
Constitution

Xavier College Ltd

(ACN 621 514 172)

(A public company limited by guarantee)

Dated: 1 May 2018

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Preamble

- (a) The Province undertakes a range of education ministries in Australia in a spirit of collaboration with the families of students and all staff, both Jesuit and lay, who share the Jesuit sense of mission.
- (b) The Jesuit education ministry operates through Jesuit colleges, all of which share the same values and principles.
- (c) Each Jesuit college in Australia is conducted by an incorporated entity which operates under its respective constitution and, from a structural perspective, sits under Jesuit Education Australia.
- (d) Jesuit Education Australia has been established to ensure and enable a secure future for high quality Catholic education in the Jesuit tradition within Australia. It oversees the implementation of and ongoing adherence to the governing Policies and Procedures of the Province relating to the operations of the colleges and The Statutes on Religious Poverty in the Society of Jesus-Instruction on the Administration of Goods (IAG).
- (e) The directors of each Jesuit college are responsible not only for strategic direction and compliance with laws and government regulations, but also for custodianship of the Jesuit identity and ethos of the organisation, and promotion of the Province's mission and goals. Hence, the directors operate in the spirit of Jesuit governance which is fraternal, spiritual and discerning. Such governance means that the Company's constitution, governance charters, operating processes and procedures, and strategic planning - reflect the spirituality of Saint Ignatius' Spiritual Exercises and the Ignatian tradition, and be in conformity with the doctrine, rites and practices of the Catholic Church and with authorised Jesuit documents - the Constitutions of the Society of Jesus, their Complementary Norms, Decrees of General Congregations, the Australian Jesuit Province Policies and Procedures for Apostolic Work (June 2006) and other documents relating to the education mission.
- (f) The Province has issued a commissioning document to Jesuit Education Australia and to the Colleges commissioning them to undertake the education works on behalf of the Province.

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

Part A – Preliminary matters

1 Defined terms, interpretation and replaceable rules

- (a) Schedule 1 sets out the:
 - (i) defined terms used in this constitution; and
 - (ii) rules of interpretation that apply to this constitution.
- (b) The replaceable rules contained in the *Corporations Act* from time to time do not apply to the Company.

2 Nature and powers of the Company and liability

- (a) The Company is a public company limited by guarantee.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of ten dollars to the assets of the Company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the Company exceed its assets. The liability of each member is limited to making such contribution and no more.
- (c) The Company has all of the powers of a natural person and of a body corporate, including those set out in the *Corporations Act*.

Part B – Purpose

3 Purpose of the Company

The purpose of the Company is to provide, advance and promote Catholic education by, among other things:

- (a) ensuring that the Company conducts an independent Catholic school in the Jesuit tradition of such a character as may from time to time be specified by the Member;
- (b) operating, maintaining and managing any preschool and out of school hours programs, child minding and other children's services; and
- (c) doing all other things incidental to or necessary for the furtherance of the purposes of the Company listed above.

(Charitable Purpose)

Part C – Members and membership

4 Membership

4.1 Sole member of the Company

The sole member of the Company is Jesuit Education Australia (**Member**).

4.2 Membership is transferable

The Member may transfer its membership of the Company and the associated rights to another Province entity for the purpose of an internal restructure so long as the incoming member first agrees in writing:

- (a) to become a member of the Company;
- (b) to be bound by this constitution; and
- (c) to the amount of the guarantee specified at rule 2(b).

4.3 Membership fees

- (a) The joining fee for membership of the Company is \$0 or such other amount as may be determined by the Member from time to time.
- (b) The annual membership fee for membership of the Company is \$0 or such other amount as may be determined by the Member from time to time.

4.4 Resolutions of single member company

For so long as the Company has a single member, that member may pass a resolution by recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

4.5 Member rights and powers

The Member has all the rights and powers of an individual and a body corporate and must exercise its rights and powers in accordance with:

- (a) this constitution (including the requirements set out in Schedule 3); and
- (b) its own constitution.

Part D – Not-for-profit

5 No profits for members

5.1 Transfer of income or property

Subject to rules 5.2 and 5.3, the assets and income of the Company must be applied solely in furtherance of its Charitable Purpose and no portion of its income or assets may be paid or transferred, directly or indirectly, to the Member.

5.2 Permitted payments

Subject to rule 5.3, the Company may, with the approval of the Directors, make payment to the Member:

- (a) by way of reasonable and proper remuneration for any goods supplied or services rendered to the Company (including remuneration as a consultant);
- (b) by way of interest on money lent to the Company by the Member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the Company's bankers on overdrawn accounts;
- (c) by way of reasonable and proper rent for premises let by the Member to the Company;
- (d) by way of a license over land or any other asset (including a licence to operate as a Jesuit college);
- (e) for authorised out-of-pocket expenses reasonably and properly incurred by the Member in connection with the affairs of the Company; and
- (f) by way of distribution, but only if the Member is an Eligible Recipient.

5.3 Operation of schools

Where the Company is functioning in its capacity as an operator of any primary or secondary school, all of the Company's assets (in so far as they relate to that school) or income (in so far as it arises from the operation of that school, including revenue derived from the Commonwealth or a state Government specifically for the operation of that school) must:

- (a) only be used for the operation of that school; and
- (b) not be used in any way which results in the school operating 'for profit' and which results in the school ceasing to be operated on a not-for-profit basis for the purposes of any applicable State or Australian Commonwealth legislation.

Part E – Directors, Secretary, Principal and Rector

6 Directors

6.1 Number of directors

- (a) The minimum number of Directors is three. The maximum number of Directors is 12 or such other number as determined by the Member in accordance with its own constitution.
- (b) If at any time there are less than three Directors, the remaining Director or Directors must:
 - (i) immediately notify the Member that there are less than three Directors; and
 - (ii) if the Member fails to appoint a sufficient number of Directors to reach or exceed three Directors within a reasonable time in the circumstances, appoint such number of Directors as are required to bring the number of Directors to three.

6.2 Appointment and removal of Directors

- (a) So long as doing so does not exceed the maximum number of Directors permitted under rule 6.1, the Member may, in accordance with rule 4.4:
 - (i) appoint any natural person to be a Director; and
 - (ii) may, at the time of appointment, determine that Director's term of office.
- (b) A person is eligible for appointment as a Director in accordance with rule 6.2(a) if that person:
 - (i) gives the Company his or her signed consent to act as a Director; and
 - (ii) is not ineligible to be a director under the *Corporations Act* or the *ACNC Act*.
- (c) Each Director is to remain as a Director until he or she resigns, his or her term of appointment (if any) expires, or he or she is removed as a Director in accordance with the law and this constitution. For the avoidance of doubt, a previous Director is, subject to the law and this constitution, eligible for reappointment at any time.

- (d) The Member may, in accordance with its constitution, remove and replace one or more Directors. For the avoidance of doubt, this includes the removal and replacement of all Directors at the same time.
- (e) None of the following people are permitted to be, and must not be appointed as, a Director:
 - (i) the Principal;
 - (ii) the Rector; and
 - (iii) any employee of the Company.

6.3 Ceasing to be a Director

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any Director becomes vacant if the Director dies or, unless the Directors otherwise resolve to confirm the Director's position, if the Director:
 - (i) is, due to physical or mental impairment, unable to properly perform his or her duties as a Director as determined by a suitably qualified professional, acting reasonably;
 - (ii) becomes bankrupt;
 - (iii) is convicted of an indictable offence;
 - (iv) is or becomes a registerable offender for the purposes of the *Sex Offenders Registration Act 2004* (Vic); or
 - (v) is not present at meetings of the Directors for a continuous period of six months without leave of absence from the Directors.
- (b) Notwithstanding anything in rule 6.3(a), a Director may resign from office by providing written notice of such to the Company addressed to either the Chair or the Secretary.

6.4 Payments to Directors

- (a) Directors must not receive any payment for acting as a director but, subject to rule 6.4(b), any director is entitled to be:
 - (i) reimbursed for all reasonable authorised travelling and other expenses properly incurred in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees; and
 - (ii) paid for any services rendered to the company in a professional or technical capacity other than as a director provided that the amount is not more than what is reasonable for the work done.
- (b) Notwithstanding anything else in this constitution, a payment of any kind which is permitted to be paid to a Director by this constitution can be made by the Company to a Director only if that payment:

- (i) does not contravene any directives, policies, procedures and protocols as determined by the Member from time to time relating to payments to Directors; and
- (ii) is approved by the Directors or such other person or persons to whom the Directors may have delegated such authority.

6.5 Interested Directors

- (a) A Director may be a director or other officer of:
 - (i) a related body corporate;
 - (ii) a body corporate promoted by the Company; or
 - (iii) a body corporate in which the Company is interested, as shareholder or otherwise.
- (b) No contract or other arrangement made between a Director and the Company is void merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- (c) Each Director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the Directors.
- (d) Where a Director has a material personal interest in a matter to be considered at a meeting, that Director must not be present while the matter is being considered at the meeting or vote on the matter, unless the Directors who do not have a material personal interest pass a resolution in accordance with the law which permits that Director to do so.
- (e) Except where the personal interest is material, a Director who has a personal interest in an arrangement may, despite that interest:
 - (i) be counted in determining whether a quorum is present at any meeting of Directors considering that arrangement; and
 - (ii) vote in respect of the arrangement or any matter arising out of it.

6.6 Powers and duties of Directors

- (a) Subject to the requirements set out in Schedule 2, the Directors are responsible for managing the business of the Company and may exercise all the powers of the Company that are not required by the law or this constitution (including those matters described at Schedule 2) to be exercised by the Member or the Provincial.
- (b) Without limiting the powers and duties under rule 6.6(a), the Directors:
 - (i) **Jesuit school:** must ensure the Company conducts an independent Catholic school in the Jesuit tradition of such character as may from time to time be specified by the Member;
 - (ii) **Formation:** must be supportive of the mission and values of the Catholic Church and the Society of Jesus and engage with formative experiences pertaining to this mission;

- (iii) **Provision of information:** must provide the Member with all information, material and documents as the Member may request from time to time and which may include minutes of Directors' meetings and of committee meetings, accounts, proposed and confirmed budgets, statements of annual fees, statements of proposed changes of property, new buildings, and major renovation and maintenance operations and statements of proposed major administrative, curriculum, pastoral and religious changes. Requests for information, material and documents may be contained within directives, policies, procedures and protocols as determined by the Member from time to time and may be made on a standing on-going basis or as a one-off request;
- (iv) **Principal:** are:
 - (A) subject to the approval by the Member, responsible for the appointment and removal of the Principal;
 - (B) responsible for determining the terms and conditions of the employment of the Principal; and
 - (C) responsible for the management, performance and disciplining of the Principal.
- (v) **Rector:** must ensure that the Rector properly performs his role as rector of the School and notify the Provincial if any matters of concern arise;
- (vi) **Appointing and terminating Company staff:** are responsible for appointing and terminating all teaching, non-teaching and administrative staff of the Company, acknowledging that this responsibility may be delegated to the Principal;
- (vii) **Use of standard agreements:** when engaging a supplier, an employee, consultant or volunteer, must ensure that any form of agreement provided by the Member for that purpose is used, and that such agreement is not amended or otherwise modified without the prior written approval of the Member. Written approval may be contained in directives, policies, procedures and protocols in relation to the engagement of suppliers and personnel as provided by the Member from time to time;
- (viii) **Tuition and boarding fees:** are responsible for fixing the tuition and boarding fees payable in relation to students' attendance at the School so long as such rules are consistent with this constitution and in accordance with any directives, policies, procedures and protocols that the Member may issue from time to time;
- (ix) **Operation and management of the Company:** may, in consultation with the Principal, make, revoke and amend rules for the operation and management of the Company so long as such rules are consistent with this constitution and in accordance with any directives, policies, procedures and protocols that the Member may issue from time to time; and
- (x) **Insurance:** must keep in force such policies of insurance as would ordinarily be desirable for a company undertaking the types of activities conducted by the Company (including operating a school) and such other insurance as the Member may direct from time to time.

- (c) Subject to any binding agreement to the contrary or unless otherwise required by law, the Directors must not dismiss any member of the Province, including the Rector, from any appointment with the Company without the prior written approval of the Provincial.
- (d) If the Company has only one member and that single member is a body corporate, any Director may act in the best interests of that body corporate member in a way permitted by the law.

6.7 Directors' meetings

The Directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

6.8 Convening of meetings of Directors

The Member, the Chair or any three or more Directors may convene a Directors' meeting.

6.9 Notice of, and attendance at, Directors' meetings

- (a) A notice of a Directors' meeting must:
 - (i) be given to the Provincial, the Principal, the Rector (if any), the Member and each current Director, other than a Director on leave of absence approved by the Directors, in a way permitted by rule 14;
 - (ii) be given with sufficient time for the Directors to properly review and consider the material provided with the notice and the matters arising from it;
 - (iii) specify the time and place of and, if relevant, the form of technology for, the meeting; and
 - (iv) state the nature of the business to be transacted at the meeting.
- (b) A resolution passed at a Directors' meeting is not invalid just because a person entitled to receive notice under rule 6.9(a), did not receive notice of the meeting provided that:
 - (i) the notice was not received because of accident or error;
 - (ii) before or after the meeting, the Director notifies the Company of his or her agreement to the resolution; or
 - (iii) the Director attended the meeting.
- (c) The Member (through its Representative) and the Provincial (or a representative nominated by the Provincial from time to time) is each entitled to attend any meeting of the directors and may speak, but not vote, at any meeting.
- (d) The Principal is entitled to attend any meeting of Directors' other than meetings called to review the Principal's salary or conditions of appointment, the performance by the Principal of the Principal's duties, or to address a dispute between the Principal and the Rector, unless the Principal is invited by the Chair to attend such a meeting. The Chair may also direct the Principal not to attend other meetings (either in whole or in part) if the Directors determine that doing so is in the best interests of the Company.

- (e) The Rector is entitled to attend any meeting of Directors' other than meetings called to review the Rector's conditions of appointment, the performance by the Rector of the Rector's duties or to address a dispute between the Principal and the Rector, unless the Rector is invited by the Chair to attend such a meeting. The Chair may also direct the Rector not to attend other meetings (either in whole or in part) if the directors determine that doing so is in the best interests of the Company.
- (f) The Principal and the Rector may each speak, but not vote, at Directors' meetings.
- (g) The Directors may resolve to invite such advisers as they wish to attend their meetings. Such advisers have the right to speak, but not to vote, at Directors' meetings.

6.10 Quorum for Directors' meetings

- (a) No business may be transacted at a Directors' meeting unless there is a quorum of Directors at the time the business is dealt with.
- (b) Unless otherwise resolved by the Member, a quorum consists of 50% in number of current Directors. If 50% is not a whole number, then the number is to be rounded up.
- (c) For the avoidance of doubt:
 - (i) a Director is present at a meeting if participating by technological means such as by telephone and can therefore be counted towards quorum; and
 - (ii) neither the Rector nor the Principal is to be counted towards quorum.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved.

6.11 Chair and Deputy-Chair

- (a) The Member must appoint a Director to the office of chair and may specify that person's term as chair (**Chair**).
- (b) The Member may appoint a different Director to the office of deputy-chair and may specify that person's term as deputy-chair (**Deputy Chair**).
- (c) The Member may remove and replace the Chair and Deputy-Chair (if any) with another Director at any time. Removal of a person from the position of Chair or Deputy-Chair does not in and of itself result in that person ceasing to be a Director.
- (d) A person must only fill the office of Chair or Deputy-Chair for so long as that person is a Director.
- (e) The Chair must preside as chair at each Directors' meeting unless the Chair is unable to attend or unwilling to act.
- (f) If the Chair is unable to attend a Directors' meeting or unwilling to act, then the Deputy-Chair, if one has been appointed, must preside as chair of that meeting.

- (g) If both the Chair and Deputy-Chair are unable to attend a Directors' meeting or are unwilling to act, then the Directors present at that meeting must elect a person from among their number to preside as chair for that meeting.

6.12 Decisions of Directors

- (a) A Directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under the law and this constitution.
- (b) Questions arising at a Directors' meeting are to be decided by a majority of votes cast by the Directors present and a decision of that kind is for all purposes a determination of the Directors.
- (c) If there are an equal number of votes cast for and against a resolution at a Directors' meeting, then the chair may cast a second vote.

6.13 Decisions without meetings

Directors may pass resolutions and otherwise make decisions outside of a Directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of Director resolutions without meetings as determined by the Member from time to time.

6.14 Committees

- (a) So long as doing so is consistent with any directives, policies, procedures and protocols provided by the Member and with any delegations the Provincial may have made in accordance with Jesuit Education Delegations, the Directors may resolve to:
 - (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the Directors which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.
- (c) The Directors may continue to exercise all of their powers despite any delegation made under this rule.

6.15 Delegation to individuals

- (a) So long as doing so is consistent with any directives, policies, procedures and protocols of the Member and the Provincial and with any delegations the Provincial may have made in accordance with Jesuit Education Delegations:
 - (i) the Directors may resolve to delegate any of their powers to one or more Directors, or to one or more employees, or to one or more members of the Society of Jesus; and
 - (ii) the directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (b) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the Directors.
- (c) The Directors may continue to exercise all of their powers despite any delegation.
- (d) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

6.16 Validity of acts

An act done by a Director or by a meeting of the Directors or a committee attended by a Director is not invalidated just because:

- (a) of a defect in the appointment of the Director;
- (b) the person is disqualified from being a Director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the Directors or committee, as the case may be, when the act was done.

7 Secretary

- (a) the Directors must appoint a secretary who may be, but does not need to be, a Director (**Secretary**).
- (b) The appointment of the Secretary may be for the period, on the conditions and, subject to rule 7(d), at the remuneration the Directors determine.
- (c) Subject to any contract between the Company and the Secretary, the Secretary may be removed or dismissed by the Directors at any time with or without cause. If that person is a Director, such removal or dismissal does not in itself remove that person from office as a Director.
- (d) A Director may not be remunerated in his or her capacity as Secretary.
- (e) The duties of the Secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by the law are established and properly maintained;

- (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attend, any meetings of the Directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as the Secretary is not invalidated just because:
- (i) of a defect in the person's appointment as the Secretary; or
 - (ii) the person is disqualified from being a secretary,
- if that circumstance was not known by the person when the act was done.

8 Provincial

- (a) Subject to rule 8(b), the Provincial may at any time give to the Directors, and the Directors must comply with, guidance and direction in such matters as he deems appropriate to ensure the Company has the character of a Catholic school in the Jesuit tradition and to ensure that all religious worship and instruction is carried on in accordance with the doctrine, rites and practices of the Catholic Church.
- (b) The Provincial may delegate such of his powers described at rule 8(a) to the Member as he so determines from time to time, in which case the Member may exercise those powers to the extent of that delegation.
- (c) The Provincial is responsible for resolving disputes and complaints as set out in rule 11.
- (d) The Provincial may at any time provide a member of the Society of Jesus for duties at the School and may at any time recall them to other duties.
- (e) The Provincial may appoint a Rector of the School at any time and may withdraw that appointment at any time.

Part F – Winding up and loss of DGR endorsement

9 Winding up

- (a) Before the Company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up provisions.
- (b) If upon the winding up or dissolution of the Company there remains, after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must be transferred to the Member but only if the Member is an Eligible Recipient.
- (c) If the Member is not an Eligible Recipient, then the Surplus Assets must not be paid to, or distributed to, the Member and must instead be given or transferred to one or more Eligible Recipients.

- (d) The decision as to which Eligible Recipient is or Eligible Recipients are to be given the Surplus Assets:
 - (i) is to be determined by the Member at or before the winding up or dissolution of the Company; or
 - (ii) if required, by the Court.
- (e) Any part of the Surplus Assets consisting of funds supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to, or otherwise dealt with in the way directed by, the department or authority that supplied it.

10 Loss of endorsement

- (a) If the endorsement of the Company as a deductible gift recipient is revoked, the following assets remaining after the payment of the Company's liabilities must be transferred to one or more Eligible Recipients to which income tax deductible gifts can be made:
 - (i) deductible gifts of money or property received for the purpose of the Company;
 - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the purpose of the Company; and
 - (iii) money received by the Company because of such deductible gifts and contributions.
- (b) The decision about which Eligible Recipient is (or Eligible Recipients are) to receive funds under rule 10(a) is to be made by the Member.

Part G – Disputes and administrative matters

11 Disputes

- (a) Subject to rule 11(c), the Provincial is responsible for resolving complaints and disputes:
 - (i) between Directors or between Directors and the Principal referred to him by the Directors or the Principal or that he otherwise becomes aware of;
 - (ii) any dispute about the nature of the practices of religious worship and instruction and whether such practices are in accordance with the doctrine, rites and practices of the Catholic Church;
 - (iii) any dispute about whether the Principal is a practising member of the Catholic Church; and
 - (iv) any other dispute that he, due to holding the office of Provincial, is responsible for managing.

(Dispute)

- (b) The Provincial may, without the need to give any reasons:
 - (i) dismiss a Dispute;
 - (ii) investigate or otherwise deal with a Dispute in such manner as he determines; and
 - (iii) direct the Member to suspend or terminate a Director's appointment and make such other decision with respect to a Dispute (including the disciplining of Directors as he so determines),

and the decision is final.

- (c) The Provincial may delegate such of his powers described at rule 11(b) to the Member as he so determines from time to time, in which case the Member may exercise those powers to the extent of that delegation.

12 Minutes and records

12.1 Minutes

The Directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) resolutions and declarations of the Member;
- (b) meetings and resolutions of Directors; and
- (c) meetings and resolutions of committees.

12.2 Inspection of records

- (a) Subject to the law, the Directors must make the minute books, accounting records and other documents of the Company available to the Member upon the Member's request (as the case may be).
- (b) The Company must establish and administer all registers required to be kept by law and the Member must provide the Company with such information as is required for the Company to comply with this rule. If events occur which would cause the information contained in a register maintained by the Company to be inaccurate, the Member must notify the Company in writing of the change within 21 days of the date of such change occurring.
- (c) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (d) The Company must keep all financial and other records required by law.

13 Indemnity and insurance

- (a) To the extent permitted by law, the Company indemnifies its Directors and other officers (both current and past) for all losses or liabilities incurred by the person as a Director or other officer of the Company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

- (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as a Director or other officer of the Company; and
 - (ii) operates only to the extent that the loss or liability is not paid by insurance.
 - (c) To the extent permitted by law, the Company may take out and pay for insurance for the benefit of its Directors and other officers (both current and past) against any liability incurred by the person as a Director or other officer of the Company including, but not limited to, a liability for negligence or for legal costs.
 - (d) To the extent permitted by law, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the Company to give effect to the rights of the person under this rule 13, on any terms and conditions that the Directors think fit. Any agreement may also give the person rights to inspect and obtain copies of the books of the Company for the purposes, and on such other terms and conditions, as the Directors decide.
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14 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
 - (b) any directives, policies, procedures and protocols relating to the giving and receiving of notices, documents and other communications as determined by the Member from time to time.
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15 General

- (a) **Common seal:** unless otherwise required under any directive, policy, procedure or protocol relating to the common seal as may be issued by the Member from time to time, the Company may choose whether it has a common seal. If the Company does have a common seal it must be kept and used in accordance with the law and with that directive, policy, procedure or protocol.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 Dictionary

1 Defined terms

In this constitution unless the context otherwise requires:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Chair means the chair of the Company as appointed under rule 6.11(a).

Charitable Purpose has the meaning given in rule 3.

Company means Xavier College Ltd.

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

Deputy-Chair means the deputy-chair of the Company as may be appointed under rule 6.11(b).

Director means a director of the Company.

Eligible Recipient means an organisation in Australia that:

- (a) has one or more objects or purposes similar to the Charitable Purpose and agrees to use any distribution provided to it by the Company to further such objects or purposes;
- (b) is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (c) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the Company; and
- (d) if the Company is endorsed as a deductible gift recipient for the purpose of any Commonwealth income tax laws, is likewise endorsed as a deductible gift recipient.

IAG means the Society of Jesus publication named 'Instruction on the Administration of Goods' as updated or revised from time to time.

Jesuit Education Australia means the company having the ACN 24 620 192 136 and having as its name Jesuit Education Australia Ltd or such other name as it may resolve.

Jesuit Education Delegations means the 'Instruments of Delegation – Jesuit Education Delegations' created by the Provincial (as amended from time to time).

Member has the meaning given at rule 4.1.

Principal means the person filling the position of principal of the School from time to time, including a person acting in this position.

Province means the Australian Province of the Society of Jesus (ABN: 19 179 772 790).

Provincial means the member of the Society of Jesus from time to time holding the office of Major Superior of the Province or, in the case of absence or indisposition, the acting Provincial or, in the event of the office of the Provincial being vacant at any time, the member of the Society of Jesus for the time being performing the duties of Provincial.

Rector means a member of the Society of Jesus who has overall responsibility for ensuring the ethos and identity of the School and who gives authentic witness to the Catholic Church and the Society of Jesus including a member of the Society of Jesus missioned to act in the position from time to time.

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act, which is to apply regardless of whether that body corporate would ordinarily be governed by the Corporations Act.

School means the school known as [Xavier College] governed and operated in accordance with this constitution.

Secretary means the secretary of the Company appointed under rule 7(a).

Society of Jesus means the universal Order of the Jesuits.

Surplus Assets has the meaning given in rule 9(b).

2 Interpretation

- (c) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (d) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution.
- (e) Unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and

- (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (f) For so long as the Company has only one member then, unless the contrary intention appears:
 - (i) a reference in a rule to the "members" is a reference to that member; and
 - (ii) a rule which confers power or imposes an obligation on the members to do a particular act or thing confers that power or imposes that obligation on that member.

Schedule 2 Requirements relating to certain decisions of Directors

Matter	Rule	Description/requirement
Confirming a Director's position	6.3(a)	The Directors must not confirm a Director's position under rule 6.3(a) without the Member's prior written approval
Appointing and removing the Principal	6.6(b)(iv)(A)	The Directors must ensure that the Company does not employ (or otherwise appoint), suspend or terminate the Principal without the Member's prior written approval.
Use of agreements	6.6(b)(vii)	The Directors must ensure that the Company does not amend or otherwise modify a standard form agreement provided by the Member for engaging a supplier, an employee, consultant or volunteer without the Member's prior written approval.
Dismissing a member of the Society of Jesus (including the Rector)	6.6(c)	Subject to any binding agreement to the contrary or unless otherwise required by law, the Directors must not dismiss any member of the Society of Jesus, including the Rector, from any appointment with the Company without the Provincial's prior written approval.
Sell or exchange property		The Directors must ensure that the Company does not sell or exchange property, and does not permit or approve the selling or exchanging of property without the Member's prior written approval subject to the limits imposed by IAG [389] ¹
Prohibited and/or illicit investments		The Directors must ensure that the Company does not invest in funds, and does not permit or approve the investing of funds of the Company in Prohibited and illicit investments without the Member's prior written approval. IAG [3.1.4] ²
Taking out loans		The Directors must ensure that the Company does not take out loans, and does not permit or approve, the taking out of loans without the Member's prior written approval.
Encumbering land		The Directors must ensure that the Company does not encumbrance land, and does not permit or approve, the encumbrance of land without the Member's prior written approval;

¹ The Statutes on Religious Poverty in the Society of Jesus – Instruction on the Administration of Goods

² The Statutes on Religious Poverty in the Society of Jesus – Instruction on the Administration of Goods

Purchase of land or buildings		<ul style="list-style-type: none"> The Directors must ensure that the Company does not purchase land or buildings, and does not permit or approve, the purchase of land or buildings without the Member's prior written approval;
Approve the strategic plans and master plans for the School		The Directors must not approve strategic plans or the School master plan without the Member's prior written approval
Constructing or renovating a building		<p>The Directors must ensure that the Company does not undertake construction or renovation of a building above the delegated limit contained in the Jesuit Education Delegations without the Member's prior written approval.</p> <p>All construction or renovations that alter the value of the building must be approved prior to commencement and total costs provided to the Member at the completion.</p>
Loan monies to persons or entities		The Directors must ensure that the Company does not loan funds to any person or entity without the Member's prior written approval.
Operating other than a school		The Directors must ensure that the Company does not operate any other business other than the School or other educational service described in rule 3(b) without the Member's prior written approval.
Delegations		The Directors must not, and must ensure that the Company does not, operate outside the authorised delegations provided by the Provincial (and as amended from time to time) without the Member's prior written approval.
Revoke or jeopardise status as a registered charity		The Directors must not, and must ensure that the Company does not, revoke or jeopardise the Company's status as a charity registered with the Australian Charities and Not-for-profits Commission or any of its endorsements, exemptions or exceptions with the Australian Taxation Office or any state government revenue office, without the Member's prior written approval.

Schedule 3 Requirements for certain decisions of the Member

The Member must not do any of the things listed below without first complying with its own constitution and any relevant directives, policies, procedures and protocols of the Province:

- (a) change the maximum number of Directors (rule 6.1(a));
- (b) appoint or remove a Director or determine a Director's term of office (rule 6.2);
- (c) appoint or remove the Chair and Deputy-Chair of the Company or determine that Directors term of appointment as the Chair or Deputy-Chair (rule 6.11);
- (d) change the quorum requirements for a meeting of the Directors (rule 6.10(b));
- (e) approve the appointment or removal of the Principal (rule 6.6(b)(iv)(A));
- (f) approve any amendment or modification to a standard form agreement provided to the Company by the Member for engaging a supplier, an employee, consultant or volunteer (rule 6.6(b)(vii));
- (g) Issue any directives, policies, procedures or protocols relating to:
 - (i) tuition and boarding fees of the Company (rule 6.6(b)(viii));
 - (ii) the operation and management of the Company (rule 6.6(b)(ix));
 - (iii) the Company's insurance (rule 6.6(b)(x));
 - (iv) the passing of Director resolutions without a meeting (rule 6.13(b));
 - (v) committees, including the establishment of, delegation to, terms of reference of and dissolving of committees (rule 6.14);
 - (vi) the delegation to individuals (rule 6.15);
 - (vii) the giving and receiving of notices, documents and other communications (rule 14(b));
 - (viii) whether the Company is to have a common seal and if so how that common seal is to be used (rule 15(a));
- (h) change or replace the constitution of the Company;
- (i) wind up the Company (rule 9);
- (j) change the company type of the Company;
- (k) change the name of the Company.