

Constitution

Mumbulla School for Rudolf Steiner Education Limited
ACN 003 437 081

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1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Auditor means the Company's auditor.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and any regulations made under that Act as amended from time to time.

Company means Mumbulla School for Rudolf Steiner Education Ltd.

Committee means a mandated Group of the Board of Directors

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

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

Director includes any person occupying the position of director of the Company.

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

Education Act means the *Education Act 1990* (NSW) and any regulations made under that Act as amended from time to time.

fit and proper means fit and proper to hold a position as a Director of the Company taking into account the Objects and requirements under the ACNC Act, the Corporations Act, the Education Act and any other relevant legislation.

fit and proper person statutory declaration means a statutory declaration in a form approved by the Board from time to time which addresses matters relevant to whether the person making the declaration is eligible to be appointed as a Director and is fit and proper.

Governance Manual means the Mumbulla School for Rudolf Steiner Education Governance Manual as approved and amended from time to time by the Board of Directors.

Initial term has the meaning given to this term in clause 27.3.

Member means a member under clause 7.

NESA means the New South Wales Education Standards Authority

NESA Act means the *Education Standards Authority Act 2013* (NSW) and any regulations made under that Act as amended from time to time.

New Director has the meaning given to this term in Clause 27.3(b).

Objects means the objects set out in clause 4.1

parent/guardian Director has the meaning given to this term in clause 27.2(a).

Person means a natural person.

Register means the register of Members of the Company.

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

Second Term has the meaning given to this term in clause 27.3.

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

School has the meaning given to it in clause 4.1.

Steiner Principles has the meaning given to this term in clause 4.1(a).

Teacher-Directors has the meaning given to this term in clause 27.2(a).

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

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

3. Replaceable rules

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

Objects

4. Objects

4.1 The Company is established for the object of:

- (a) operating a non-denominational co-educational school and early childhood facility (the School), for children irrespective of their social, religious or cultural background, which:
 - (i) At all times works out of and fosters the educational philosophy and principles of the late Dr. Rudolf Steiner (the **Steiner Principles**) in their application to the education of children and the training of teachers including those that:
 - (A) Respect the individuality of the child,

- (B) Foster self-determination in the child,
 - (C) Develop the child's creative and critical abilities,
 - (D) Emphasise the harmony of nature,
 - (E) Stress co-operation rather than competition,
 - (F) Stress active involvement of learners in a wide range of educational situations;
and
- (ii) Maintains high academic standards consistent with the preceding objects; and
 - (iii) Supports the promotion of the Steiner Principles at all levels and supports organisations and initiatives whose objects altogether or in part are similar to those of the Company, and
- (b) carrying out all other things incidental to or to further the objects set out in (a) above.
- 4.2 The Company may only exercise the powers granted in section 124(1) of the Corporations Act to:
- (a) carry out the Objects set out in this clause; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).
 - (c) found and publicly endow scholarships and bursaries that would be under the guidelines for Deductible Gift Recipient Funds.
 - (i) The fund is managed by members of the mandated Equitable Access Group of the Board of Directors.
 - (d) amend the constitution by special resolution of the members.

Income and property of Company

5. Income and property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the Objects.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

Membership

6. Number of Members

- 6.1 Notwithstanding anything else in this Constitution, membership of the Company is limited to 40 members.

7. Admission

7.1 The Members of the Company are:

- (a) the Members who have consented to become Members and been registered as Members in the Company's register of Members as at the date of adoption of this Constitution; and
- (b) other eligible persons whom the Directors admit to membership in accordance with this Constitution.

7.2 A person is eligible to be admitted to membership if the person supports the Objects and is:

- (a) a parent or guardian of a student enrolled at the School; or
- (b) a member of the School staff;
- (c) both (a) and (b); or
- (d) a member of the community not otherwise eligible but with an interest in contributing to the governance of the School.

7.3 Applications for membership of the Company must:

- (a) be in writing;
- (b) confirm that the applicant supports the Objects;
- (c) state under which paragraph of clause 7.2 the applicant is eligible to be a member;
- (d) be signed by the applicant;
- (e) be nominated by an existing Member, and
- (f) be in a form approved by the Directors in their absolute discretion.

7.4 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:

- (a) accept the application, if such acceptance will not lead to the membership exceeding the limits imposed by clause 6.1;
- (b) reject the application; or
- (c) ask the applicant to give more evidence of eligibility or suitability for membership.

7.5 If the Directors ask for more evidence under clause 7.4, their determination of the application for membership is to be deferred until the evidence is given.

7.6 The Directors do not have to give any reason for rejecting an application for membership.

7.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

8. Ceasing to be a Member

8.1 A Member's membership of the Company will immediately cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;

- (b) if three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and
 - (ii) who has been given at least 14 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (c) if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) had been admitted to membership in accordance with Clause 7.2(a) and they have ceased to be a parent or guardian of a student enrolled at the School;
 - (iv) had been admitted to membership in accordance with Clause 7.2(b) and they have ceased to be a member of School staff;
 - (v) had been admitted to membership in accordance with Clause 7.2(c) and they have:
 - (A) ceased to be a parent or guardian of a student enrolled at the School; and
 - (B) ceased to be a member of School staff.

9. Powers of attorney

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

General meetings

10. Calling general meeting

- 10.1 A general meeting called the annual general meeting must be held at least once in every calendar year.
- 10.2 Any Director may, at any time, call a general meeting.
- 10.3 A Member may:
 - (a) request the Directors to call, and the Directors must call, a general meeting in accordance with section 249D of the Corporations Act as if that section applied to the Company; and

- (b) call and arrange to hold a general meeting in accordance with section 249E or section 249F of the Corporations Act as if those sections, except for the offence and penalty provision in subsection 249E(4), applied to the Company.

11. Notice of general meeting

- 11.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 11.2 A notice calling a general meeting:
 - (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 11.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
 - (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 11.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called under clause 10.3).
- 11.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 47.1 entitled to receive notices from the Company.
- 11.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

12. Member

In clauses 13, 14, 16 and 20, **Member** includes a Member present in person, or by technology which allows each Member to hear and be heard or by proxy or attorney.

13. Quorum

- 13.1 No business may be transacted at a general meeting unless a quorum of Members is present. .
- 13.2 A quorum of Members is at least half of the Members.
- 13.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

14. Chairperson

- 14.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 14.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no chairperson or deputy chairperson; or
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 14.3 If the Directors make no election under clause 14.2 when they are entitled to do so, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 14.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

15. Adjournment

- 15.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 15.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 15.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 15.4 Notice of an adjourned general meeting in accordance with clause 11.1 must be given if a general meeting has been adjourned for more than 21 days but is not required for an adjournment of 21 days or less.

16. Decision on questions

- 16.1 Subject to the Corporations Act, a resolution is carried if consensus has been reached. However, if not possible to reach consensus, a resolution will be carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 16.2 A resolution put to the vote of a meeting is to be decided on a show of hands and voices for those Members participating by technology unless a poll is demanded in accordance with the Corporations Act.
- 16.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 16.4 The demand for a poll may be withdrawn.
- 16.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

17. Taking a poll

- 17.1 If a poll is demanded under clause 16.2, a poll will be taken when and in the manner that the chairperson directs.
- 17.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 17.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 17.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 17.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 17.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

18. Casting vote of chairperson

The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy or attorney.

19. Offensive material

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

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:

- (i) electronic or recording device;
- (ii) placard or banner; or
- (iii) other article,

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

Votes of Members

20. Entitlement to vote

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

21. Objections

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

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

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

22. Votes by proxy

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

22.2 A proxy need not be a Member.

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

22.4 A proxy or attorney may vote on a poll.

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

23. Document appointing proxy

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

23.2 For the purposes of clause 23.1, an appointment received at an electronic address will be taken to be signed by the Member if:

- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
- (b) the appointment has been verified in another manner approved by the Directors.

- 23.3 A proxy's appointment is valid at an adjourned general meeting.
- 23.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 23.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,
even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 23.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

24. Lodgement of proxy

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

25. Validity

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

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

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

Directors

26. Directors

26.1 The initial Directors of the Company are the persons who have consented to act as directors and are registered in the Company's register of Directors as at the date of adoption of this Constitution. Those persons hold office subject to this Constitution.

26.2 A person is not eligible to be appointed or re-appointed as a Director if the person is disqualified from holding, or is otherwise ineligible to hold, office as a Director of the Company under the ACNC Act, the Corporations Act, the Education Act or any other legislation.

26.3 A person is not eligible to be appointed or re-appointed as a Director unless:

- (a) the person is a Member;
- (b) the person has been nominated in writing by two other Members;
- (c) the person consents in writing to be a Director;
- (d) the person undertakes in writing to:
 - (i) undertake any training required under the Education Act, the NES Act, the ACNC Act, the Corporations Act or any other legislation;
 - (ii) undertake any other training reasonably required by the Board from time to time;
 - (iii) notify the Board immediately if they have become ineligible to be a Director;
 - (iv) notify the Board immediately of any circumstance which:
 - (A) affects, or which may affect, whether they are fit and proper to be a Director; or
 - (B) has caused, or which may have caused, the cessation of their Directorship in accordance with Clause 29.
 - (v) provide to the Board whenever reasonably requested by the Board to do so a fit and proper person statutory declaration.

26.4 A person is not eligible to be appointed as a New Director unless:

- (a) the person has provided to the Board a fit and proper person statutory declaration; and
- (b) the Board has decided that the person is a fit and proper person to be appointed to the Board.

26.5 A person is not eligible to be re-appointed as a Director unless:

- (a) the person has provided a statutory declaration to the Board:
 - (i) confirming that since they were appointed there has not been any change in their circumstances relevant to whether they are a fit and proper person; or
 - (ii) providing details of any change in their circumstances; and

- (b) the Board has decided that the person is a fit and proper person to be re-appointed to the Board.

27. Appointment and removal of Directors

27.1 The Company shall have up to twelve (12) Directors and no fewer than six (6).

27.2 The Directors shall comprise:

- (a) Subject to clause 27.2(b) and clause 27.2(c), equal numbers of:
 - (i) persons who are parents or guardians of a student enrolled at the School and who are not members of the School staff (**parent/guardian Directors**); and
 - (ii) persons who are members of the Education Committee (as defined in Clause 39) (**Teacher-Directors**).
- (b) For purposes of calculating whether there are equal numbers of parent/guardian Directors and Teacher-Directors, any Director who is both a member of the Education Committee and a parent or guardian of a student enrolled at the School, shall be counted as a Teacher-Director.
- (c) Such other persons as the Board of Directors from time to time shall determine and appoint to the Board for a term expiring at the next General meeting. This power to appoint Directors may be exercised even if the exercise of the power results in a lack of equality of numbers between parent/guardian Directors and Teacher-Directors.

27.3 Subject to Clause 27.4, the terms of Directors appointed at a general meeting by a resolution under Clause 27.11(a) start and end as follows:

- (a) A Director's term starts at the end of the general meeting at which the Director is appointed.
- (b) The first term of a Director who has not been appointed as a Director by a resolution at any of the previous two annual general meetings (a **New Director**), ends at the end of the next annual general meeting after the meeting at which they were appointed (**Initial Term**).
- (c) If a New Director is reappointed at the end their Initial Term, their second term (**Second Term**) ends at the end of the second annual general meeting after their reappointment. Directors who have been New Directors are eligible for reappointment after their Initial and Second Terms.
- (d) The term of appointment or re-appointment of a Director other than a New Director, ends:
 - (i) in accordance with any resolution of the Company under clause 27.11 when the Director was appointed or re-appointed either:
 - (A) at the end of the second annual general meeting after they were last appointed:
or
 - (B) at the end of the third annual general meeting after they were last appointed.
 - (ii) if no date for the end of the term of appointment was set when they were appointed, at the end of the third annual general meeting after they were last appointed.

27.4 At each annual general meeting, at least one-quarter of the Directors must retire from office. The calculation of the one-quarter of Directors retiring for these purposes:

- (a) shall include each Director:
 - (i) who chooses to resign with effect at the annual general meeting in accordance with clause 29(c);
 - (ii) whose Initial Term as a Director under clause 27.3(b) is expiring;
 - (iii) whose Second Term as a Director under clause 27.3(c) is expiring;
 - (iv) whose appointment is terminating in accordance with clause 27.3(d);
 - (v) whose appointment is terminating in accordance with clause 27.7; or
 - (vi) whose appointment is terminating in accordance with Clause 30;
- (b) but shall not include a Director whose appointment under clause 27.2(c) is expiring.

27.5 If the one-quarter retirement requirement in clause 27.4 is not met by resignations and expiry of terms of appointment referred to in clause 27.4(a), then the Directors who must retire at each annual general meeting under clause 27.4 will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.

27.6 Subject to clauses 27.7 retiring Director including a Director whose appointment has been terminated by the operation of clause 27.4 is eligible for re-election or re-appointment.

27.7 Subject to clause 27.8, any person who has been a Director for nine consecutive years is not eligible to be a Director for a period of two years after those nine years' service.

27.8 The Directors may, by a two-thirds majority, resolve that a person is eligible to be a Director if that person would otherwise not be eligible solely by operation of clause 27.7.

27.9 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.

27.10 Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and commence processes in accordance with section 203D of the Corporations Act which may result in removal of the Director from office under clause 27.11(c) or annul the suspension and reinstate the Director.

27.11 Subject to this clause 27, the Company may, by resolution passed in general meeting:

- (a) appoint and re-appoint Directors and, when appointing or re-appointing Directors other than New Directors, may specify that the appointment or re-appointment is to end;
 - (i) at the end of the second annual general meeting after the appointment or re-appointment: or
 - (ii) at the end of the third annual general meeting after the appointment or re-appointment.

The reason for giving the Company in general meeting the discretion to choose between two and three year appointments is to give the Company the power to manage appointments to avoid having blocks of Directors retiring at the same time with associated risks of loss of knowledge and disorderly transition.]

- (b) increase or reduce the number of Directors;

- (c) remove any Director before the end of the Director's period of office, subject to the provisions of section 203D of the Corporations Act; and
- (d) appoint another person in the place of a Director removed in accordance with Clause 27.11(c).

27.12 A person appointed under clause 27.11(c) will hold office for the period for which the Director replaced would have held office if the Director had not been removed.

27.13 A resolution passed at a general meeting appointing or confirming the appointment of 2 or more directors is void unless:

- (a) the meeting has resolved that the appointments or confirmations may be voted on together; and
- (b) no votes were cast against the resolution.

27.14 Clause 27.13 does not affect:

- (a) a resolution to appoint directors by an amendment to the company's constitution (if any); or
- (b) a ballot or poll to elect 2 or more directors if the ballot or poll does not require members voting for 1 candidate to vote for another candidate.

27.15 For the purposes of Clause 27.14(b), a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.

28. Retirement

29. Vacation of office

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

- (a) is prohibited by or under the Corporations Act, the Education Act 1900 (NSW), the ACNC Act or any other legislation from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company in accordance with clause 27.11(c);
- (e) is absent from Directors' meetings for 6 consecutive months without leave of absence from the Directors;
- (f) is or becomes a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW);
- (g) ceases to be a Member of the Company;
- (h) was a Teacher-Director when appointed and ceases to be a member of the Education Committee; or

- (i) was a parent/ guardian Director when appointed and ceases to be a parent or guardian of a student enrolled at the School or becomes a member of the School staff.

30. Casual Directors

- 30.1 Subject to clause 27.1, the Directors may appoint any Member who is otherwise eligible as a Director to fill a casual vacancy other than a casual vacancy brought about by a Company resolution under clause 27.11(c).
- 30.2 The Directors must exercise the power in clause 30.1 consistently with clause 27.2 and, in particular:
 - (a) must appoint a member of the Education Committee to replace a Teacher-Director; and
 - (b) must appoint a person who is a parent or guardian of a student enrolled at the School and who is not a member of the School staff to replace a parent/guardian Director.
- 30.3 A Director appointed under clause 30.1 ceases to be a Director at the conclusion of the next annual general meeting of the Company but is eligible for re-election or re-appointment as a Director.

31. Powers and duties of Directors

- 31.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 31.2 Without limiting the generality of clause 31.1, the Directors may exercise all the powers of the Company to:
 - (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 31.3 Directors must follow policies and procedures as outlined in the Mumbulla School Governance Manual, which will be issued to each director on appointment.

32. Directors' meetings

- 32.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 32.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 32.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.

- 32.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 32.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 32.6 Subject to clause 35, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 32.7 Clauses 32.4 to 32.5 apply to meetings of Committees as if all committee members were Directors.
- 32.8 The Directors may meet together, adjourn and regulate their meetings as they think fit. Questions arising at any meeting shall be decided by discussion and consensus. In the case of a lack of consensus, the directors shall decide by casting a vote.
- 32.9 A quorum for meetings of Directors is half of the appointed Directors, plus one (1) at least two of whom must be Teacher-Directors.
- 32.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 32.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

33. Decision on questions

- 33.1 Questions arising at a meeting of Directors are to be decided by consensus or failing this, a majority of votes of the Directors present and voting and, subject to clause 35 and 33.2, each Director has one vote.
- 33.2 Resolution of Disputes are handled as per the procedure in the in the Company's Governance Manual.

34. Payments to Directors

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

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company;
- (d) of any honorarium and

- (e) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

35. Directors' interests

- 35.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 35.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 35.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 35.4 Subject to clause 34, a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 35.5 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors and that such disclosure must be recorded in the minutes of the meeting.

A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- 35.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for

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

36. Remaining Directors

- 36.1 The Directors may act even if there are vacancies on the board.
- 36.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
 - (a) appoint a Director; or
 - (b) call a general meeting.

37. Chairperson

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

38. Delegation

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

39. The Education Committee

- 39.1 There shall be an Education Committee, also called the College of Teachers (**College**), consisting of educational staff at the School.
- 39.2 The College of Teachers holds the principalship of the School.

- 39.3 The College is responsible for all educational matters including:
- (a) Implementing and administering the curricula, programmes, practices, and school policies;
 - (b) Making recommendations to the Directors and reporting to the Directors on all educational matters including: practices, programmes, policies, enrolments, and facilities;
 - (c) Specifying the design and furnishing of grounds and buildings acquired or erected or to be erected.
- 39.5 The College shall meet weekly. The quorum for the College shall be determined by the members of the College and Board will be informed of the method for such determination. The quorum will be noted in the Governance Manual and updated as required. Decisions shall be passed by consensus.
- 39.6 The policy of growth will be established by College and the Board of Directors.
- 39.7 The Board of Directors shall delegate to the College of Teachers the processes of appointment, appraisal and dismissal of educational staff. The College of Teachers shall inform, advise, and make recommendations to the Board of Directors in relation to these matters. The Board is ultimately responsible for the employment of, and duty of care to, all staff employed within the school.
- 39.8 The College will have input into all policies affecting the wellbeing of the child including Workplace, Health and Safety matters.
- 39.9 The College will have input into Fundraising, Public Relations and Community activities to ensure that these reflect the educational ethos of the School.

40. Written resolutions

- 40.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 40.2 For the purposes of clause 40.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 40.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 40.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 40.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

41. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or

(b) a person appointed to one of those positions was disqualified,

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

42. Minutes and Registers

42.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 40;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 35.

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

42.3 The Company must keep all registers required by this Constitution and the Corporations Act, including a register of Members (**Register**), including the member's original membership application.

43. Appointment of attorneys and agents

43.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with clause 43.2 to be the attorney or agent of the Company:

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

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

- (a) any company;
- (b) the members, directors, nominees or managers of any company or firm; or
- (c) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

43.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

- 43.4 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

44. Secretary

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

Inspection of records

45. Inspection of records

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

Notices

46. Service of notices

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

(b) on the day after its despatch.

- 46.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 46.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 47.
- 46.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 46.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 46.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

47. Persons entitled to notice

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

Audit and accounts

48. Audit and accounts

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

Winding up & revocation of endorsement

49. Winding up & revocation of endorsement

- 49.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year,
undertakes to contribute to the property of the Company for the:
 - (c) payment of debts and liabilities of the Company (in relation to clause 49.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and

(d) adjustment of the rights of the contributories amongst themselves,
the amount of \$20.00.

49.2 Subject to clause 49.3, if any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to an entity which, by its constitution, is:

- (a) required to pursue similar charitable purposes to those pursued by the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors (other than in circumstances contemplated by clause 35),

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

49.3 If any fund for the operation of which the Company is endorsed as a deductible gift recipient for the purpose of Subdivision 30BA of the Income Tax Assessment Act 1997 (**ITAA 1997**), is wound up or if the endorsement of the Company as a deductible gift recipient for the operation of such fund is revoked, any surplus assets of the gift fund required by section 30-130 of ITAA 1997 to be maintained by the Company remaining after the payment of liabilities attributable to it, shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made under Division 30 ITAA 1997, and which is required to pursue similar charitable purposes to those pursued by the Company

Indemnity

50. Indemnity

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

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

50.2 The amount of any indemnity payable under clauses 50.1(a) or 50.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

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

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

Transition

51. Transition

- 51.1 For purposes of this clause, “amendments” mean the amendments made at the 2019 annual general meeting or, if the meeting is adjourned and reconvened, at the reconvened meeting.
- 51.2 Subject to clause 51.3, the amendments commence the day after the conclusion of the 2019 annual general meeting or, if the meeting is adjourned and reconvened, the day after the conclusion of the reconvened meeting.
- 51.3 The amendments to clauses 7 and 8 do not apply to the membership of persons who are Members at the time the amendments otherwise come into effect. Clauses 7 and 8 in the form which was in operation prior to the amendments continue to apply to the membership of persons who are Members at the time the amendments otherwise come into effect.
- 51.4 If at the time that the amendments commence, a member of staff who is not a member of the Education Committee is a Director:
- (a) the person may continue to hold office as a Director notwithstanding amended clause 27.2(a) and shall be counted as a parent/guardian Director for purposes of the equality requirement in clause 27.2(a);
 - (b) amended clause 29(i) shall not apply to their Directorship;
 - (c) if there is a casual vacancy in their position, amended clause 30.2 shall apply as if they were a parent/guardian Director.