



Constitution

Edmund Rice Education Australia Flexible Schools
Ltd

ACN: 659 978 846

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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 Blessed Edmund Rice in Ireland in 1802.

Edmund Rice Education Australia (**EREA**) 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. EREA was constituted, in accordance with the norms of Canon Law, as a public juridic person within the Catholic Church on 20 September 2012 and carries on its mission in the name of the Church.

This mission is prescribed by the Charter and Core Charter Documents which define and direct the apostolic work of EREA.

EREA is regulated by EREA Statutes approved by the Holy See and is subject to Canon Law. The members of EREA, also referred to in the EREA Statutes as the 'Council', are the college or group of persons holding ultimate responsibility for ensuring that all schools and other apostolic activities of EREA are conducted in conformity with the faith, teaching and legislation 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 (TEREA) incorporated pursuant to the provisions of the *Roman Catholic Church Communities Lands Act 1942* (NSW).

TEREA has established the Company as the governing body of Flexible and Special Schools outside of the State of Victoria (**the Educational Bodies**).

The Company is a proper apostolic work of EREA within each local diocese and therefore with its approved purposes, is subject to the authority of the relevant diocesan Bishop as defined in the Code of Canon Law (cf. inter alia canons 394, 803 §1, §3 and 806 §1).

1. Name

The name of the Company is Edmund Rice Education Australia Flexible 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 vulnerable and disenfranchised young people and children with intellectual and sensory disabilities through the provision of Catholic education to early years, primary and secondary school aged students in the Charism of Blessed Edmund Rice in fulfilment of the mission of Jesus Christ, including by:
 - (i) governing, conducting and operating the Educational Bodies with fidelity to the Charter; and
 - (ii) ensuring the safety, wellbeing and education of all children in all of the operations of the Company;provided that any activity or thing in fulfilment of the Purpose will not result in any Educational Body operating "for profit" within the meaning of Part 7, Division 3 of the Education Act.
- (c) In pursuing the Purpose, the Company may without limitation:
 - (i) own, govern, operate or control any educational facilities and any 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;provided that it will not result in any Educational Body operating "for profit" within the meaning of Part 7, Division 3 of the Education Act.

- (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 faith, teaching and legislation of the Church.

3. Not-For-Profit

- (a) Income and property received by the Company must be applied solely towards the Purpose.
- (b) 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 or other profit distribution in their capacity as Member or Directors.
- (c) Clause 3(b) does not stop the Company from making a payment:
 - (i) to the Member for goods or services provided or expenses properly incurred at fair and reasonable rates or rates more favourable to the Company;
 - (ii) of premiums for insurance indemnifying current or former Directors to the extent allowed for by law and this Constitution; or
 - (iii) with the prior approval of the Board, to a Director:
 - (A) for goods or services provided to or rendered to the Company, other than as a Director, if the amount is no more than a reasonable market value for the work done; or
 - (B) as reimbursement for reasonable out-of-pocket expenses properly incurred in performing a duty as Director;

provided that no such payment results in any Educational Body operating “for profit” within the meaning of Part 7, Division 3 of the Education Act.

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 Decisions subject to Member approval

- (a) The prior written approval of the Member must be obtained before any Board decision takes effect to:
 - (i) establish or terminate an apostolic work of EREA;
 - (ii) approve any Educational Body’s School Renewal Report;
 - (iii) appoint, re-appoint, suspend or remove the Chief Executive Officer;
 - (iv) approve building and capital infrastructure expenditure by an Educational Body greater than \$20,000,000;
 - (v) mortgage, transfer, assign or encumber any land;
 - (vi) acquire or sell land;
 - (vii) enter into a loan or loan extension agreement greater than \$20,000,000;
 - (viii) enter into a land or infrastructure lease for a term greater than twenty years or a value greater than \$20,000,000;
 - (ix) consolidate or merge the Company with any other organisation;
 - (x) establish any subsidiary or other new entity, joint venture or other corporate affiliation;
 - (xi) cease to operate the Company;
 - (xii) allow any Educational Body to do anything referred to in paragraph 4.2(a)(i), 4.2(a)(v), 4.2(a)(vi), 4.2(a)(vii), 4.2(a)(viii) or 4.2(a)(x); or
 - (xiii) suppress 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.

5. Responsibilities of the Member

5.1 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) an attestation of compliance with:
 - (A) with respect to Schools – the Australian Government accountability requirements under the *Australian Education Act 2013* (Cth) and the *Australian Education Regulations 2013* (Cth);
 - (B) the requirements of the relevant schools regulator in each jurisdiction in which the Company operates;
 - (C) the Company's child safety 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 Educational Bodies (including financial forecasts);
 - (C) progress in the wellbeing, safety, nurturing and development of students;
 - (D) how the Charter is lived within the Educational Bodies; and
 - (E) contributions to the achievement of the TERE Mission strategy.
- (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 Educational Body:
 - (i) every five years (or on request by the Member) – a Stewardship Sustainability Review

as and when it is undertaken by the Company; and

- (ii) when adopted or updated by the Board – a Capital Master Plan.

The Member will prescribe the content, format and due date of the Annual Report and any documents required by 5.1(d).

- (e) The Member will administer the School Renewal Process as per its policies to provide validation and accreditation of Educational Bodies as Catholic Schools in the Edmund Rice tradition. The Board must:
 - (i) ensure full participation in the School Renewal Process;
 - (ii) note and endorse the School Renewal Report provided by the Member;
 - (iii) ensure action to attend to recommendations made in the School Renewal Report; and
 - (iv) provide progress reports against School Renewal Report recommendations as required by the Member.
- (f) 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);
 - (ii) any matter that could significantly and negatively impact the Company's ability to pursue the Purpose, the mission of EREA or the reputation of a School, the Company or EREA;
 - (iii) any suspension or removal of a Principal; and
 - (iv) details of any loans entered into by the Company or the Educational Bodies.

5.2 Provision of Annual Report and notice of Member meetings

The Annual Report and notice of any meeting (if the Company Secretary is asked to convene a meeting in accordance with clause 5.4) must be given:

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

5.3 Resolutions of the Member

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

5.4 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 Representative;
 - (iii) the Member's chair; or
 - (iv) the auditor appointed by the Member;
 may ask the Company Secretary to convene a meeting between any of the Member, the Board, the Chief Executive Officer 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 5.4(b).

5.5 Member Representative

- (a) The Member must appoint an individual as its Member Representative by written notice to the Company.
- (b) The appointment may be a standing one.
- (c) The appointment may be made by reference to a position held.
- (d) The Member may appoint more than one Member Representative but only one Member Representative may exercise the Member's powers at any one time.
- (e) The role of the Member 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).
- (f) The Member Representative (or their nominee) may attend and speak at Board meetings but is not a Director and may not vote.

5.6 Liability of Member

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

6. Appointment and Removal of Directors

6.1 Number of Directors

- (a) Subject to clause 6.1(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.
- (c) The Chief Executive Officer and Secretary may attend and speak at Board meetings (other than any in camera meeting or part of a meeting) but are not Directors and may not vote.

6.2 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 currently and has not been an employee of the Company at any time within the previous three years;
- (c) 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;
- (d) is a "fit and proper person" (or any equivalent requirement) for the purposes of any legislative requirements applying to schools in the jurisdictions in which the Company operates;
- (e) is not and has not been a registrable person for the purpose of any law relating to child protection (offender registration);
- (f) is not and has not been a disqualified person for the purpose of any law relating to working with children;
- (g) has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board and Member from time to time; and
- (h) is not ineligible to be a Director under:
 - (i) the Act; or
 - (ii) the ACNC Legislation.

6.3 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.

6.4 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 6.4(b).

6.5 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, become 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 no longer a fit and proper person for the purpose of any law relating to Educational Bodies including that the Director:
 - (i) cannot make a statutory declaration that they are a fit and proper person as required;
 - (ii) gives such a statutory declaration that all Directors (other than the subject Director) jointly determine is false or misleading; or
 - (iii) engages in conduct such that they are no longer able to make such a statutory declaration; or
- (g) cease to meet the eligibility requirements set out in any of clauses 6.2(b), 6.2(d), 6.2(e) 6.2(f) or 6.2(h) above.

6.6 Effect of casual vacancy

If the number of Directors is less than the minimum number fixed under clause 6.1, 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.

6.7 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.

6.8 Leave of absence

- (a) Directors are entitled to request a leave of absence from Board meetings for a maximum period of three months, subject to approval by the Board.
- (b) Leave of absence requests must be made in writing to the Chair and cannot be granted retrospectively, unless there are extenuating circumstances (as agreed by the Board from time to time) which give rise to a retrospective approval.
- (c) The Board will consider any request for a leave of absence at its next scheduled meeting (unless there are extenuating circumstances (as agreed by the Board from time to time)).
- (d) A Director on an approved leave of absence:
 - (i) is not counted for the purpose of forming a quorum in accordance with clause 7.3 or passing resolutions without meetings in accordance with clause 7.7;
 - (ii) will be recorded in Board meeting minutes as a Director on an approved leave of absence;
 - (iii) will not receive minutes of Board meetings or general meetings but will have access to previous minutes when they return to the Board; and
 - (iv) will be recorded as being on an approved leave of absence in the Annual Report.

7. Board Decision Making

7.1 Convening Board meetings

- (a) A Director may convene or ask the Company Secretary to convene a Board meeting in accordance with this clause 7.
- (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 four times a year.

7.2 Notice of Board meetings

- (a) Written notice of Board meetings must be given to every Director and the Member 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.

7.3 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.

7.4 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 each 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.

7.5 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 (if any) will be the chairperson; and
 - (ii) if there is no Deputy Chair or 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.

7.6 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.

7.7 Resolutions without meetings

- (a) A Board resolution may be passed without a meeting if 75% 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 75% of the Directors 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 75% consent in favour within five Business Days after the notice was given.

7.8 Provision of documents to the Member

The Board must provide the following documents to the Member Representative:

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

8. Directors' Interests

- (a) Directors must comply at all times with the requirements of the Act, the ACNC Legislation, this Constitution and the Conflict of Interest Policy in relation to the identification, disclosure and management of Director conflicts of interest.
- (b) No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- (c) No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- (d) A Director is not disqualified, merely because of being a Director, from contracting with the Company in any respect.
- (e) Subject to clause 8(a):
 - (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (A) enter into any agreement or arrangement with the Company;
 - (B) hold any office or place of profit other than as auditor in the Company; and
 - (C) act in a professional capacity other than as auditor for the Company; and
 - (ii) the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- (f) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
 - (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter,
 unless permitted by the Conflict of Interest Policy to do so, in which case the Director may:
 - (iii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (g) A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to

the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

9. Directors' Powers and Duties

9.1 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 Educational Bodies.
- (c) The Board must ensure that the Company complies with:
 - (i) all legal and regulatory requirements of civil law;
 - (ii) this Constitution; and
 - (iii) to the extent not inconsistent with the Purpose or this Constitution, the Charter, School Renewal Process, Formation, and Core Charter Documents (as developed, 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.

9.2 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 an 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.

9.3 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.

9.4 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.

9.5 Establishment of Committees

- (a) The Board may establish Committees.
- (b) A Committee may include, or be comprised of, non-Directors.
- (c) The Board will, in its sole discretion, appoint the Committee members and the chair of a Committee or provide for the Committee to make some or all appointments.
- (d) The meetings and proceedings of Committees are:
 - (i) subject to any terms of reference and/or delegation established by the Board; and
 - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

9.6 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 and operation of the 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:
 - (i) the faith, teaching and legislation of the Church;
 - (ii) the Charter and Core Charter Documents; and
 - (iii) any policy framework applicable to the Educational Bodies prescribed by the Member.

10. Office Bearers

10.1 Appointment of Office Bearers

- (a) The Chair will be appointed by the Member from among the Board as required.
- (b) The Board may appoint other positions (if any) as determined by the Board.
- (c) 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.
- (d) An Office Bearer may be elected for more than one successive term.
- (e) 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.

10.2 Company Secretary

- (a) The Board must appoint at least one Company Secretary.
- (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 from their role as Company Secretary.

11. 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 9.5 to the full extent permitted by law against all losses and liabilities incurred as a result of their position as an officer of the Company.
- (b) This indemnity:
 - (i) is a continuing obligation and is enforceable even if the person has ceased to be an officer of the company; and
 - (ii) is not subject to any requirement to first incur an expense or make a payment.

- (c) The Company may, to the extent permitted by law, pay or agree to pay, a premium in respect of a contract insuring its officers.
- (d) Nothing in this clause 11 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 an officer may have in respect of any loss or liability.
- (e) No indemnity may be given, contract entered into or insurance premium paid if it would result in an Educational Body operating "for profit" within the meaning of Part 7, Division 3 of the Education Act.

12. Disputes

- (a) The parties to a dispute under this Constitution, being:
 - (i) one or more Directors; or
 - (ii) the Company and one or more Directors;
 must attempt to resolve the matter between themselves within 14 days of being made aware of the dispute.
- (b) If the parties cannot resolve the dispute within 10 days, they must:
 - (i) notify the Secretary;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (c) The mediator must:
 - (i) be a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement, a person chosen by the president of the law institute in the jurisdiction within which the dispute arose.
- (d) A mediator:
 - (i) must be a professionally accredited mediator;
 - (ii) must not be the Member;
 - (iii) must not have a personal interest in the dispute; and
 - (iv) must not be biased towards or against anyone involved in the dispute.
- (e) When conducting the mediation, the mediator must allow those involved a reasonable chance to be heard and to review any written statements.
- (f) The mediator must not determine the dispute.
- (g) A Director must not commence a formal legal proceeding (except for interlocutory relief) in relation to a dispute under this Constitution unless and until they have complied with this dispute resolution procedure.

13. Administration

13.1 Minutes and records

- (a) The Board must ensure that:
 - (i) minutes of all meetings convened pursuant to clause 5.4, Board meetings and Committee meetings; and
 - (ii) records of resolutions passed by the Member, Board and Committees without a meeting;
 are recorded and kept with the Company's records as soon as practicable.
- (b) The Company must ensure that minutes of a Board meeting, a meeting convened pursuant to clause 5.4 or a Committee meeting are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

13.2 Common seal

The Company does not have a common seal.

13.3 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.

14. Records, Accounting and Audit

14.1 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.

14.2 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 5.4 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 5.1; and
 - (ii) in connection with any meeting convened pursuant to clause 5.4.

14.3 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.

15. Amending this Constitution

- (a) The Company may only alter this Constitution by resolution of the Member in accordance with the Act.
- (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 a School in any relevant jurisdiction.
- (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).

16. 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.

17. Winding up

17.1 Process

The Company may only be wound up in accordance with the Act.

17.2 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.

17.3 Distribution of assets

- (a) If the Company is a Deductible Gift Recipient, any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from other assets of the Company.
- (b) If the Company is a Deductible Gift Recipient and is wound up, or it ceases to be endorsed as a Deductible Gift Recipient, any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to an entity or entities endorsed as a Deductible Gift Recipient which:
 - (i) have charitable purposes similar to the Purpose;
 - (ii) are required to apply its profits (if any) or other income in promoting its purposes; and
 - (iii) prohibit the distribution of profit or gain to its members to at least the same extent as the Company.
- (c) If on 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;
 - (ii) be given or transferred to an entity or entities that:
 - (A) have charitable purposes similar to the Purpose;
 - (B) are required to apply their profits (if any) or other income in promoting its purposes; and
 - (C) prohibit the distribution of profit or gain to their members to at least the same extent as the Company; and
 - (iii) otherwise be applied in accordance with any legislative and funding requirements applicable to the Educational Bodies.
- (d) The recipient under clause 17.3(c) must:
 - (i) be able to be registered as a Charitable Institution;
 - (ii) have a principal object or pursuit that the Commissioner is satisfied is fulfilling a charitable object or promoting the public good; or
 - (iii) be required to use the assets for a purpose the Commissioner is satisfied is charitable or for the promotion of the public good.
- (e) The identity of the recipient(s) under clauses 17.3(b) and 17.3(c) will be decided by resolution of the Member on or before any winding up, deregistration or dissolution. If the Member fails

to decide, the identity of the recipient must be determined by application to the Supreme Court in the State of Queensland.

- (f) For clarity, clause 17.3(c)(i) does not prohibit any payment or distribution to the Member that is not made in the Member's capacity as Member, provided that the Member otherwise meets the requirements of 17.3(c)(ii) and 17.3(d).

18. Interpretation

18.1 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 Member pursuant to clause 5.1(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.

"Business Day" means Monday to Friday inclusive, excluding any public holiday in a relevant State or Territory.

"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:

- (a) how pedagogy is achieved within the existing infrastructure;
- (b) state of present infrastructure outlining key gaps in requirements and building deficits;
- (c) outline of new building developments to come;
- (d) timeline and estimated building costs; and
- (e) any proposed land acquisitions.

"chairperson" means the person chairing a meeting.

"Chair" means the person appointed to the position of Chair under clause 10.

"Charitable Institution" means an institution that is registered by the Commissioner under section 149C(1) of the *Taxation Administration Act 2001* (Qld).

"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 as expressed through the Touchstones.

"Chief Executive Officer" means the person appointed to serve as the chief executive officer of the Company in accordance with clause 9.4. The Chief Executive Officer may be referred to by any other title chosen by the Company, including Executive Director.

"Church" means the Roman Catholic Church.

"Commissioner" means the Commissioner of State Revenue appointed under section 7(2) of the *Taxation Administration Act 2001* (Qld).

"Committee" means a committee of the Board established under clause 9.5.

"Company" means Edmund Rice Education Australia Flexible Schools Ltd (ACN 659 978 846), being the proprietor of the Educational Bodies.

"Company Secretary" means the person appointed to the position of Company Secretary under clause 10.2.

"Conflict of Interest Policy" means the Conflict of Interest Policy approved by the Board from time to time.

“Core Charter Documents” means the documents that articulate the Charter and define and direct the apostolic work of EREA as developed, amended and approved by the Member.

“day” means calendar day except public holidays.

“Deductible Gift Recipient” means an entity to which tax-deductible gifts may be made pursuant to Division 30 of the ITAA 97.

“DGR Gifts” means:

- (a) gifts of money or property for the Principal Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
- (c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.

“Education Act” means the *Education Act 1990* (NSW).

“Educational Body” means the Schools and early learning centres listed in Schedule 1 and established by the Company from time to time.

“EREA” means Edmund Rice Education Australia.

“Formation” means the response of school communities and individuals to nurturing spirituality, mission and ministry within the context of EREA.

“Guaranteed Amount” means the amount set out in clause 5.6.

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

“ITAA 97” means the *Income Tax Assessment Act 1997* (Cth).

“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.

“Member Representative” means a person appointed to represent the Member in accordance with clause 5.5.

“Office Bearer” means the Chair, Company Secretary and any other office bearers appointed by the Board under clause 10.1(b).

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

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

“School” means a school registered in an Australian State or Territory (except for the States of Victoria and New South Wales) operated by the Company listed in Schedule 1.

“School Renewal Process” means the statement which defines and guides the process for validation and accreditation of an Educational Body as a Catholic school in the Edmund Rice tradition.

“School Renewal Report” means a quantitative and qualitative report prepared by the Member of the findings and outcomes of the School Renewal Process.

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

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

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

18.2 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; and

- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

18.3 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.

Albert Park Flexible Learning Centre, Brisbane
Bowen Education Engagement Program, Bowen
Burdekin Education Program, Ayr
Deception Bay Flexible Learning Centre, Deception Bay
Edmund Rice Flexi School, Elizabeth
FAME, Christie Downs
Geraldton Flexible Learning Centre, Geraldton
Gympie Flexible Learning Centre, Gympie
Hemmant Flexible Learning Centre, Hemmant
Inala Flexible Learning Centre, Inala
Ipswich Flexible Learning Centre, Ipswich
Mount Isa Flexible Learning Centre, Sunset Mount Isa
Noosa Flexible Learning Centre, Sunshine Beach
Pambula Beach Flexible Learning Centre, Pambula
Rockhampton Flexible Learning Centre, Rockhampton
St Edmunds College, Wahrenonga
St Francis Flexible Learning Centre, West Moonah
St Gabriel's School, Castle Hill
St Joseph's Flexible Learning Centre, Alice Springs
St Mary's Flexible Learning Centre, St Marys
Southport Flexible Learning Centre, Southport
The Centre Education Programme, Kingston
Townsville Flexible Learning Centre, West End
Wollongong Flexible Learning Centre, Towradgi