide:
 - (A) upon the closure of a School, the identity of the recipient may be determined by the Board; or
 - (B) upon the winding up, deregistration or dissolution of the Company, the identity of the recipient must be determined by application to the Supreme Court in the State of Victoria.

16. Interpretation

16.1 Definitions

In this Constitution:

“ACNC” means the Australian Charities and Not-for-profits Commission.

“ACNC Legislation” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

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

“Annual Report” means a report provided once in every calendar year to the sole Member pursuant to clause 4.3(b).

“auditor” may mean a reviewer, if permitted by the Act or ACNC Legislation.

“Board” means the persons for the time being constituting the Board of the Company.

“Canon Law” means the universal law of the Church in the 1983 *Code of Canon Law* and universal legislation as well as particular and proper law enacted by the competent ecclesiastical authority.

“Capital Master Plan” means a plan for the Company’s land and infrastructure which includes: how pedagogy is achieved within the existing infrastructure; state of present infrastructure outlining key gaps in requirements and building deficits; outline of new building developments to come; timeline and estimated building costs; and any proposed land acquisitions.

“chairperson” means the person chairing a meeting.

“Chair” means the person appointed to the position of Chair under clause 8.

“Charity” means a charity registered under the ACNC Legislation and Charities has the corresponding meaning.

“Charter” means the articulation of the mission of a Catholic school in the Edmund Rice tradition.

“Chief Executive Officer” means the person appointed to serve as the chief executive officer of the Company in accordance with clause 7.4.

“Church” means the Roman Catholic Church.

“Company” means Edmund Rice Education Australia Victorian Schools Ltd (ACN 659 880 985) the proprietor of the Victorian Educational Bodies.

“Company Secretary” means the person appointed to that role pursuant to clause 8.2.

“day” means calendar day except public holidays.

“Early Learning Centre” means:

- (a) a not-for-profit approved education and care service (within the meaning of the *Education and Care Services National Law Act 2010* (Vic));
- (b) which provides education and care to children, including a three or four year old kindergarten program; and
- (c) that operates as a feeder for enrolments to a Victorian registered School; and

“ETR Act” means the *Education and Training Reform Act 2006* (Vic).

“ETRR 2017” means the *Education and Training Reform Regulations 2017* (Vic).

“Formation” means the response through baptism to nurturing spirituality, mission and ministry within the context of EREA.

“Foundations” means the statement by Edmund Rice Education Australia of the elements which underpin the continuance of the charism of Edmund Rice in school ministry as Church mission.

“Government Funding” means money provided for the conduct of the School under an agreement or arrangement with the State of Victoria or the Commonwealth of Australia.

“Guaranteed Amount” means the amount set out in clause 4.8.

“Holy See” means the Dicastery for Institutes of Consecrated Life and Societies of Apostolic Life of the Roman Curia.

“liability” means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

“Member” means the sole member of the Company, being TEREa.

“Mission Sustainability Review” means a commercial strategy for an Educational Body to ensure and promote its sustainable operation.

“Office Bearer” means the Chair, Deputy Chair and Company Secretary.

“person” includes a natural person and a corporation within the meaning of s 57A of the Act.

“Purpose” means the purpose set out in clause 2.

“Prohibited Agreement or Arrangement” has the meaning given to that term under the ETRR 2017.

“Renewal Process” means the statement which defines and guides the process for authentication of a school as a Catholic school in the Edmund Rice tradition.

“Renewal Report” means a quantitative and qualitative review of the commitment of each Victorian Educational Body to the Charism of Edmund Rice.

“Representative” means a person appointed to represent the Member in accordance with clause 4.7.

“School” means a registered Victorian School operated by the Company.

“school boarding premises” means a not-for-profit registered school boarding premises at which students who are enrolled or attending a School are boarding.

“Statute” means the canonical statutes under Canon Law for Edmund Rice Education Australia.

“TEREA” means the Trustees of Edmund Rice Education Australia being a body corporate incorporated under the *Roman Catholic Church Communities Lands Act 1942* (NSW).

“Victorian Educational Body” means the Schools, Early Learning Centres and registered school boarding premises listed in Schedule 1 and established by the Company from time to time.

16.2 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.

- (b) A reference to any legislation or regulation or to any provision of any legislation or of any regulation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (c) A reference to a person shall be construed so as to include its executors, administrators and successors.

16.3 Exclusion of replaceable rules

- (a) The replaceable rules contained in the Act do not apply to the Company.
- (b) If at any time, the Company is not a Charity, the Act (unless it is a replaceable rule) overrides any part of this Constitution or policy of the Company to the extent of any inconsistency.

Schedule 1

Parade College (Bundoora and Preston)

St Bernard's College, Essendon

St Joseph's College, Geelong

St Mary's College, East St Kilda

St Patrick's College, Ballarat

St Joseph's Flexible Learning Centre, Melbourne, Geelong and Colac