



EDMUND RICE EDUCATION AUSTRALIA

Constitution

Edmund Rice Education Australia Ltd

ACN: 659 849 715

First prepared	19 September 2022 with assistance from Moores
Amended	With assistance from Moores on 20 May 2024
Review date	To be determined by the Board

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Preamble

Edmund Rice Education Australia was established 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 on 20 September 2012 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 TEREА.

TEREA has established and is the sole member of the Company, which in turn is the parent entity of subsidiary companies that operate Schools and Early Learning Centres (**Educational Bodies**) governed and conducted in the Edmund Rice tradition.

1. Name

The name of the Company is Edmund Rice Education Australia 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 advance Catholic education, including by:
 - (i) supporting and advancing Catholic education in the Edmund Rice tradition in fulfilment of the mission of Jesus Christ;
 - (ii) promoting the safety and wellbeing of all children within all operations of the Company and its subsidiaries; and
 - (iii) ensuring stable patrimony, including across the subsidiary companies established to operate the Educational Bodies.
- (c) 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) 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 Directors to the extent allowed for by law and this Constitution; or
 - (iii) with the prior approval of the Board, to a Director:
 - (A) of remuneration for services rendered as a Director in an amount determined by the Member from time to time, provided that any payment of remuneration for services rendered as a Director will not be in respect of any functions or duties

performed in respect of any subsidiary company operating schools in New South Wales;

- (B) for services 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
- (C) as reimbursement for reasonable out-of-pocket expenses properly incurred in performing a duty as Director,

provided that no such payment results in any school operated by any subsidiary of the Company in New South Wales operating 'for profit' within the meaning of Part 7, Division 3 of the *Education Act 1990* (NSW).

4. Membership

4.1 General

- (a) TEREA 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) appoint, re-appoint, suspend or remove the Chief Executive Officer;
 - (ii) mortgage, transfer, assign or encumber any land (subject always to clause 4.2(b)(ii));
 - (iii) acquire or sell land (subject always to clause 4.2(b)(ii));
 - (iv) enter into a loan or loan extension agreement greater than \$20,000,000;
 - (v) enter into a land or infrastructure lease for a term greater than three years or a value greater than \$3,000,000;
 - (vi) approve building and capital infrastructure greater than \$20,000,000, in alignment with an approved Capital Master Plan and within approved budget;
 - (vii) consolidate or merge the Company with any other organisation;
 - (viii) establish any subsidiary or other new entity, joint venture or other corporate affiliation;
 - (ix) cease to operate the Company; or
 - (x) remove any Office Bearer.
- (b) The following actions of the Company also require the approval of the Holy See:
 - (i) any change to the Purpose; or
 - (ii) the sale, lease, mortgage, encumbrance, disposition, or other form of alienation of the stable patrimony of TEREA 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.

5. Responsibilities to the Member

5.1 Annual 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) anticipated Board vacancies and any proposed Director appointments;
 - (iii) any recommended auditor appointment;
 - (iv) fixing of the auditor's remuneration;
 - (v) any questions for determination by the Member; and

- (vi) report of the Chair, which must include a report as to:
 - (A) furtherance of the Purpose;
 - (B) the strategic plan of the Company (including financial forecasts);
 - (C) how the charism of Edmund Rice is lived within the Educational Bodies.
- (vii) a consolidated Renewal Report, updated to include all information received from the subsidiary companies in the previous twelve months; and
- (viii) all Capital Master Plans received from the subsidiary companies in the previous twelve months.

(the Annual Report).

5.2 Notice of the Annual Report or meeting with Member

Notice of the Annual Report or meeting (if the Secretary is asked to convene a meeting in accordance with clause 5.4) 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.

5.3 Resolutions of the Member

The Representative for the Member 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) Either:
 - (i) a Director;
 - (ii) the Member's Representative; or
 - (iii) any auditor appointed by the Member;
 may ask the Secretary to convene a meeting between any of the Member, the Board and any auditor appointed by the Member at any time.
- (c) The 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 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 President is the Representative of the Member.
- (c) If the President is unable to act as Representative, then the Member may appoint a Councillor to act as interim Representative.
- (d) The 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 seven and no more than eleven 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 three.

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 a Councillor or an employee of the Company;
- (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 purpose of any law pertaining to Educational Bodies;
- (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.
- (i) Clause 6.2(h)(ii) will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.

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:
- (b) is three years (unless a different period is specified in the resolution);
 - (i) commences on the date of appointment; and
 - (ii) 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.
- (c) A Director may be appointed for more than one term of office, provided that they do not serve continuously for more than nine years.
- (d) 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(c).

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, 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) are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Act;
- (f) become ineligible to be a Director under the Act or the ACNC Legislation; or
- (g) are no longer a fit and proper person for the purpose of any law relating to Educational Bodies including that the Director cannot make a statutory declaration that they are a fit and proper

person as required, gives such a statutory declaration that all Directors (other than the subject Director) jointly determine is false or misleading, or engages in conduct such that they are no longer able to make such a statutory declaration;

- (h) cease to meet the eligibility requirements set out in clause 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.

7. Board Decision Making

7.1 Convening Board meetings

- (a) A Director may convene or ask the 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 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 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.

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 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.

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 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.

7.8 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.

8. Directors' Interests

- (a) As required by the Act, the ACNC Legislation or this Constitution (as applicable), a Director must give each of the other Directors notice of any actual or perceived, direct or indirect personal interest in a matter that relates to the affairs of the Company as soon as practicable after the relevant facts have come to the knowledge of the Director.
- (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), a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (i) enter into any agreement or arrangement with the Company;
 - (ii) hold any office or place of profit other than as auditor in the Company; and
 - (iii) act in a professional capacity other than as auditor for the Company,
 and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- (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 Act or this Constitution 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 must ensure that the Company complies with:
 - (i) all legal and regulatory requirements of civil law;
 - (ii) this Constitution; and
 - (iii) the Charter, Formation, Renewal Process and Foundations documents (as amended and approved by the Member from time to time).
- (c) The Board may exercise all powers of the Company, the Act or this Constitution (including Schedule 1) to be exercised by the Member.
- (d) The Board must not, and must ensure that the Company and any subsidiary company does not, operate outside the limits set in the EREA Delegation Frameworks (as amended by the Board in consultation with the Member from time to time).
- (e) 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, 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 consistent with the EREA Delegation Frameworks;
 - (ii) must be by instrument of delegation; and
 - (iii) 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 day to day 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 meetings and proceedings of committees are:
 - (i) subject to any terms of reference and/or delegation; 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 general conduct, management and good governance of the Company, the subsidiary companies (but only to the extent necessary to protect stable patrimony and mission) and 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.

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) 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 clause 4.2(a)(x)), 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 Secretary and to the person who is the subject of the resolution.

10.2 Secretary

- (a) The Directors must appoint at least one Secretary, who may also be a Director.
- (b) The Secretary is to be appointed on such terms and conditions as the Board deems fit.
- (c) A person may not be appointed as Secretary unless the person:
 - (i) consents in writing to being appointed as Secretary;
 - (ii) is at least 18 years of age; and
 - (iii) is resident in Australia.
- (d) The Board may suspend or remove a Secretary.

11. Indemnities and Insurance

- (a) The Company indemnifies every present and past Director and executive 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;
 - (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 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.

12. 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 mediator must be:
 - (A) chosen by the agreement of those involved; or
 - (B) if the parties cannot agree, chosen by the Member;
 - (ii) the mediator must not have a personal interest in the Dispute and must not be biased towards anyone involved in the Dispute; and
 - (iii) 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) The Member's determination of a Dispute is final.

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, 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 5.4 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 Secretary; or
 - (iii) such other persons appointed by the Board for that purpose;
 subject to the requirements of the EREA Delegation Frameworks.
- (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:
 - (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)(i).
- (b) The Member must not pass a resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.
- (c) A resolution to amend this Constitution that alters the Purpose has no effect if the prior approval of the Holy See has not been obtained.

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 Approval of Holy See required

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 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; and
 - (ii) be given or transferred to an entity which:
 - (A) has charitable purposes similar to the Purpose;
 - (B) is required to apply its profits (if any) or other income in promoting its purposes; and
 - (C) prohibits the distribution of profit or gain to its Members to at least the same extent as the Company.
- (b) The recipient entity under clause 17.3(a) must:
 - (i) be able to be registered as a Charitable Institution; or
 - (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.
- (c) The identity of the recipient entity under clause 17.3(a) 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 entity must be determined by application to the Supreme Court in the State of Queensland.

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 sole 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.

“**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 and **Canonical** has a corresponding meaning.

“**Capital Master Plan**” means a 10-20 year view of an Educational Body’s land and infrastructure which includes: references to pedagogy and its line to 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 10.

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

“**Charity**” means a charity registered under the ACNC Legislation.

“**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 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 s 7(2) of the *Taxation Administration Act 2001* (Qld).

“**Company**” means Edmund Rice Education Australia Ltd (ACN 659 849 715).

“**Councillor**” means a member from time to time of TEREА.

“**day**” means calendar day except public holidays.

“**Early Learning Centre**” means a not-for-profit approved education and care service which provides education and care to children including children younger than the minimum compulsory school age.

“**Educational Body**” means a school or Early Learning Centre owned, governed, managed and conducted by a subsidiary company and **Educational Bodies** has the corresponding meaning.

“**EREA Delegation Frameworks**” means the EREA Delegation Framework – EREA Ltd and Subsidiary Entities and the EREA Delegation Framework – EREA Schools approved by the Board in consultation with the Member.

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

“**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.

“**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.

“**Member**” means TEREА.

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

“**Oceania Province**” means the province known as Oceania Province of the Congregation of Christian Brothers.

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

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

“**President**” means the President of TEREА.

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

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

“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 Educational Body to the Charism of Edmund Rice.

“School” means an Educational Body providing education to children of compulsory school age during normal school hours.

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

“subsidiary company” means a company of which the Company is the sole member.

“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.
- (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.

Schedule 1

Board decisions subject to approval or consultation with the Member

The following Board decisions are subject to the approval of or consultation with the Member (as specified below):

- (a) consultation - the Board must consult with the Member before amending the Edmund Rice Education Australia Ltd Delegation Instrument (clause 9.1(d)); or
- (b) approval: the approval of the Member must be obtained before any Board decision takes effect to (clause 4.2(a)):
 - (i) appoint, re-appoint, suspend or remove the Chief Executive Officer;
 - (ii) mortgage, transfer, assign or encumber any land (subject always to clause 4.2(b)(ii));
 - (iii) acquire or sell real land (subject always to clause 4.2(b)(ii));
 - (iv) enter into a loan or loan extension agreement greater than \$20,000,000;
 - (v) enter into a land or infrastructure lease for a term greater than three years or a value greater than \$3,000,000;
 - (vi) approve building and capital infrastructure greater than \$20,000,000, in alignment with an approved Capital Master Plan and within approved budget;
 - (vii) consolidate or merge the Company with any other organisation;
 - (viii) establish any subsidiary or other new entity, joint venture or other corporate affiliation;
 - (ix) cease to operate the Company; or
 - (x) remove any Office Bearer.

Company decisions subject to the approval of the Holy See

The following Company decisions are subject to the approval of the Holy See (clause 4.2(b)):

- (a) any change to the Purpose; or
- (c) the sale, lease, mortgage or encumbrance disposition, or other form of alienation of the stable patrimony of TERE A in excess of any amount established by the Holy See from time to time.

Reserved powers and decisions for the Member

The following powers and decisions are reserved for the Member:

- (a) receive reports (clause 5.1(b));
- (b) ask the Secretary to convene a meeting between any of the Member, the Board and any auditor appointed by the Member (clause 5.4(b));
- (c) its Representative may attend and speak (but not vote) at Board meetings (clause 5.5(d));
- (d) change the minimum or maximum number of Directors (clause 6.1(b));
- (e) determine (with the Board) suitable qualifications, skills and experience for Directors (clause 6.2(e));
- (f) appoint or remove a Director or determine a Director's term of office (clause 6.3(a), 6.4(a) and 6.5(b));
- (g) be notified of Board meetings (clause 7.2(a));
- (h) receive minutes of Board meetings and resolutions without a meeting (clause 7.8);
- (i) appoint the Chair (clause 10.1(a));
- (j) determine Disputes (clause 12);
- (k) appoint the auditor (clause 14.2(a));
- (l) amend the constitution of the Company (clause 15), subject to approval of the Holy See if required pursuant to clause 4.2(b); and
- (m) wind up the Company and determine distribution of any surplus (clause 17.3).