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Constitution

FEDERATION OF RELIGIOUS INSTITUTE AND MINISTERIAL PJP CATHOLIC SCHOOL
AUTHORITIES IN NSW AND ACT LTD (ACN 622 756 245)
A Company Limited by Guarantee

Table of Contents

PREAMBLE	1
2. NAME OF COMPANY.....	1
3. TYPE OF COMPANY.....	1
4. LIMITED LIABILITY OF MEMBERS	1
5. DEFINITIONS	2
6. OBJECTS & POWERS	4
7. NOT-FOR-PROFIT	4
8. AMENDING THE CONSTITUTION.....	5
9. MEMBERSHIP	5
10. APPLICATION FOR MEMBERSHIP	5
11. REGISTER OF MEMBERS.....	6
12. CESSATION OF MEMBERSHIP	7
13. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE.....	7
14. ENTRANCE FEE AND SUBSCRIPTIONS.....	7
15. MEMBERS' RIGHTS.....	8
16. DISPUTE RESOLUTION	8
17. CONVENING OF GENERAL MEETINGS	9
18. ANNUAL GENERAL MEETING	9
19. NOTICE OF GENERAL MEETINGS.....	10
20. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING	11
21. QUORUM.....	11
22. CHAIR AND DEPUTY-CHAIR	11
23. CHAIR'S CASTING VOTE	12
24. ADJOURNMENT OF MEETINGS.....	12
25. CIRCULATING RESOLUTION OF MEMBERS	12
26. HOW VOTING IS CARRIED OUT	13
27. POLLS	13
28. VOTING RIGHTS.....	14
29. CHALLENGE TO A MEMBER'S RIGHT TO VOTE	14
30. RIGHT TO APPOINT PROXIES	14
31. APPOINTING A PROXY	14
32. LODGMENT OF PROXIES.....	15
33. VALIDITY OF PROXIES	15
34. VOTING BY PROXY.....	16
35. NUMBER OF COUNCILLORS.....	16
36. ELECTION AND APPOINTMENT OF COUNCILLORS.....	16
37. TERM OF OFFICE.....	17
38. OFFICERS OF THE COUNCIL.....	18
39. WHEN A COUNCILLOR STOPS BEING A COUNCILLOR.....	18
40. NEGOTIABLE INSTRUMENTS	19
41. POWER OF COUNCILLORS.....	19
42. DELEGATION OF COUNCILLORS' POWERS	19
43. COMMITTEE OF COUNCILLORS.....	19

44.	PAYMENTS TO COUNCILLORS	20
45.	CONFLICTS OF INTEREST	20
46.	DUTIES OF COUNCILLORS	21
47.	WHEN THE COUNCILLORS MEET	22
48.	CALLING COUNCIL MEETINGS.....	22
49.	USING TECHNOLOGY TO HOLD COUNCIL MEETINGS.....	22
50.	QUORUM AT COUNCIL MEETINGS	22
51.	CHAIR.....	22
52.	VOTING	23
53.	WRITTEN RESOLUTIONS BY COUNCILLORS	23
54.	VALIDATION OF ACTS OF COUNCILLORS	23
55.	MINUTES AND RECORDS	24
56.	APPOINTMENT AND ROLE OF SECRETARY	24
57.	ROLE OF TREASURER	25
58.	EXECUTIVE OFFICER.....	25
59.	EXECUTION OF DOCUMENTS	26
60.	FINANCIAL AND RELATED RECORDS	26
61.	COUNCILLORS' ACCESS TO DOCUMENTS.....	27
62.	BY-LAWS.....	27
63.	WHEN NOTICE IS TAKEN TO BE GIVEN	27
64.	WINDING UP	27
65.	INDEMNITY	28
66.	PAYMENT OF INDEMNITY POLICY PREMIUM	28
67.	INDEMNITY TO CONTINUE.....	29
	SCHEDULE 1	30

PREAMBLE

- 1.1 The Federation of Religious Institute and Ministerial PJP Catholic School Authorities in NSW and ACT Ltd (**Federation**) is established to represent the interests of these authorities and their schools in the increasingly complex and dynamic educational context.
- 1.2 The Federation is committed, with other Catholic School Authorities, to the following principles:
- (a) Catholic education shares in realising God's mission in the Church.
 - (b) Each Catholic school is a particular expression of the Church's service of this mission and an integral part of its local Diocese and of the Universal Church.
 - (c) The ecclesial imperatives of collegiality and subsidiarity define the mutual relationships that exist among all the Catholic School Authorities within the Federation.
 - (d) Catholic School Authorities within the Federation acknowledge and value the interdependence that should prevail among them, in the interests of the common good of the Catholic education sector.
 - (e) While each authority governs its school(s) with due autonomy and freedom, all accept a share of responsibility for contributing to the vitality and viability of the ongoing work and growth of Catholic education.
- 1.3 The Federation follows on and benefits from the work and leadership of the Conference of Leaders of Religious Institutes of NSW (CLRINSW) undertaken through its Education Committee. In recognition of the autonomy of members, it provides a mechanism to seek a common voice.

2. NAME OF COMPANY

- 2.1 The name of the company is the Federation of Religious Institute and Ministerial PJP Catholic School Authorities in NSW and ACT Ltd (ACN 622 756 245).

3. TYPE OF COMPANY

- 3.1 The Federation is a non-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

4. LIMITED LIABILITY OF MEMBERS

- 4.1 Each Member must contribute an amount not more than \$10.00 (the guarantee) to the property of the Federation if the Federation is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
- (a) payment of debts and liabilities of the Federation;

- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

5. DEFINITIONS

5.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

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

Act means the *Corporations Act 2001*.

Business Day means a day on which banks are open for business in Sydney.

Catholic School Authority means that body which is responsible for the canonical governance of a Catholic school(s).

Casual Vacancy means any vacancy arising due to the resignation, retirement, death or removal of a Councillor or a Councillor otherwise ceasing to be a Councillor in accordance with clause 39 but not a vacancy arising by effluxion of time or retirement by rotation. Failure of an elected Councillor to consent to act may also constitute a casual vacancy.

Chair means the person holding that office under this Constitution and includes any assistant or acting chairperson.

Committee means a committee established in accordance with **clause 43**.

Constitution means this constitution as amended or supplemented from time to time by a Special Resolution of the Members in a general meeting.

Council means the board of Directors.

Councillor means any person holding the position of a director of the Federation and Councillors means the directors for the time being of the Federation or as the context permits such number of them as have authority to act for the Federation.

Executive Officer means the person holding that office in accordance with **clause 58**.

Federation means the Federation of Religious Institute and Ministerial PJP Catholic School Authorities in NSW and ACT Ltd.

Financial Year means the financial year of the Federation ending on 31 December.

Founding Member means a Member listed in **Schedule 1**.

Member means a Member of the Federation.

Ministerial Public Juridic Person means a Public Juridic Person recognised as such under the Code of Canon Law (ref. can. 116) which is (for the purposes of this

Constitution) established by the decree of a competent ecclesiastical authority (not de iure) for the purpose of active ministry.

Office means the registered office for the time being of the Federation which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

Register means the register of Members to be kept pursuant to the Act.

Religious Institute means a canonically recognised religious institute and/or society with public juridic status in the Catholic Church in which, in accordance with their own law, the members pronounce public vows and live a fraternal life in common.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is a Member of the Federation.

Secretary means the person appointed as the secretary of the Federation and includes any assistant or acting secretary.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with the Act; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

5.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint

of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

- 5.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 5.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.
- 5.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

6. OBJECTS & POWERS

- 6.1 The charitable objects for which the Federation is established are the promotion of religion and education and in particular:
- (a) to assist Catholic School Authorities in their role as canonical stewards of Catholic schools in NSW and the ACT;
 - (b) to bring together the richness of the charisms of the Religious Institute (RI) and Ministerial Public Juridic Person (PJP) school authorities and support their leaders in the ministry of governance;
 - (c) to be a collaborative network of members and their representatives;
 - (d) to foster cooperative networks of members and those involved in the governance and leadership of schools;
 - (e) to provide a forum through which members are informed about, and may develop common positions, on issues affecting them;
 - (f) to advocate on behalf of members; and
 - (g) to express the developed common position of members and be the normal representative of members in Catholic and other education structures.
- 6.2 The Federation can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Federation set out in **clause 6.1**; and
 - (b) do all things incidental or convenient in relation to the attainment of an object under **6.1**.

7. NOT-FOR-PROFIT

- 7.1 The income and property of the Federation will only be applied towards the promotion of the objects of the Federation set out in **clause 6.1**.

7.2 No income or assets of the Federation will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Federation. However nothing in this Constitution will prevent payment in good faith to a Member:

- (a) in return for any services rendered or goods supplied to the Federation in the ordinary and usual course of its business;
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to the Federation;
- (c) of reasonable and proper rent for premises leased by any Member to the Federation,

for carrying out the Federation's charitable purposes.

8. AMENDING THE CONSTITUTION

8.1 The Members may amend this Constitution by passing a Special Resolution.

9. MEMBERSHIP

9.1 The number of Members of the Federation is unlimited, but may be altered by the Council from time to time.

9.2 The Members of the Federation are:

- (a) Founding Members; and
- (b) any other person that is admitted as a Member, in accordance with this Constitution.

9.3 Membership of the Federation is open to any Religious Institute or Ministerial Public Juridical Person Catholic School Authority which has canonical stewardship of a school/s in NSW and/or the ACT.

9.4 Members may nominate a Representative (who may be altered from time to time by giving written notice to the Federation) of an individual natural person to represent the Member and that person alone shall be able to represent, act and exercise the membership rights of the Member. The Member may revoke its nomination of any Representative acting as the Member's Representative at any time by submitting written notice to the Federation provided that an alternative delegate is nominated.

10. APPLICATION FOR MEMBERSHIP

10.1 Every application for Membership of the Federation must:

- (a) be lodged with the Secretary and must set forth the name and address of the applicant;

- (b) state that the applicant agrees to comply with the terms of the Federation's Constitution.
 - 10.2 Applications for Membership of the Federation must be made in writing on a form approved by the Council for that purpose and signed by the applicant.
 - 10.3 At the first Council meeting after an application for Membership has been received, the Council will in its absolute discretion:
 - (a) determine the admission or rejection of the applicant; or
 - (b) ask the applicant to supply any evidence of eligibility that the Council considers reasonably necessary.
 - 10.4 An applicant will be admitted to Membership of the Federation if 75% of Councillors entitled to vote at a Council meeting resolve to admit the applicant.
 - 10.5 If the Council approves an application for Membership, the Secretary must, as soon as practicable, notify the applicant in writing of their approval for Membership.
 - 10.6 If the Council rejects an application for Membership, the Secretary must, as soon as practicable, notify the applicant in writing that their application has been rejected.
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11. REGISTER OF MEMBERS

- 11.1 The Federation must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:
 - (a) for each current Member:
 - (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email);
and
 - (iv) date the Member was entered on to the Register;
 - (b) for each person who stopped being a Member in the last 7 years:
 - (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email);
and
 - (iv) dates the Membership started and ended.

- 11.2 The Federation must give current Members reasonable access to the Register of Members.
- 11.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

12. CESSATION OF MEMBERSHIP

- 12.1 A person immediately stops being a Member if:
- (a) they cease to be a Catholic School Authority;
 - (b) they are wound up or otherwise dissolved or deregistered;
 - (c) they resign, by writing to the Secretary;
 - (d) they fail to pay the annual membership fee under **clause 14** within 3 months of the fee being due;
 - (e) the Federation, in a general meeting, resolves by a resolution with a 75% majority of Members to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Federation renders it undesirable that that Member continue to be a Member of the Federation. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed; or
 - (f) they have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

13. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

- 13.1 A right, privilege or obligation which a person has by reason of being a Member of the Federation:
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates on cessation of the person's Membership.

14. ENTRANCE FEE AND SUBSCRIPTIONS

- 14.1 A Member of the Federation shall on admission to membership pay such entrance fee as determined by the Council from time to time.
- 14.2 In addition to any entrance fee in accordance with clause 14.1, a Member must also pay an annual membership fee as determined by the Council based upon a methodology approved by the Members from time to time. The annual membership fee shall be payable within 30 days of the date of the Federation's tax invoice for this fee. The Council must use its best endeavours to issue this tax invoice by 28 February of each year.

15. MEMBERS' RIGHTS

15.1 Members of the Federation will be entitled to:

- (a) receive notice of and attend and vote at general meetings of the Federation; and
- (b) receive annual reports of the Federation including financial reports in relation to each Financial Year.

15.2 All other rights, privileges and obligations of Members are in accordance with the Act.

16. DISPUTE RESOLUTION

16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Councillor and:

- (a) one or more Members;
- (b) one or more Councillors; or
- (c) the Federation.

16.2 A Member must not start a dispute resolution procedure under **clause 16.1** in relation to a matter which is the subject of a disciplinary procedure until the disciplinary procedure is completed.

16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

16.4 If those involved in the dispute do not resolve it under **clause 16.3**, they must within 10 days:

- (a) tell the Council about the dispute in writing;
- (b) participate in a dispute resolution process put in place by the Council.

16.5 If those involved in the dispute do not resolve it under **clause 16.4** the Council will appoint a mediator who will:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the Chair; or
 - (ii) for other disputes, a person chosen by either the Deputy Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Federation has its registered Office.

16.6 A mediator chosen by the Chair under **clause 16.5**:

- (a) may be a Member or former Member of the Federation;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.

17. CONVENING OF GENERAL MEETINGS

- 17.1 Any 3 Councillors may whenever those Councillors think fit convene a general meeting of the Federation in accordance with the provisions of the Act.
- 17.2 5% of Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- 17.3 A general meeting of the Federation may be convened at 2 or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting, including to hear and be heard.

18. ANNUAL GENERAL MEETING

- 18.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the Federation; and
 - (b) after the first annual general meeting, at least once in every calendar year.
- 18.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Federation's activities;
 - (b) a review of the Federation's finances;
 - (c) any auditor's report;
 - (d) the election of Councillors; and
 - (e) the appointment and payment of auditors, if any.
- 18.3 Before or at the annual general meeting, the Councillors must give information to the Members on the Federation's activities and finances during the period since the last annual general meeting.

18.4 The Chair of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Federation.

19. NOTICE OF GENERAL MEETINGS

19.1 Notice of a general meeting must be given to:

- (a) each Member entitled to vote at the meeting;
- (b) each Councillor; and
- (c) the auditor (if any).

19.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

19.3 Subject to **clause 19.4**, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
- (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

19.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a Councillor;
- (b) appoint a Councillor in order to replace a Councillor who was removed; or
- (c) remove an auditor.

19.5 Notice of a general meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
- (d) any other information required under the Act.

19.6 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

19.7 Where any general meeting is cancelled or postponed or the venue for the same is changed:

- (a) the Council must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

20. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

- 20.1 The Chair of a general meeting may invite any person who is not a Member to attend and/or address a meeting.

21. QUORUM

- 21.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- 21.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a Representative or proxy of more than one Member).
- 21.3 A majority of Members entitled to vote constitute a quorum for all general meetings.
- 21.4 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
- (a) the meeting if convened upon the requisition of Members shall be dissolved;
 - (b) in any other case:
 - (i) the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Council may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.
- 21.5 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

22. CHAIR AND DEPUTY-CHAIR

- 22.1 The Chair shall be entitled to preside as chairperson at every general meeting.
- 22.2 Where a general meeting is held and:

- (a) there is no Chair; or
- (b) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as chairperson of the meeting,

the Deputy-Chair shall act as chairperson of the meeting, or if there is no Deputy-Chair or they are not present or unwilling to act, the other Councillors present may choose another Councillor as chairperson of the meeting by two-thirds majority, or if their number is not 3 or a multiple of 3, then the nearest number to two-thirds. If no Councillor is so chosen or if all the Councillors present decline to take the chair, the Members present may choose one of their number to be chairperson of the meeting.

- 22.3 The rulings of the Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

23. CHAIR'S CASTING VOTE

- 23.1 In the case of an equality of votes whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

24. ADJOURNMENT OF MEETINGS

- 24.1 The Chair of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs,
- to a time and place as determined by the Chair.
- 24.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 24.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 24.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

25. CIRCULATING RESOLUTION OF MEMBERS

- 25.1 Subject to **clause 25.3**, the Councillors may put a resolution to the Members to pass a resolution without a general meeting being held.

- 25.2 The Councillors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- 25.3 Circular resolutions cannot be used:
- (a) to remove an auditor, appoint a Councillor or remove a Councillor; or
 - (b) where the Act or this Constitution requires a meeting to be held.
- 25.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in **clause 25.5** or **clause 25.6**.
- 25.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 25.6 The Federation may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

26. HOW VOTING IS CARRIED OUT

- 26.1 At any general meeting a resolution to be considered at the meeting where possible shall be decided by consensus or if a consensus cannot be reached, by a simple majority of a show of hands unless a poll is demanded by:
- (a) the Chair of the meeting; or
 - (b) at least two Members entitled to vote on the resolution.
- 26.2 Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 26.3 On a show of hands, the Chair's decision is conclusive evidence of the result of the vote.
- 26.4 The Chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

27. POLLS

- 27.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or

- (c) immediately after the voting results on a show of hands are declared.
- 27.2 If a poll is demanded it must be taken in such manner and at such time and place as the Chair of the meeting directs subject to **clause 27.5**.
- 27.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 27.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 27.5 A poll demanded on any question of adjournment of a meeting must be taken immediately.
- 27.6 The demand for a poll may be withdrawn.

28. VOTING RIGHTS

- 28.1 A Member entitled to vote has one vote.
- 28.2 No person other than a Member shall be entitled to vote at a general meeting.
- 28.3 A Member is not entitled to vote at any general meeting of the Federation unless all money due and payable by the Member has been paid.

29. CHALLENGE TO A MEMBER'S RIGHT TO VOTE

- 29.1 A Member or the Chair may only challenge a person's right to vote at a general meeting at that meeting.
- 29.2 If a challenge is made under **clause 29.1**, the Chair must decide whether or not the person may vote. The Chair's decision is final.

30. RIGHT TO APPOINT PROXIES

- 30.1 A Representative who is entitled to attend and vote at a general meeting of the Federation may jointly (not severally) together with an authorised Officer or attorney of the Member appoint a person as a proxy to attend and vote on behalf of the Representative at the meeting.

31. APPOINTING A PROXY

- 31.1 The instrument appointing a proxy must be in writing signed by the appointing Representative and by an authorised Officer or attorney of the Member.
- 31.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:

- (a) the name and address of the Member;
 - (b) the name of the Federation;
 - (c) the proxy's name or the name of the office of the proxy; and
 - (d) the meetings at which the instrument of proxy may be used.
- 31.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 31.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by this **clause 31**.
- 31.5 An instrument of proxy may be revoked at any time by notice in writing to the Federation.

32. LODGMENT OF PROXIES

- 32.1 An instrument appointing:
- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (b) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,
- must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Council may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be, at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.
- 32.2 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.
- 32.3 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Federation.

33. VALIDITY OF PROXIES

- 33.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (a) the bankruptcy or liquidation of the Member;

- (b) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

unless the Federation has received at its Office written notice of the bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Council may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- 33.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

34. VOTING BY PROXY

- 34.1 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.
- 34.2 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.

35. NUMBER OF COUNCILLORS

- 35.1 The Federation must have at least 3 and no more than 6 Councillors.
- 35.2 The Council shall be comprised of the officers of the Council and up to 3 ordinary Councillors.

36. ELECTION AND APPOINTMENT OF COUNCILLORS

- 36.1 The initial Councillors are the people who have agreed to act as Councillors and who are named in the application for registration of the Federation.
- 36.2 Apart from the initial Councillors, the Members may elect a Councillor by a resolution passed in an annual general meeting.
- 36.3 A person is eligible for election as a Councillor of the Federation if they:

- (a) are nominated by 2 Members or Representatives of Members entitled to vote at least 7 days before the annual general meeting;
- (b) give the Federation their signed consent to act as a Councillor of the Federation before the annual general meeting; and
- (c) are not ineligible to be a Councillor under the Act or the ACNC Act.

36.4 Any casual vacancy occurring because of resignation or vacancy in the number of Councillors may be filled by the Council after calling for expressions of interests from School Authorities and any Councillor so appointed only holds office until the next Annual General Meeting, and is then eligible for reappointment subject to this Constitution.

37. TERM OF OFFICE

- 37.1 At the first annual general meeting all initial Councillors of the Federation must retire.
- 37.2 A Councillor who retires pursuant to **clause 37.1** may be nominated for re-election.
- 37.3 A Councillor, except an initial Councillor, shall be elected for 3 years if elected at an annual general meeting or 3 years from the date of the next annual general meeting if elected at a general meeting pursuant to clause 36.7. However, of the Councillors of the Federation elected at the first annual general meeting, 2 of the Councillors of the Federation shall hold office for a term of 4 years, 2 for a term of 5 years and 2 for a term of 6 years.
- 37.4 Notwithstanding clause 37.1, at each annual general meeting:
 - (a) any Councillor appointed to fill a casual vacancy pursuant to clause 36.4 must retire; and
 - (b) commencing from the fifth annual general meeting, sufficient Councillors must retire including those required to retire pursuant to clause 37.4(a) and those Councillors whose terms are due to expire, such that at least two Councillors may be elected.
- 37.5 The Councillors who must retire at each annual general meeting under clause 37.4(b) will be the Councillors who have been longest in office since last being elected.

Where Councillors were elected on the same day, the Councillor(s) to retire will be decided by lot unless they agree otherwise.

- 37.6 A Councillor's term of office starts at the end of the meeting at which they are elected, or in the case of Councillors appointed to fill a Casual Vacancy on the date of their appointment and ends at the end of the annual general meeting at which they retire, or they cease to hold office in accordance with **clause 39**.
- 37.7 A Councillor who retires under **clause 37** may be nominated for re-election, subject to **clause 37.8**.
- 37.8 A Councillor who has held office for a continuous period of 9 years or more may only be re-elected by a Special Resolution.

38. OFFICERS OF THE COUNCIL

- 38.1 The officers of the Council (Council Officers) shall include
- (a) Chair,
 - (b) Deputy Chair, and
 - (c) Treasurer.
- 38.2 The Councillors shall, as soon as practicable after each annual general meeting, appoint by way of majority vote, one Councillor to fill each of the Council Officer positions and such Council Officers shall hold office until the end of the next annual general meeting.
- 38.3 In the event of a vacancy arising in respect of any Council Officer, the Council shall appoint by way of majority vote, another Councillor to fill that position.

39. WHEN A COUNCILLOR STOPS BEING A COUNCILLOR

- 39.1 A Councillor stops being a Councillor if they:
- (a) give written notice of resignation as a Councillor to the Secretary of the Federation and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice);
 - (b) retire in accordance with **clause** Error! Reference source not found.;
 - (c) die;
 - (d) are removed as a Councillor by a resolution of the Members;
 - (e) are absent for 3 consecutive Council meetings without approval from the Councillors;
 - (f) become ineligible to be a Councillor of the Federation under the Act or the ACNC Act; or

- (g) become of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health.

40. NEGOTIABLE INSTRUMENTS

- 40.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Federation must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least 2 Councillors. The Councillors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.

41. POWER OF COUNCILLORS

- 41.1 All day-to-day control, management and conduct of the Federation shall be vested in the Council who shall exercise all such powers of the Federation as are not by the Act or by this Constitution required to be exercised in any other manner.

42. DELEGATION OF COUNCILLORS' POWERS

- 42.1 The Councillors may delegate any of their powers and functions to a Committee, a Councillor, an employee of the Federation (such as a chief executive officer) or any other person, as they consider appropriate, on such terms and conditions and with such restrictions as they may think expedient.
- 42.2 Powers conferred under this clause may be exercised concurrently with the powers of the Council in that regard and the Council may from time to time withdraw, revoke or vary all or any of such powers.
- 42.3 The delegation must be recorded in the Federation's minute book.

43. COMMITTEE OF COUNCILLORS

- 43.1 The Council may form and delegate any of its powers to a Committee consisting of such Councillors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees will normally be chaired by a Councillor.
- 43.2 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Council. A power so exercised shall be taken to be exercised by the Council.
- 43.3 The meetings and proceedings of any Committee will be governed by the provisions for regulating the meetings and proceedings of the Council contained in this Constitution.
- 43.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Council are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Council meeting.

43.5 The Council shall create and maintain an Education Policy Committee consisting of such persons as the Council thinks fit and on the terms contained in this **clause 43**.

44. PAYMENTS TO COUNCILLORS

44.1 The Federation must not pay fees to a Councillor for acting as a Councillor.

44.2 The Federation may:

- (a) pay a Councillor for any services rendered to the Federation in a professional or technical capacity, other than as a Councillor, if the amount is no more than a reasonable fee for the work done; or
- (b) reimburse a Councillor for expenses properly incurred by the Councillor in connection with the affairs of the Federation.

44.3 Any payment made under **clause 44.2** must be approved by the Councillors.

44.4 The Federation may pay premiums for insurance indemnifying Councillors, as allowed for by law (including the Act) and this Constitution.

45. CONFLICTS OF INTEREST

45.1 A Councillor must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Council meeting (or that is proposed in a circular resolution):

- (a) to the other Councillors; or
- (b) if all of the Councillors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.

45.2 The disclosure of a conflict of interest by a Councillor must be recorded in the minutes of the meeting.

45.3 A general notice given to the Council by a Councillor that the Councillor is an Officer, a Member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Councillor's interest in the corporation or firm shall, in relation to any matter involving the Federation and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Councillor's interest, provided that the extent of the interest is no greater at the time of first or any subsequent consideration of the relevant matter by the Council than was stated in the notice.

45.4 Each Councillor who has a material personal interest in a matter that is being considered at a Council meeting (or that is proposed in a circular resolution) must not, except as provided under **clauses 45.5**:

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

45.5 A Councillor may still be present and vote if:

- (a) their interest arises because they are a Member of the Federation, and the other Councillors have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Councillor against liabilities that the Councillor incurs as a Councillor of the Federation (see **clause 65**);
- (c) their interest relates to a payment by the Federation under **clause 66** (indemnity), or any contract relating to an indemnity that is allowed under the Act;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Councillor to vote on the matter; or
- (e) the Councillors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Councillor, the nature and extent of the Councillor's interest in the matter and how it relates to the affairs of the Federation; and
 - (ii) says that those Councillors are satisfied that the interest should not stop the Councillor from voting or being present.

46. DUTIES OF COUNCILLORS

- 46.1 The Councillors must comply with their duties as Councillors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Councillor of the Federation;
 - (b) to act in good faith in the best interests of the Federation and to further the charitable purpose(s) of the Federation set out in **clause 6.1**;
 - (c) not to misuse their position as a Councillor;
 - (d) not to misuse information they gain in their role as a Councillor;
 - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in this **clause 45**;
 - (f) to ensure that the financial affairs of the Federation are managed responsibly; and
 - (g) not to allow the Federation to operate while it is insolvent.

47. WHEN THE COUNCILLORS MEET

- 47.1 The Councillors may decide how often, where and when they meet, provided that they shall meet together not less than 4 times each calendar year.

48. CALLING COUNCIL MEETINGS

- 48.1 A Councillor may at any time and the Secretary upon the request of a Councillor shall convene a Council meeting by giving at least 48 hours' notice of the meeting to all Councillors.
- 48.2 Notice of a Council meeting need not be in writing.

49. USING TECHNOLOGY TO HOLD COUNCIL MEETINGS

- 49.1 The Councillors may hold Council meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Councillors.
- 49.2 The Councillors' agreement may be a standing one.
- 49.3 A Councillor may only withdraw their consent within a reasonable period before the meeting.

50. QUORUM AT COUNCIL MEETINGS

- 50.1 Unless the Councillors determine otherwise, the quorum for a Council meeting is a majority (more than 50%) of Councillors.
- 50.2 No business may be transacted at any Council meeting unless a quorum of Councillors is present at all times during the meeting.
- 50.3 Councillors who are personally present (or in conference in accordance with **clause 49**) form a quorum. A Councillor who is disqualified from voting on a matter pursuant to **clause 45** shall be counted in the quorum despite that disqualification.
- 50.4 All resolutions of the Councillors passed at a Council meeting where a quorum is present but where notice of the meeting has not been given as required to each Councillor, or any act carried out pursuant to such resolution, shall, provided each Councillor to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Councillors.

51. CHAIR

- 51.1 The Chair shall, if present, preside as chairperson of every Council meeting.
- 51.2 If a Council meeting is held and the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the

meeting, then the Deputy-Chair shall preside. If the Deputy-Chair is not present or unwilling to chair the meeting then the other Councillors present must elect one of their number to be chairperson of the meeting.

52. VOTING

- 52.1 Where possible, a resolution of the Council must be passed by a consensus, or if a consensus cannot be reached then by a majority of votes of the Councillors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Councillors will for all purposes be taken to be a determination of the Council.
- 52.2 Each Councillor shall have one vote.
- 52.3 In case of an equality of votes at a Council meeting, the Chair does not have a casting vote in addition to a deliberative vote.

53. WRITTEN RESOLUTIONS BY COUNCILLORS

- 53.1 The Council may pass a resolution by way of a circular resolution without a Council meeting being held if all the Councillors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 53.2 The resolution is passed when the last Councillor signs.
- 53.3 A transmission, via whatever technological means, which is received by the Federation and which purports to have been signed by a Councillor, shall for the purposes of this clause be taken to be in writing and signed by that Councillor at the time of the receipt of the transmission by the Federation in legible form.
- 53.4 The Federation may send a circular resolution by email to the Councillors and the Councillors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

54. VALIDATION OF ACTS OF COUNCILLORS

- 54.1 All acts done:
- (a) at any Council meeting; or
 - (b) by any person acting as a Councillor,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Councillor or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Councillor and had been entitled to vote.

55. MINUTES AND RECORDS

- 55.1 The Federation must make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
 - (b) circular resolutions of Members;
 - (c) a copy of a notice of each general meeting.
- 55.2 The Federation must make and keep the following records:
- (a) minutes of proceedings and resolutions of Council meetings (including meetings of any Committees); and
 - (b) circular resolutions of Councillors.
- 55.3 To allow Members to inspect the Federation's records:
- (a) the Federation must give a Member reasonable access to the records set out in **clause 55.1**; and
 - (b) the Councillors may authorise a Member to inspect other records of the Federation, including records referred to in **clause 55.2** and **clause 60.1**.
- 55.4 The Councillors must ensure that minutes of a general meeting or a Council meeting are signed within a reasonable time after the meeting by:
- (a) the Chair of the meeting; or
 - (b) the Chair of the next meeting.
- 55.5 The Councillors must ensure that minutes of the passing of a circular resolution (of Members or Councillors) are signed by the Chair within a reasonable time after the resolution is passed.

56. APPOINTMENT AND ROLE OF SECRETARY

- 56.1 The Federation must have at least one Secretary.
- 56.2 A Secretary must be appointed by the Councillors (after giving the Federation their signed consent to act as Secretary of the Federation) and may be removed from that role by the Councillors.
- 56.3 The Councillors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 56.4 The role of the Secretary includes:
- (a) ensuring the maintenance of a Register of the Federation's Members;
 - (b) ensuring the keeping of minutes and records of:

- (i) all appointments of office-bearers and Councillors; and
 - (ii) the names of those present at a Council meeting or a general meeting; and
 - (iii) proceedings and resolutions at Council meetings and general meetings; and
 - (iv) circular resolutions; and
- (c) attending Council meetings and general meetings.

57. ROLE OF TREASURER

- 57.1 The Federation must have a Treasurer who shall also be a Councillor.
- 57.2 The Members must decide the terms and conditions under which the Treasurer is elected, including any remuneration.
- 57.3 The role of the Treasurer includes:
- (a) preparing and presenting annual financial statements for the Federation to the annual general meeting;
 - (b) ensuring that all money due to the Federation is collected and received and that all payments authorised by the Federation are made; and
 - (c) ensuring that correct books and accounts are kept showing the financial affairs of the Federation, including full details of all receipts and expenditure connected with the activities of the Federation.

58. EXECUTIVE OFFICER

- 58.1 The Council shall appoint an Executive Officer.
- 58.2 The Executive Officer shall be responsible for fulfilling the functions and responsibilities outlined in the job description for the Executive Officer as determined by the Council.
- 58.3 The Executive Officer shall be accountable to the Council, and between Council meetings, to the Chair of the Council.
- 58.4 The Council shall:
- (a) instruct the Executive Officer to carry out the directions of the Councillors in accordance with the Constitution; and
 - (b) receive regular reports from the Executive Officer on the progress of implementing these directions.

58.5 The duties of the Executive Officer shall include:

- (a) planning and assisting in the organisation of meetings of the members and other stakeholders;
- (b) attendance at Council meetings;
- (c) facilitating the work of any special purpose sub-committees established by the Council;
- (d) maintaining a full and correct record of activities, including financial operations for presentation to Members at the annual general meeting;
- (e) at the direction of the Council, notifying members of a general meeting;
- (f) developing an action plan from the strategic plan; and
- (g) any other duties assigned by the Council to further the aims of the Federation.

59. EXECUTION OF DOCUMENTS

59.1 Without limiting the manner in which the Federation may execute any contract, including as permitted under section 126 of the Act, the Federation may execute a document without using a common seal if the document is signed by:

- (a) two Councillors of the Federation; or
- (b) a Councillor and the Secretary.

59.2 Nothing in this Constitution requires the Federation to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Federation.

60. FINANCIAL AND RELATED RECORDS

60.1 The Federation must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

60.2 The Federation must also keep written records that correctly record its operations.

60.3 The Federation must retain its records for at least 7 years.

60.4 The Councillors must take reasonable steps to ensure that the Federation's records are kept safe.

61. COUNCILLORS' ACCESS TO DOCUMENTS

- 61.1 A Councillor has a right of access to the financial records of the Federation at all reasonable times.
- 61.2 If the Councillors agree, the Federation must give a Councillor or former Councillor access to:
- (a) certain documents, including documents provided for or available to the Councillors; and
 - (b) any other documents referred to in those documents.

62. BY-LAWS

- 62.1 The Councillors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 62.2 Members and Councillors must comply with by-laws as if they were part of this Constitution.

63. WHEN NOTICE IS TAKEN TO BE GIVEN

- 63.1 Written notice under this Constitution may be:
- (a) delivered in person, or left at the recipient's address, and is taken to be given on the day it is delivered;
 - (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs;
 - (c) sent by email, fax or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

64. WINDING UP

- 64.1 If any surplus remains following the winding up of the Federation, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to one or more corporation(s) or institution(s) which has:
- (a) charitable objects which are similar to the objects of the Federation as set out in **clause 6.1**;
 - (b) a governing document which requires its income and property to be applied in promoting its objects; and

- (c) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Federation by **clause 7**.

64.2 The identity of the corporation(s) or institution(s) is to be determined by a Special Resolution of the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

65. INDEMNITY

65.1 To the extent permitted by law every Officer (and former Officer) of the Federation shall be indemnified out of the funds of the Federation against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Federation under this clause unless:

- (a) it is in respect of a liability to another person (other than the Federation or a related body corporate to the Federation) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

66. PAYMENT OF INDEMNITY POLICY PREMIUM

66.1 To the extent permitted by law, the Federation may at the discretion of the Council enter into and pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Federation against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Federation; or
- (b) a contravention of sections 182 or 183 of the Act.

66.2 The Council shall have the discretion to approve the terms and conditions of any such policy of insurance.

66.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of their actions or omissions then the Federation shall not be required to indemnify the Officer under **clause 65** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

67. INDEMNITY TO CONTINUE

- 67.1 The indemnity granted by the Federation, contained in **clause 65**, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

SCHEDULE 1

Founding Members

Corporation of the Society of the Missionaries of the Sacred Heart

Dominican Education Australia Ltd

Good Samaritan Education

Jesuit Education Australia Limited

Loreto Ministries Ltd

Trustees of Mary Aikenhead Ministries

The Salesian Society Incorporated

The Trustees of the Order of Hermits of St Augustine in Australasia

The Trustees of the Marist Brothers

Trustees of the Sisters of Mercy (North Sydney)

Trustees of the Sisters of Mercy Parramatta

Trustees of Edmund Rice Education Australia

Trustees of Kildare Ministries

Trustees of the De La Salle Brothers

Trustees of the Vincentian Fathers

Trustees of the Society of the Sacred Heart of Jesus

Trustees of the Lebanese Maronite Order