

# Constitution

St Paul's Anglican Grammar School Limited

ACN: 005 949 539

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## **MOORES**

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## 1. Name

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The name of the Company is St Paul's Anglican Grammar School Limited (the **Company**).

## 2. Principal Purpose and Powers

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- (a) The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Charity.
- (b) The Principal Purpose for which the Company is established is to advance education by operating an Anglican School and Early Learning Centre in the Diocese of Gippsland.
- (c) The Company will pursue its Principal Purpose so as to provide a comprehensive and excellent modern academic education which:
  - (i) empowers and supports the school community to undertake a broad range of academic and other educational opportunities.
  - (ii) prepares students to enter the next phases of life in the wider community;
  - (iii) provides an educational environment in which:
    - (A) students may develop an understanding of the social and moral values consistent with the Christian faith as expressed in the Anglican tradition;
    - (B) opportunities are provided to explore the implications of the above for human relationships with God and with each other; and
    - (C) opportunities are provided to make a commitment to Christian life.
  - (iv) allows students to develop a concern for and to be involved in the life of the local, wider, and global community and the natural environment; and
  - (v) provides a choice in schooling at a cost that is accessible for as many families in the community as practicable.
- (d) Solely to carry out the Principal Purpose, the Company may exercise all of the powers of an individual and a company under the Act

## 3. Not-For-Profit

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- (a) Income and property received by the School (or by the Company on behalf of the School) must be applied as follows:
  - (i) Government Funding must be applied solely towards the conduct of the School;
  - (ii) other funding must be applied solely towards the Principal Purpose.
- (b) The Company and the School must not enter into a Prohibited Agreement or Arrangement with each other or with any other person or entity.
- (c) No part of the income or property of the Company may be paid or transferred directly or indirectly to Members or Directors by way of dividend, bonus or other profit distribution in their capacity as Members or Directors.
- (d) Clause 3(a) does not stop the Company from making a payment (provided it is not a Prohibited Agreement or Arrangement):
  - (i) to a Member for goods or services provided or expenses properly incurred at fair and reasonable rates or rates more favourable to the Company;
  - (ii) to a Member in carrying out the Company's Principal Purpose;
  - (iii) of premiums for insurance indemnifying Directors to the extent allowed for by law and this Constitution; or
  - (iv) with the prior approval of the Board, to a Director:
    - (A) for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
    - (B) as reimbursement for out-of-pocket expenses properly incurred in performing a duty as Director.

## 4. Membership

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### 4.1 General

The minimum number of Members is three.

### 4.2 Eligibility

To be eligible for Membership, a person must:

- (a) be committed to the Principal Purpose of the Company; and
- (b) meet the description of the relevant Membership Class set out in clause 4.3.

### 4.3 Membership Classes

- (a) The Company will have the following Membership Classes:
  - (i) **Ordinary Members**, being
    - (A) a parent or guardian of a student enrolled at the School;
    - (B) a person with whom a student enrolled at the School permanently resides;
    - (C) an employee of the Company; or
    - (D) a person who in the opinion of the Board possesses skills and abilities of possible benefit to the Company.
  - (ii) **Ex-officio Members**, being:
    - (A) the Principal; and
    - (B) the Bishop;
  - (iii) **Nominated Members**, being:
    - (A) a representative of the Gippsland diocese of the Anglican Church of Australia; nominated by the Bishop and approved by the Board; and
    - (B) the Rector or Rectors of the Anglican Church or Churches of Australia of the Parish or Parishes in which the Company may from time to time be situated or their nominee or nominees approved by the Board.
  - (iv) **Alumni Members** – being former students; and
  - (v) **Honorary Life Members** - being people considered by the Board to have made a significant contribution to the life of the School.

### 4.4 Voting rights

All Members except Alumni Members are entitled to vote.

### 4.5 Ordinary or Alumni Membership Application

- (a) Ordinary Members and Alumni Members must apply for Membership.
- (b) An application for Ordinary or Alumni Membership must be made in writing in the form and manner (if any) approved by the Board.
- (c) An applicant must pay the annual membership fee determined by the Board (if any).
- (d) An applicant must agree in writing to contribute the Guaranteed Amount in accordance with clause 18.1.

### 4.6 Admission

- (a) Ex-officio, Nominated and Honorary Life Members will be automatically admitted to membership on providing written consent to become a Member.
- (b) The Board must consider and resolve whether to accept or reject each application for Ordinary or Alumni Membership within a reasonable time.
- (c) The Board does not have to give reasons for accepting or rejecting any Ordinary or Alumni Membership application.
- (d) If the Board accepts an Ordinary or Alumni Membership application, the Secretary must, as soon as possible:

- (i) enter the applicant's details into the Register, subject to the payment of the annual membership fee (if any); and
  - (ii) notify the Member in writing of the date their membership commenced.
- (e) If the Board rejects an Ordinary or Alumni Membership application, the Secretary must notify the applicant in writing of the rejection as soon as possible.
- (f) A person becomes a Member when their name is entered into the Register.

#### **4.7 Membership fees**

- (a) Ex-officio Members, Nominated Members and Honorary Life Members are not required to pay a membership fee.
- (b) The Board may determine the amount of the annual membership fee from time to time. The Board may apply different membership fees to different Membership Classes.
- (c) The annual membership fee is due and payable on 31 March each year.
- (d) The rights of a Member (including the right to vote) who has not paid the annual membership fee by the due date are suspended until it is paid.
- (e) If a Member does not pay their annual membership fee within 60 days of receiving a notice of payment from the Company, the Member is deemed to have resigned their Membership.

#### **4.8 Register**

- (a) The Secretary must maintain the Register.
- (b) The Register must contain:
  - (i) the name, address, Membership Class, and date of admission to Membership – for each current Member; and
  - (ii) the name, date of admission to Membership and date on which a person stopped being a Member – for each person who ceased to be Member in the past seven years.
- (c) The Secretary may keep former Member entries separately from current Member entries.
- (d) Notices may be served on a Member at their address in the Register.
- (e) The Company must give Members access to the Register in accordance with the Act.
- (f) Information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

#### **4.9 Ceasing to be a Member**

- (a) A person ceases to be a Member on:
  - (i) death;
  - (ii) resignation;
  - (iii) expulsion in accordance with clause 4.10;
  - (iv) deemed resignation in accordance with clause 4.7(e);
  - (v) the Board deeming, in their sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence within 60 days;
  - (vi) ceasing to be a Director;
  - (vii) failing to satisfy the relevant eligibility requirements for the Member's Membership Class and the membership not being transferred to another Membership Class;
  - (viii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
  - (ix) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health.
- (b) A Member whose Membership is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding the Guaranteed Amount for which the Member is liable under this Constitution.

- (c) There will be no liability for any loss or injury suffered by a Member as a result of any decision made in good faith under this clause.
- (d) Any person who for any reason ceases to be a Member must not represent themselves in any manner as being a Member.

#### 4.10 Discipline of Members

- (a) The Board may suspend or expel a Member from the Company if it decides it is not in the interests of the Company for the person to continue or remain as a Member.
- (b) The Board may not resolve to suspend or expel a Member outside of a Board meeting.
- (c) If the Board intends to consider a resolution to suspend or expel a Member, it must notify the Member in writing at least 7 days prior to the relevant Board meeting:
  - (i) of the date, place and time of the meeting where the resolution will be considered;
  - (ii) of the intended resolution and the grounds on which it is based; and
  - (iii) that they may attend the meeting and give an oral or written explanation or submission before the resolution is voted on.
- (d) After considering any oral or written explanation or submission, the Board may resolve to:
  - (i) take no further action;
  - (ii) warn the Member;
  - (iii) suspend the Member's rights for up to 12 months;
  - (iv) expel the Member;
  - (v) refer the decision to an unbiased, independent person on conditions that the Board consider appropriate (however, the person can only make a decision that the Board could have made under this clause); or
  - (vi) require the matter to be determined at a general meeting.
- (e) If the Board resolves to expel the Member, the Member may, provided written notice is provided to the Secretary within 48 hours of the decision, request the expulsion be confirmed by the Company at a general meeting called by the Board for this purpose.
- (f) Any Member expelled from the Company may at any time apply to the Board to be readmitted as a Member.
- (g) No person may become a Director following expulsion or while suspended unless they are subsequently readmitted as a Member.

#### 4.11 Liability of Members

The liability of a Member is limited to the Guaranteed Amount, being \$50.

## 5. General Meetings

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### 5.1 Convening general meetings

- (a) The Board may call a general meeting.
- (b) If the Company receives a written request from Members with at least 5% of the votes that may be cast at a general meeting to call a general meeting (a **Request**), the Board must:
  - (i) give all Members notice of a general meeting within 21 days of the Request; and
  - (ii) hold the general meeting within 2 months of the Request.
- (c) The Request must state any resolution to be proposed at the meeting.
- (d) If the Board does not call the meeting within 21 days of a Request, 50% or more of the Members who made the request may call a general meeting.
- (e) To call and hold a meeting under clause 5.1(d) the Members must:
  - (i) as far as possible, follow the general meeting procedures in this Constitution; and
  - (ii) hold the general meeting within three months after making the Request.



## 5.2 Changes to general meeting arrangements

- (a) The Board may change the venue for, postpone or cancel a general meeting called under clause 5.1(a).
- (b) If a change is made under clause 5.2(a):
  - (i) notice of the change must be given to all persons entitled to receive notices of a general meeting under this Constitution;
  - (ii) a notice of postponement must specify the date, time and place to which the general meeting has been postponed; and
  - (iii) clause 5.5 does not apply to the notice.
- (c) The only business that may be transacted at a general meeting which is postponed is the business specified in the original notice convening the meeting.

## 5.3 Entitlement to receive notice

Notice of a general meeting:

- (a) must be given to every Member and every Director; and
- (b) may be given to any auditor appointed for the Company and in office at the time.

## 5.4 Notice of general meetings

A notice of general meeting must:

- (a) be in writing;
- (b) state the place, day and time of the meeting;
- (c) provide details of any technology that will be used to facilitate the meeting;
- (d) state the general nature of the business to be transacted at the meeting;
- (e) state the wording of any Special Resolution to be considered (and state that it is proposed as a Special Resolution);
- (f) include the information under clause 6.4;
- (g) include any proxy form approved by the Board; and
- (h) state that any proxy form must be given to the Company at least 24 hours before the meeting, by delivery to the Company at its registered address or at another address (including an electronic address) specified in the notice of the meeting.

## 5.5 Timing of notice

At least 21 days' notice must be given of a General Meeting (other than a meeting to consider a resolution to remove a Director or auditor) unless:

- (a) in the case of an Annual General Meeting, all the Members entitled to attend and vote agree beforehand; and
- (b) in the case of any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

## 5.6 Annual General Meeting

- (a) The Board must hold an Annual General Meeting at least once in every calendar year.
- (b) The business of an Annual General Meeting may include any of the following (even if not stated in the notice of meeting):
  - (i) the annual financial statements and any auditor's report;
  - (ii) the appointment of Directors; and
  - (iii) the appointment of any auditor.

## 5.7 Chairperson of General Meetings

- (a) The Chair will preside as chairperson at every General Meeting.
- (b) If there is no Chair, the Chair is not present within 15 minutes of the commencement time or the Chair is unwilling to act as chairperson for all or part of the meeting, the following may

preside as chairperson (in order of precedence):

- (i) a Deputy Chair (if any); or
- (ii) a Director chosen by a majority of the Directors present.

### **5.8 Quorum for General Meetings**

- (a) No business may be transacted at a General Meeting (other than electing a chairperson or adjourning the meeting), unless a quorum is present at the time the business is dealt with.
- (b) A quorum for a General Meeting is 15 Members.
- (c) If a quorum is not present within 15 minutes of the commencement time, then:
  - (i) if the meeting was called by, or at the request of Members, the meeting will dissolve;
  - (ii) otherwise:
    - (A) the meeting stands adjourned to the day, time and place, determined by the Board or (if no determination is made by the Board), to the same day, time and place in the following week; and
    - (B) if at the resumption of the meeting a quorum is not present within 15 minutes of the commencement time, the meeting will dissolve.
- (d) Each proxy present must be counted for the purpose of determining a quorum, provided that:
  - (i) only one proxy may be counted for each Member; and
  - (ii) no individual may be counted more than once.
- (e) A suspended Member is not counted for the purpose of determining a quorum.

### **5.9 Adjournment of General Meetings**

- (a) The chairperson may (and must if directed by a majority of the Members present and entitled to vote) adjourn the meeting or any business, motion, or discussion being considered or remaining to be considered.
- (b) Only unfinished business may be transacted at a General Meeting resumed after an adjournment.
- (c) It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.
- (d) A meeting adjourned under this clause is adjourned to the day, time and place determined by the Board or (if no determination is made by the Board), to the same day, time and place in the following week.

## **6. Voting at General Meetings**

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### **6.1 Voting rights**

- (a) Each Member (other than Alumni Members) has one vote (provided they are not suspended).
- (b) On a vote conducted at a General Meeting:
  - (i) on a show of hands or voices, each person present who is a Member, or proxy for a Member has one vote; and
  - (ii) by poll, each person present who is a Member has one vote and each person present as a proxy has one vote for each Member they represent.

### **6.2 Method of Voting**

- (a) Voting will occur by show of hands or voices or such other method as the chairperson determines, unless a poll is demanded and not withdrawn.
- (b) A poll can be demanded by the chairperson or three Members (or their proxies) at any time prior to a vote, or immediately after the declaration of a result of a vote conducted by means other than a poll.
- (c) A poll must be taken in the manner directed by the chairperson.
- (d) A poll demanded on the election of the chairperson or on a question of adjournment must be

taken immediately.

- (e) A Member may vote in person or by technology or by proxy.

### **6.3 Decisions of the Members**

- (a) Questions arising for determination (other than a Special Resolution) will be decided by a majority of votes cast (unless otherwise provided in this Constitution).
- (b) The chairperson will have a deliberative vote. If equal votes are cast, the chairperson will also have a casting vote.
- (c) A declaration by the chairperson that a resolution has been carried or lost on a show of hands or voices is conclusive evidence of the fact (unless a poll is demanded).

### **6.4 Proxies**

- (a) A Member may appoint another Member as proxy to act on their behalf at one or more General Meetings.
- (b) A proxy may exercise any and all of the rights of the Member who appointed them, subject to the following:
- (i) any directions or limitations specified in the proxy appointment; and
  - (ii) a proxy cannot speak and vote for a Member while the Member is present at a meeting.
- (c) The appointment must be written and signed by the appointing Member in a form substantially similar to that in Schedule 1.
- (d) A proxy vote is valid even if the appointing Member revokes the appointment, or ceases to be a Member, provided that the chairperson was not aware of the revocation or cessation of membership at the time of the meeting.

### **6.5 Use of technology**

- (a) The Company may hold a General Meeting at any two or more locations using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) A person participating through the use of technology will be deemed to be present at the meeting in person.

### **6.6 Circulating Member Resolutions**

- (a) This clause does not apply to a Special Resolution, a resolution to remove a Director or a resolution to appoint or remove an auditor.
- (b) A resolution may be passed without a meeting if:
- (i) notice is given to all Members entitled to vote; and
  - (ii) 75% of Members entitled to vote approve the resolution in writing.
- (c) For the purpose of this clause:
- (i) the notice must include the wording of the resolution and may be distributed by any means, including electronic communication;
  - (ii) approval in writing includes approval by email and any other means of electronic communication; and
  - (iii) the resolution will fail if it does not received the required approval within seven days after the notice is given.
- (d) The resolution is passed when approval is given to the Secretary by the last person necessary to constitute a 75% majority in favour of the resolution.

## **7. Dispute Resolution**

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- (a) The Board will determine the procedure to be followed to determine any dispute arising between:
- (i) a Member and another Member;
  - (ii) a Member and the Board; and
  - (iii) a Member and the Company.

- (b) The Board will be subject to the following:
  - (i) a Member may appoint any Person to act on behalf of the Member in the dispute resolution procedure;
  - (ii) each party to the dispute has been given an opportunity to be heard on the matter which is the subject of the dispute; and
  - (iii) the outcome of the dispute must not be determined by a biased decision-maker.

## **8. Appointment and Removal Of Directors**

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### **8.1 Number and composition of Directors**

- (a) The Company will have nine Directors.
- (b) The Board will comprise:
  - (i) three Appointed Directors, being:
    - (A) a representative of the diocese of Gippsland of the Anglican Church of Australia nominated by the Bishop and approved by the Board;
    - (B) an active communicant member of the Anglican Church of Australia or a member of a Christian Church aligned with the principles, values and beliefs of the Anglican Church of Australia nominated by the Board and approved by the Bishop; and
    - (C) an individual nominated by the Board who, in the opinion of the Board, possesses skills and abilities of possible benefit to the Company; and
  - (ii) six Elected Directors.
- (c) Appointments to the Board where possible, will have regard to representation from all campuses of the School.

### **8.2 Eligibility**

- (a) Any natural person committed to the Principal Purpose is eligible to be appointed or elected as a Director provided the person:
  - (i) is a Member;
  - (ii) is a "fit and proper person" within the meaning of Schedule 4 of the ETRR 2017;
  - (iii) has consented in writing to be a Director;
  - (iv) has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time;
  - (v) is not an employee of the Company; and
  - (vi) is not ineligible to be a Director under:
    - (A) the Act; or
    - (B) the ACNC Legislation.
- (b) Rule 8.2(a)(vi)(B) will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.

### **8.3 Nomination and Election of Elected Directors**

- (a) Any Member may nominate for office as an Elected Director.
- (b) Nominations must be submitted:
  - (i) in the form (if any) approved by the Board;
  - (ii) in writing signed by two current Members; and
  - (iii) delivered to the Secretary at least 30 days before the date fixed for the Annual General Meeting.
- (c) The Board must confirm that a nominee meets the eligibility criteria. Nominees that meet the eligibility criteria will become candidates.
- (d) If the number of candidates is less than or equal to the number of Elected Director vacancies, the candidates will be appointed as Elected Directors.

- (e) If the number of candidates exceeds the number of Elected Director vacancies:
  - (i) details of the candidates must be included in the notice of Annual General Meeting; and
  - (ii) an election must be held at the Annual General Meeting.
- (f) The process and format of the election must be determined by the Board.

#### **8.4 Appointment of Directors**

The Board may appoint:

- (a) an Appointed Director at any time; and
- (b) a Director to fill a casual vacancy in the office of an Elected Director.

#### **8.5 Term of office**

- (a) The term of office of Elected Directors:
  - (i) is three years (unless a different period is specified in the resolution);
  - (ii) commences at the end of the General Meeting at which they are elected; and
  - (iii) expires at the end of the third Annual General Meeting following the election (or at the end of the period specified in the resolution).
- (b) The term of office of Appointed Directors:
  - (i) is three years (unless a different period is specified in the resolution);
  - (ii) commences on the date of appointment; and
  - (iii) expires at the end of the period specified in the resolution.
- (c) The term of office of a Director appointed to fill a casual vacancy in the office of Elected Director:
  - (i) commences on the date of appointment; and
  - (ii) expires at the end of the first Annual General Meeting following the appointment.
- (d) A Director who has served continuously for 15 years or more may only be re-elected by Special Resolution.

#### **8.6 Ceasing to be a Director**

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

- (a) resign by written notice to the Company;
- (b) cease to be a Member;
- (c) are removed by the Members under the Act;
- (d) are absent without the consent of the Board, from:
  - (i) three consecutive Board meetings; or
  - (ii) four Board meetings over 12 months;
- (e) are the 8.1(b)(i)(A) representative and the Bishop withdraws their nomination;
- (f) complete a consecutive period of service on the Board of 15 years;
- (g) die, or become subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
- (h) are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Act;
- (i) become ineligible to be a Director under the Act or the ACNC Legislation; or
- (j) are no longer a fit and proper person within the meaning of Schedule 4 of the ETRR 2017.

#### **8.7 Effect of casual vacancy**

If the number of Directors is insufficient to constitute a quorum or less than the minimum number fixed under clause 8.1, the remaining Directors may, except in an emergency, act only to:

- (a) increase the number of Directors to a number sufficient to constitute a quorum or meet that minimum number; or
- (b) convene a General Meeting of the Company.

### **8.8 Defects in appointment of Directors**

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

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

## **9. Board Decision Making**

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### **9.1 Convening Board meetings**

A Director may convene or ask the Secretary to convene a Board meeting.

### **9.2 Notice of Board meetings**

- (a) Written notice of Board meetings must be given to every Director at least 48 hours' prior to the meeting (unless the Board unanimously waives this requirement).
- (b) A notice of a Board meeting:
  - (i) must specify the place, day and time of the meeting;
  - (ii) must provide details of any technology that will be used to facilitate the meeting; and
  - (iii) does not need to specify the nature of the business to be transacted at the meeting.

### **9.3 Quorum for Board meetings**

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

### **9.4 Use of technology in Board meetings**

- (a) The Board may hold its meetings using any technology that is agreed to by the Board.
- (b) The Board's agreement may be a standing one.
- (c) A Director who attends by technology is deemed to be present in person at the meeting.

### **9.5 Chairperson of Board meetings**

- (a) The Chair will preside as chairperson at Board meetings.
- (b) If there is no Chair, the Chair is not present within 15 minutes after the commencement time or the Chair is unwilling to act as chairperson for all or part of the meeting then:
  - (i) if there is a Deputy Chair, the Deputy Chair will be the chairperson; and
  - (ii) if the Deputy Chair is not present or is not willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

### **9.6 Voting at Board meetings**

- (a) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote.
- (b) The chairperson will have a deliberative vote. If equal votes are cast, the chairperson will also have a casting vote.

### **9.7 Resolutions without meetings**

- (a) A Board resolution may be passed without a meeting if a majority of the Directors entitled to vote on the resolution:
  - (i) sign a notice stating that they are in favour of the resolution; or
  - (ii) respond to an email stating that they are in favour of the resolutions.

- (b) The resolution is passed at the time when the last Director necessary to constitute a majority in favour signs.
- (c) For the purpose of this clause:
  - (i) the notice must include the wording of the resolution;
  - (ii) the notice may be distributed by any means;
  - (iii) separate copies of the notice may be signed; and
  - (iv) the resolution fails if it has not achieved majority consent within 72 hours after the notice was given.

## 10. Directors' Powers and Duties

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### 10.1 Powers of the Board

- (a) The Directors are responsible for managing the business of the Company and furthering the Principal Purpose.
- (b) The Directors may exercise all the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Members.
- (c) The Board cannot remove a Director or auditor.
- (d) The Board may delegate any of its powers to one or more Directors, the Secretary, the Principal or a committee.
- (e) The Board may specify terms of the delegation (including the power to further delegate) and revoke a delegation.

### 10.2 Duties of Directors

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

### 10.3 Establishment of committees

- (a) The Board may establish committees.
- (b) The Board may determine terms of reference for a committee.

### 10.4 By-laws

- (a) The Board may make regulations or by-laws for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter by-laws or regulations as it sees fit.

## 11. Directors' Interests

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### 11.1 Conflicts of interest

- (a) A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Directors (or the Members if the other Directors share that conflict).
- (b) A Director who has a material personal interest in a matter that is being considered by the Board:
  - (i) must not be present while the matter is being considered at a Board meeting; or
  - (ii) vote on the matter;
 unless permitted by clause 11.1(c).
- (c) Provided the Board approves and it is permitted by law, a Director may be present or vote if:
  - (i) the interest arises because the Director is a Member and the other Members have the same interest;
  - (ii) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;
  - (iii) the interest relates to any payment by the Company under clause 12.5 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity; or
  - (iv) the Australian Securities and Investments Commission makes an order allowing the

- Director to vote on the matter; or
- (v) the interest relates to a contract the Company is proposing to enter into that:
    - (A) is subject to approval by the Members; and
    - (B) will not impose any obligation on the Company if it is not approved by the Members;
  - (vi) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
    - (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present; or
  - (vii) the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause .

### 11.2 Permissible conduct

Provided a Director complies with clause 11.1, and the following does not constitute a Prohibited Arrangement or Agreement, a Director may:

- (a) hold any other position in the Company, except that of auditor;
- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (e) sign or participate in the execution of a document by or on behalf of the Company; and
- (f) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

## 12. Office Bearers and Principal

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### 12.1 Appointment of Office Bearers

- (a) From time to time as required, the Board must appoint a Chair, a Deputy Chair, a Treasurer and any other Office Bearers it deems fit from among the Board.
- (b) Office Bearers of the Company hold office until the end of the first Annual General Meeting following their appointment.
- (c) An Office Bearer may be elected for more than one successive term.
- (d) The Board may remove or suspend a person from holding any Office Bearer position by resolution passed at a Board meeting provided:
  - (i) the resolution is passed by not less than two-thirds of the Directors present; and
  - (ii) at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person who is the subject of the resolution.

### 12.2 Secretary

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



(iii) is resident in Australia.

(e) The Board may suspend or remove a Secretary.

### 12.3 Business Manager

- (a) The Business Manager is appointed by the Principal on such terms and conditions as the Principal deems fit.
- (b) The Business Manager is responsible to the Board for the financial and business administration of the Company.
- (c) The Business Manager must comply with any reasonable direction given by the Principal in the performance of their duties.
- (d) The Business Manager has the right of direct approach to the Board and any committee in relation to financial matters.
- (e) At the invitation of the Chair, the Business Manager may attend and speak, but not vote, at all Board meetings, General Meetings and committee meetings.

### 12.4 Bishop

The Bishop may visit the School on reasonable notice to the Chair or Secretary, to inspect its operations and administration and is entitled, on giving reasonable notice to the Chair or Secretary, to speak at any Board meetings.

### 12.5 Principal

- (a) The Board may appoint a Principal for a term, at the remuneration and on the conditions that it deems fit.
- (b) The Principal:
  - (i) must be an active communicant member of an Anglican Church of Australia or a member of a Christian Church aligned with the principles, values and beliefs of the Anglican Church of Australia and is to be appointed by the Board and approved by the Bishop upon and subject to such terms and conditions as it may think fit or shall otherwise be a person approved by the Bishop.
  - (ii) may not be a Director; and
  - (iii) must be a "fit and proper person" within the meaning of Schedule 4 of the ETRR 2017.
- (c) The Principal may attend and speak at all Board meetings, General Meetings and committee meetings, but may not vote.

## 13. Indemnities and Insurance

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- (a) The Company indemnifies every present and past Director and executive officer of the Company to the full extent permitted by law against all losses and liabilities incurred as a result of their position as an officer of the Company.
- (b) This indemnity:
  - (i) is a continuing obligation and is enforceable even if the person has ceased to be an officer of the company;
  - (ii) is not subject to any requirement to first incur an expense or make a payment; and
  - (iii) operates only to the extent that the relevant loss or liability is not covered by insurance.
- (c) The Company may, to the extent permitted by law, pay or agree to pay, a premium in respect of a contract insuring its officers.
- (d) Nothing in this clause 13 limits the Company's ability to indemnify or pay for insurance for any person not expressly covered by this clause.

## 14. Administration

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### 14.1 Minutes and records

- (a) The Board must ensure that:
  - (i) minutes of all General Meetings, Board meetings and committee meetings; and

- (ii) records of resolutions passed by Members, Directors and committees without a meeting;

are recorded and kept with the Company's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).

- (b) The Company must ensure that minutes of a Board or General Meeting are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

#### **14.2 Members' access to Company records**

The Company must give Members access to Company records as required by the Act.

#### **14.3 Common seal**

The Company does not have a common seal.

#### **14.4 Execution of documents**

The Company may execute documents by the signature of:

- (a) two Directors;
- (b) one Director and the Secretary; or
- (c) such other persons appointed by the Board for that purpose.

### **15. Records, Accounting and Audit**

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#### **15.1 Accounts and other records of the Company**

- (a) The Board must:
  - (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements; and
  - (ii) ensure that records of its operations are kept; and
  - (iii) take reasonable steps to ensure that the Company's records are kept safe.
- (b) The Company must retain its records for at least seven years.

#### **15.2 Audit**

- (a) If required by law, the Company must appoint and remunerate an auditor.
- (b) Any auditor is entitled to attend any General Meeting and to be heard by the Members on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company may give any auditor all communications relating to the General Meeting that the Members of the Company are entitled to receive.

### **16. Amending This Constitution**

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- (a) The Company may only alter this Constitution by Special Resolution in accordance with the Act.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

### **17. Notices**

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- (a) Notices can be served on Members or Directors personally, by post, email or other electronic means.
- (b) Notices are taken to be served:
  - (i) in the case of a properly addressed and posted notice, five Business Days after the date of posting; and
  - (ii) in the case of a notice sent by email or other electronic means, at the time of sending.
- (c) The non-receipt of notice or a failure to give notice, does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) the individual waives notice before or after the meeting (including by attending the

- meeting); or
- (iii) the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.
- (d) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

## 18. Closure of the School or the Company

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### 18.1 Contribution of a Member on winding up

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

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

### 18.2 Distribution of assets on closure of the School or the winding up, deregistration or dissolution of the Company

- (a) If on the closure of the School there is a surplus of School assets remaining after satisfying all the School's liabilities and expenses, the surplus must:
- (i) not be paid or distributed to a Member in their capacity as a Member; and
- (ii) be used to provide education services to children of compulsory school age; or
- (iii) be given or transferred to a Charity or Charities which:
- (A) provides educational services to children of compulsory school age; or
- (B) has charitable purposes similar to the Principal Purpose(s); and
- (C) prohibits the distribution of profit or gain to its Members in their capacity as Members.
- (b) If on the winding up, deregistration or dissolution of the Company, there is a surplus of Company assets remaining after satisfying all the Company's liabilities and expenses, the surplus must:
- (i) not be paid or distributed to a Member in their capacity as a Member; and
- (ii) be used to provide education services to school-age children; or
- (iii) be given or transferred to a Charity or Charities which:
- (A) provides educational services to school-age children; or
- (B) has similar Principal Purposes(s) to those of the Company as described in this Constitution; and
- (C) prohibits the distribution of profit or gain to its Members in their capacity as Members.
- (c) The identity of the recipient Charity or Charities under clause 18.2(a)(iii) or 18.2(b)(iii) will be decided by resolution of the Members on or before any closure, winding up, deregistration or dissolution. If the Members fail to decide:
- (i) on the closure of the School, the identity of the recipient Charity or Charities may be determined by the Board; or
- (ii) on the winding up, deregistration or dissolution of the Company, the identity of the recipient Charity or Charities must be determined by application to the Supreme Court in the State of Victoria.

## 19. Interpretation

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### 19.1 Definitions

In this Constitution:

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

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

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

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

“**Bishop**” means the Bishop of the Anglican Diocese of Gippsland.

“**chairperson**” means the person chairing a meeting.

“**Chair**” means the person appointed to the position of Chair under clause 12.

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

“**Company**” means St Paul’s Anglican Grammar School Limited, the proprietor of the School and Early Learning Centre.

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

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

“**General Meeting**” means a meeting of Members (including an Annual General Meeting).

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

“**Guaranteed Amount**” means the amount set out in clause 4.11.

“**Member**” means a person whose name is entered in the Register as a Member of the Company in accordance with clause 4.7.

“**Membership Class**” means a Membership Class listed in clause 4.3.

“**Office Bearer**” means Chair, Deputy Chair and Treasurer.

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

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

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

“**School**” means St Paul’s Anglican Grammar School.

“**Register**” means the register of Members under the Act.

“**Special Resolution**” means a resolution passed at a general meeting:

- (a) of which 21 days’ notice specifying the intention to propose the resolution as a Special Resolution has been given pursuant to this Constitution and the Act; and
- (b) by not less than 75% of the votes cast.

## 19.2 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.
- (b) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

## 19.3 Exclusion of replaceable rules

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

## 20. Transitional Provisions

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The following clauses apply notwithstanding anything to the contrary in this Constitution.

**20.1 Members**

The Members immediately following the adoption of this Constitution will be those Members listed on the Register at the time of adoption.

**20.2 Directors**

- (a) The Directors immediately following the adoption of this Constitution will be those in office at the time of adoption.
- (b) Directors appointed prior to the adoption of this Constitution may complete their term of office under the previous Constitution.

## SCHEDULE 1

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### APPOINTMENT OF PROXY – ST PAUL’S ANGLICAN GRAMMAR SCHOOL LIMITED

I, \_\_\_\_\_  
(Member)

of \_\_\_\_\_  
(Address)

appoint \_\_\_\_\_  
(Proxy)

as my proxy for the General Meeting of St Paul’s Anglican Grammar School Limited be held on

\_\_\_\_\_  
(Date)

and at any adjournment.

#### CHOOSE

My proxy can vote on my behalf for all resolutions at the above General Meeting.

#### OR

My proxy can vote for the resolutions listed below as indicated:

in favour of / against	detail of proposed resolution

Signed \_\_\_\_\_  
(Member)

Date: