



# **CONSTITUTION OF BACCHUS MARSH GRAMMAR**

Australian Company Number (ACN) [insert ACN]  
Australian Business Number (ABN) [insert ABN]

A company limited by guarantee

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## Preliminary

### 1. Name of the company

The name of the **company** is Bacchus Marsh Grammar Ltd.

### 2. Type of company

- (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 **company** is a secular organisation.

### 3. Limited liability of members

The liability of **members** is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

Each **member** must contribute an amount not more than \$100 (the **guarantee**) to the property of the **company** if the **company** 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) debts and liabilities of the **company** incurred before the **member** ceased being a **member**, or
- (b) costs of winding up.

### 5. Definitions

In this **constitution**, words and phrases have the meaning set out in clauses 73 and 75.

## Charitable purposes and powers

### 6. Object

The **company's** object is to pursue the following charitable purposes:

- (a) provide education of excellence for each **student**;
- (b) provide an in-depth integrated curriculum, emphasizing, but not limited to: literacy; numeracy; and science-technology for the **students**;
- (c) operate an efficient and balanced timetable;
- (d) ensure a smooth transition between primary and secondary levels of schooling;
- (e) encourage effort, confidence and enthusiasm in all areas of each **student's** development;
- (f) assist **students**, families and staff to understand and accept individual differences;
- (g) work to improve **students'** abilities, with a focus on improving individual strengths and weaknesses;
- (h) encourage and work with each **student** to achieve their maximum potential;
- (i) to assist **students** to grow, experience and gain knowledge in a positive, safe and secure environment; and
- (j) with appropriate discipline, firmly but fairly applied, encourage a respect for authority, development of self-control and personal responsibility.

## 7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purposes set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

## 8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 8.2 and 72.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a **member** for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
  - (b) making a payment to a **member** in carrying out the **company's** charitable purposes.

## 9. Amending the constitution

- 9.1 Subject to clause 9.2, the **members** may amend this **constitution** by passing a **special resolution**.
- 9.2 The **members** must not pass a **special resolution** that amends this **constitution** if passing it causes the **company** to no longer be a charity.

# Members

## 10. Membership and register of members

- 10.1 The **members** of the **company** are:
- (a) **initial members**, and
  - (b) any other person that the **directors** allow to be a **member**, in accordance with this **constitution**.
- 10.2 The **company** 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
    - iii. any alternative address nominated by the **member** for the service of notices, 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
    - iii. any alternative address nominated by the **member** for the service of notices, and
    - iv. dates the membership started and ended.
- 10.3 The **company** must give current **members** access to the **register of members**.
- 10.4 Information that is accessed from the **register of members** must only be used in a manner relevant to the interests or rights of **members**.

### 11. Who can be a member

- 11.1 A person who has been approved by the **nominations committee** pursuant to clauses 38 and 39.
- 11.2 Subject to clause 11.1 a person who supports the purposes of the **company** is eligible to apply to be a **member** of the **company** under clause 12.
- 11.3 In this clause, 'person' means an individual or incorporated body.

### 12. How to apply to become a member

A person (as defined in clause 11.3) may apply to become a **member** of the **company** by writing to the secretary stating that they:

- (a) want to become a **member**
- (b) support the purposes of the **company**, and
- (c) agree to comply with the **company's constitution**, including paying the guarantee under clause 4 if required.

### 13. Directors decide whether to approve membership

- 13.1 The **directors** must consider an application for membership presented by the **nominations committee** within a reasonable time after the secretary receives the application.
- 13.2 If the **directors** approve an application, the secretary must as soon as possible:
  - (a) enter the new **member** on the **register of members**, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the **directors** reject an application presented by the **nominations committee**, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 The **directors** shall/shall not be required to provide the **nominations committee** with their reasoning.
- 13.5 For the avoidance of doubt, the **directors** may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a **member**, the applicant agrees to those three matters.

### 14. When a person becomes a member

Other than **initial members**, an applicant will become a **member** when they are entered on the **register of members**.

### 15. When a person stops being a member

A person immediately stops being a **member** if they:

- (a) die
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated **member**)
- (c) resign, by writing to the secretary
- (d) are expelled under clause 17,
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a **member**.

## Dispute resolution and disciplinary procedures

### 16. Dispute resolution

- 16.1 The dispute resolution procedure in this clause 16 applies to disputes (disagreements) under this **constitution** between a **member** or **director** and:
- (a) one or more **members**
  - (b) one or more **directors**, or
  - (c) the **company**.
- 16.2 A **member** must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 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 **directors** about the dispute in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (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 **directors**, or
    - ii. for other disputes, a person chosen by either the 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 **company** has its registered office.
- 16.6 A mediator chosen by the **directors** under clause 16.5(b)(i):
- (a) may be a **member** or former **member** of the **company**
  - (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. Disciplining members

- 17.1 In accordance with this clause 17, the **directors** may resolve to warn, suspend or expel a **member** from the **company** if the **directors** consider that:
- (a) the **member** has breached this **constitution**, or
  - (b) the **member's** behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the **member** in writing:
- (a) that the **directors** are considering a resolution to warn, suspend or expel the **member**
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the **member** is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the **member** may provide an explanation to the **directors**, and details of how to do so.

- 17.3 Before the **directors** pass any resolution under clause 17.1, the **member** must be given a chance to explain or defend themselves by:
- (a) sending the **directors** a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the **directors** may:
- (a) take no further action
  - (b) warn the **member**
  - (c) suspend the **member's** rights as a **member** for a period of no more than 12 months
  - (d) expel the **member**
  - (e) refer the decision to an unbiased, independent person on conditions that the **directors** consider appropriate (however, the person can only make a decision that the **directors** could have made under this clause), or
  - (f) require the matter to be determined at a **general meeting**.
- 17.5 The **directors** cannot fine a **member**.
- 17.6 The secretary must give written notice to the **member** of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the **member** as a result of any decision made in good faith under this clause.

## General meetings of members

### 18. General meetings called by directors

- 18.1 The **directors** may call a **general meeting**.
- 18.2 If **members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the **directors** must:
- (a) within 21 days of the **members'** request, give all **members** notice of a **general meeting**, and
  - (b) hold the **general meeting** within 2 months of the **members'** request.
- 18.3 The percentage of votes that **members** have (in clause 18.2) is to be worked out as at midnight before the **members** request the meeting.
- 18.4 The **members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the **company**.
- 18.5 Separate copies of a document setting out the request may be signed by **members** if the wording of the request is the same in each copy.

### 19. General meetings called by members

- 19.1 If the **directors** do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the **members** who made the request may call and arrange to hold a **general meeting**.
- 19.2 To call and hold a meeting under clause 19.1 the **members** must:



- (a) as far as possible, follow the procedures for **general meetings** set out in this **constitution**
  - (b) call the meeting using the list of **members** on the **register of members** , which the **company** must provide to the **members** making the request at no cost, and
  - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 19.3 The **company** must pay the **members** who request the **general meeting** any reasonable expenses they incur because the **directors** did not call and hold the meeting.

## 20. Annual general meeting

- 20.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) within 18 months after registration of the **company**, and
  - (b) after the first annual **general meeting**, at least once in every calendar year.
- 20.2 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 **company's** activities
  - (b) a review of the **company's** finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual **general meeting**, the **directors** must give information to the **members** on the **company's** activities and finances during the period since the last annual **general meeting**.
- 20.4 The chairperson of the annual **general meeting** must give **members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 21. Notice of general meetings

- 21.1 Notice of a **general meeting** must be given to:
- (a) each **member** entitled to vote at the meeting
  - (b) each **director**, and
  - (c) the auditor (if any).
- 21.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, 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.
- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a **director** or **member**
  - (b) appoint a **director** or **member** in order to replace a **director** or **member** who was removed, or
  - (c) remove an auditor.

- 21.5 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 two 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
  - (d) a statement that **members** have the right to appoint proxies and that, if a **member** appoints a proxy:
    - i. the proxy does not need to be a **member** of the **company**
    - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 21.6 If a **general meeting** is adjourned for 1 month or more, the **members** must be given new notice of the resumed meeting.

## 22. Quorum at general meetings

- 22.1 For a **general meeting** to be held, at least 5 **members** (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. 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**).
- 22.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 23. Auditor's right to attend meetings

- 23.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the **members** on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a **member** of the **company** is entitled to receive.

## 24. Representatives of members

- 24.1 An incorporated **member** may appoint as a representative:
- (a) one individual to represent the **member** at meetings and to sign circular resolutions under clause 31, and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 24.2 The appointment of a representative by a **member** must:
- (a) be in writing

- (b) include the name of the representative
  - (c) be signed on behalf of the **member**, and
  - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a **member** relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

#### **25. Using technology to hold meetings**

- 25.1 The **company** may hold a **general meeting** at 2 or more venues using any technology that gives the **members** as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

#### **26. Chairperson for general meetings**

- 26.1 The **elected chairperson** is entitled to chair **general meetings**.
- 26.2 The **members** present and entitled to vote at a **general meeting** may choose a **director** or **member** to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**, or
  - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

#### **27. Role of the chairperson**

- 27.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give **members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.2 The chairperson does not have a casting vote.

#### **28. Adjournment of meetings**

- 28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

#### **29. Members' resolutions and statements**

- 29.1 **Members** with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a **members' resolution**, and/or
  - (b) a written request to the **company** that the **company** give all of its **members** a **members' statement**.
- 29.2 A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **members** proposing the resolution.
- 29.3 A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **members** making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by **members** if the wording is the same in each copy.

- 29.5 The percentage of votes that **members** have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 29.6 If the **company** has been given notice of a **members' resolution** under clause 29.1(a), the resolution must be considered at the next **general meeting** held more than 2 months after the notice is given.
- 29.7 This clause does not limit any other right that a **member** has to propose a resolution at a **general meeting**.

### **30. Company must give notice of proposed resolution or distribute statement**

- 30.1 If the **company** has been given a notice or request under clause 29:
- (a) in time to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, it must do so at the **company's** cost, or
  - (b) too late to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then the **members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **members** notice of the proposed **members' resolution** or a copy of the **members' statement**. However, at a **general meeting**, the **members** may pass a resolution that the **company** will pay these expenses.
- 30.2 The **company** does not need to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** if:
- (a) it is more than 1,000 words long
  - (b) the **directors** consider it may be defamatory
  - (c) clause 30.1(b) applies, and the **members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed **members' resolution** or a copy of the **members' statement** to **members**, or
  - (d) in the case of a proposed **members' resolution**, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **members**.

### **31. Circular resolutions of members**

- 31.1 Subject to clause 31.3, the **directors** may put a resolution to the **members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 31.2 The **directors** 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.
- 31.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a **director** or remove a **director**, or appoint a **member** or remove a **member**
  - (b) for passing a **special resolution**, or
  - (c) where the **Corporations Act** or this **constitution** requires a meeting to be held.
- 31.4 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 31.5 or clause 31.6.
- 31.5 **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.
- 31.6 The **company** 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.

## Voting at general meetings

### 32. How many votes a member has

Each **member** has one vote.

### 33. Challenge to member's right to vote

- 33.1 A **member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 34. How voting is carried out

- 34.1 Voting must be conducted and decided by:
  - (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson 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.

### 35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (a) at least 5 **members present**, or
  - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
  - (a) for the election of a chairperson under clause 26.2, or
  - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

### 36. Appointment of proxy

- 36.1 A **member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy does not need to be a **member**.

- 36.3 A proxy appointed to attend and vote for a **member** has the same rights as the **member** to:
- (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the **member** appointing the proxy and must contain:
- (a) the **member's** name and address
  - (b) the **company's** name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 21.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a **member** at a meeting while the **member** is at the meeting.
- 36.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **member**:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### 37. Voting by proxy

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a **member** appointed as a proxy from voting as a **member** on a show of hands).
- 37.2 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.

## Nominations committee

### 38. Composition of Nominations Committee

- 38.1 The **directors** shall establish a **nominations committee** comprising the following:
- (a) the chair;
  - (b) a **director**;
  - (c) a **member** of the **company**;
  - (d) the **principal**; and

- (e) an additional person appointed by the **directors**, who must be a **member** of the **company**.

38.2 There are to be no more than 5 persons on the **nominations committee**.

### **39. Powers and Duties of the Nominations Committee**

39.1 The **directors** must develop a policy which sets out the functions of the **nominations committee**.

39.2 The functions to be conferred on the **nominations committee** by the policy:

- (a) Must include a procedure for identifying and nominating suitable candidates for election or appointment as **directors**
- (b) Must include a procedure for identifying and nominating suitable candidates for election or appointment as chair of the **board**
- (c) May include a procedure for developing and implementing a structured process for evaluation of **board** performance and renewal of **board** positions; and
- (d) May include any other function thought desirable or convenient by the **directors**.

39.3 In assessing the suitability of candidates for election or appointment as **directors**, the **nominations committee** must:

- (a) Ensure that among the **directors** there is a desirable combination of skills, qualifications and experience;
- (b) Satisfy itself that a candidate is not prohibited by the Act from acting as a **director**; and
- (c) Satisfy itself that a candidate successfully meets all requirements of the *Working With Children Act 2005* (Vic) and the **board** has sighted a current Working With Children's Check for each candidate.

39.4 Any person who wishes to apply for a position as **director** must submit themselves to the review process conducted by the **nominations committee**.

39.5 The **nominations committee** has absolute discretion in all its functions, subject only to the direction of the **directors**, the provisions of this **constitution** and the **law**.

39.6 The **nominations committee** may decline to nominate any person for election or appointment as a **director** (including the chair) and is not required to provide reasoning.

39.7 The **nominations committee** may nominate a person for more than 1 position on the **board**.

In the event of a dispute about whether a person meets the eligibility criteria for election or appointment as a **director**, the **nominations committee** shall determine the dispute in its discretion.

## **Directors**

### **40. Number of directors**

40.1 The **company** must have at least 3 and no more than 11 **directors**.

40.2 The **principal** will be a **director** of the **company**.

#### 41. Election and appointment of directors

- 41.1 The initial **directors** are the people who have agreed to act as **directors** and who are named as proposed **directors** in the application for registration of the **company**.
- 41.2 Apart from the initial **directors** and **directors** appointed under clause 41.5, the **members** may elect a **director** by a resolution passed in a **general meeting**.
- 41.3 Each of the **directors** must be appointed by a separate resolution, unless:
- the **members** present have first passed a resolution that the appointments may be voted on together, and
  - no votes were cast against that resolution.
- 41.4 A person is eligible for election as a **director** of the **company** if they:
- Is a person that the **directors** believe will provide benefit and value to the **company**
  - are nominated by two **members** or representatives of **members** entitled to vote (unless the person was previously elected as a **director** at a **general meeting** and has been a **director** since that meeting),
  - give the **company** their signed consent to act as a **director** of the **company**, and
  - are not ineligible to be a **director** under the **Corporations Act** or the **ACNC Act**.
- 41.5 The **directors** may appoint a person as a **director** to fill a casual vacancy or as an additional **director** if that person:
- is a **member** of the **company**, or a representative of a **member** of the **company** (appointed under clause 24)
  - gives the **company** their signed consent to act as a **director** of the **company**, and
  - is not ineligible to be a **director** under the **Corporations Act** or the **ACNC Act**.
- 41.6 If the number of **directors** is reduced to fewer than 3 or is less than the number required for a quorum, the continuing **directors** may act for the purpose of increasing the number of **directors** to 3 (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

#### 42. Election of chairperson

The **directors** must elect a **director** as the **company's** elected chairperson.

#### 43. Term of office

- 43.1 At each annual **general meeting**:
- any **director** appointed by the **directors** to fill a casual vacancy or as an additional **director** must retire, and
  - at least one-third of the remaining **directors** must retire.
- 43.2 The **directors** who must retire at each annual **general meeting** under clause 43.1(b) will be the **directors** who have been longest in office since last being elected. Where **directors** were elected on the same day, the director(s) to retire will be decided by ballot unless they agree otherwise.
- 43.3 Other than a **director** appointed under clause 41.5, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.



- 43.4 Each **director** must retire at least once every 3 years.
- 43.5 A **director** who retires under clause 43.1 may nominate for election or re-election, subject to clause 43.6.
- 43.6 A **director** who has held office for a continuous period of 9 years or more may only be re-appointed or re-elected by a **special resolution**
- 43.7 Irrespective of any provision in this clause 43 and/or clause 44 the **principal** shall remain a **director** for the duration of their appointment in the role of **principal**.

#### 44. When a director stops being a director

A **director** stops being a **director** if they:

- (a) give written notice of resignation as a **director** to the **company**
- (b) die
- (c) are removed as a **director** by a **members' resolution**
- (d) stop being a **member** of the **company**
- (e) are a representative of a **member**, and that **member** stops being a **member**
- (f) are a representative of a **member**, and the **member** notifies the **company** that the representative is no longer a representative
- (g) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a **director** of the **company** under the **Corporations Act** or the **ACNC Act**.

## Powers of directors

#### 45. Powers of directors

- 45.1 The **directors** are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 45.2 The **directors** may use all the powers of the **company** except for powers that, under the **Corporations Act** or this **constitution**, may only be used by **members**.
- 45.3 The **directors** must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 46, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 45.4 The **directors** cannot remove a **director** or auditor. **Directors** and auditors may only be removed by a **members' resolution** at a **general meeting**.

#### 46. Delegation of directors' powers

- 46.1 The **directors** may delegate any of their powers and functions to a committee, a **director**, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 46.2 The delegation must be recorded in the **company's** minute book.
- 46.3 Each committees shall:
- (a) have no management role;
  - (b) have suitable experience and knowledge to fulfil the committee's responsibilities and any regulatory requirements;

- (c) Perform activities and make recommendations to the **board** consistent with this **constitution**;
- (d) regularly update the **board** about matters relevant to the committee's role and responsibilities and make appropriate recommendations for approval, and where appropriate resolutions of the **board**;
- (e) engage independent advice as it considers necessary to carry out its duties at the **company's** expense provided prior approval of the **board** has been given;
- (f) require the attendance of **company** officers at meetings as appropriate;
- (g) engage the **board** secretary to provide secretarial services to the committee, or such other person as nominated by the **board**;
- (h) ensure all committee reports and other papers of a committee are made available to the **directors** upon request, provided no conflict of interest exists.

#### 47. Payments to directors

- 47.1 The **company** must not pay fees to a **director** for acting as a **director**.
- 47.2 The **company** may:
- (a) pay a **director** 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) reimburse a **director** for expenses properly incurred by the **director** in connection with the affairs of the **company**.
- 47.3 Any payment made under clause 47.2 must be approved by the **directors**.
- 47.4 The **company** may pay premiums for insurance indemnifying **directors**, as allowed for by **law** (including the **Corporations Act**) and this **constitution**.

#### 48. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) 2 **directors** of the **company**, or
- (b) a **director** and the secretary.

## Duties of directors

#### 49. Duties of directors

The **directors** must comply with their duties as **directors** under **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 **director** of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6
- (c) not to misuse their position as a **director**
- (d) not to misuse information they gain in their role as a **director**
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 50
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and

- (g) not to allow the **company** to operate while it is insolvent.

## 50. Conflicts of interest

- 50.1 A **director** must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of **directors** (or that is proposed in a circular resolution):
- (a) to the other **directors**, or
  - (b) if all of the **directors** have the same conflict of interest, to the **members** at the next **general meeting**, or at an earlier time if reasonable to do so.
- 50.2 The disclosure of a conflict of interest by a **director** must be recorded in the minutes of the meeting.
- 50.3 Each **director** who has a material personal interest in a matter that is being considered at a meeting of **directors**(or that is proposed in a circular resolution) must not, except as provided under clauses 50.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 50.4 A **director** may still be present and vote if:
- (a) their interest arises because they are a **member** of the **company**, and the other **members** have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the **director** against liabilities that the **director** incurs as a **director** of the **company** (see clause 69)
  - (c) their interest relates to a payment by the **company** under clause 68 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the **director** to vote on the matter, or
  - (e) the **directors** who do not have a material personal interest in the matter pass a resolution that:
    - (i) 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
    - (ii) says that those **directors** are satisfied that the interest should not stop the **director** from voting or being present.

## 51. The Principal

- 51.1 **Appointment and removal of a principal**
- (a) The **directors** may, wish to appoint the **principal** under the terms of an employment contract approved by the **board**.
  - (b) The **directors** may terminate the employment of the **principal** according to the terms and conditions set out in the **principal's** employment contract.
  - (c) A resolution to terminate the employment of the **principal**:
    - (iii) must be passed by **special resolution** of the **board** meeting; and
    - (iv) cannot be passed without the support of the Chair.

## Directors' meetings

**52. When the directors meet**

The **directors** will meet at least 4 times in each year at such place and such times as the **directors** may determine.

**53. Calling directors' meetings**

- 53.1 A **director** may call a directors' meeting by giving reasonable notice to all of the other directors.
- 53.2 A **director** may give notice in writing or by any other means of communication that has previously been agreed to by all of the **directors**.
- 53.3 Meetings of the **directors** may be convened by the Chairperson, by any 4 of the **directors** or by the **principal**.
- 53.4 A notice will be given to the **directors** of any meeting specifying the general nature of the business to be transacted at such a meeting.

**54. Chairperson for directors' meetings**

- 54.1 The **elected chairperson** is entitled to chair **directors'** meetings.
- 54.2 The **directors** at a directors' meeting may choose a **director** to be the chairperson for that meeting if the **elected chairperson** is:
  - (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chairperson of the meeting.

**55. Quorum at directors' meetings**

- 55.1 Unless the **directors** determine otherwise, the quorum for a **directors'** meeting is a majority (more than 50%) of directors.
- 55.2 A quorum must be present for the whole **directors'** meeting.

**56. Using technology to hold directors' meetings**

- 56.1 The **directors** may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 56.2 The agreement may be a standing (ongoing) one.
- 56.3 A **director** may only withdraw their consent within a reasonable period before the meeting.

**57. Passing directors' resolutions**

- 57.1 A **directors' resolution** must be passed by a majority of the votes cast by **directors** present and entitled to vote on the resolution.
- 57.2 If a **directors' resolution** is subject to a deadlock where 50% of the **directors** entitled to vote, vote to pass the proposed resolution and 50% of the **directors** entitled to vote, vote against the proposed resolution, the **board** will invite a **visiting expert** to vote on the resolution to resolve the deadlock.
- 57.3 The determination of the **visiting expert** shall (save for manifest error) be final and binding.
- 57.4 The **visiting expert** must sign an appropriate confidentiality agreement and will be presented with all relevant information and documents to cast an informed vote.

**58. Circular resolutions of directors**

- 58.1 The **directors** may pass a circular resolution without a directors' meeting being held.

- 58.2 A circular resolution is passed if all the **directors** entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 58.3 or clause 58.4.
- 58.3 Each **director** may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 58.4 The **company** may send a circular resolution by email to the **directors** and the **directors** may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 58.5 A circular resolution is passed when the last **director** signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

## Secretary

### 59. Appointment and role of secretary

- 59.1 The **company** must have at least 1 secretary, who may also be a director.
- 59.2 A secretary must be appointed by the **directors** (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 59.3 The **directors** must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 59.4 The role of the secretary includes:
- (a) maintaining a register of the **company's members**, and
  - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

## Minutes and records

### 60. Minutes and records

- 60.1 The **company** must, within 1 month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
  - (b) minutes of circular resolutions of **members**
  - (c) a copy of a notice of each **general meeting**, and
  - (d) a copy of a **members' statement** distributed to **members** under clause 30.
- 60.2 The **company** must, within 1 month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **directors' meetings** (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 60.3 To allow **members** to inspect the **company's** records:
- (a) the **company** must give a **member** access to the records set out in clause 60.1, and
  - (b) the **directors** may authorise a **member** to inspect other records of the **company**, including records referred to in clause 60.2 and clause 61.1.
- 60.4 The **directors** must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or

- (b) the chairperson of the next meeting.
- 60.5 The **directors** must ensure that minutes of the passing of a circular resolution (of **members** or **directors**) are signed by a **director** within a reasonable time after the resolution is passed.

#### 61. Financial and related records

- 61.1 The **company** 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.
- 61.2 The **company** must also keep written records that correctly record its operations.
- 61.3 The **company** must retain its records for at least 7 years.
- 61.4 The **directors** must take reasonable steps to ensure that the **company's** records are kept safe.

## By-laws

#### 62. By-laws

- 62.1 The **directors** may pass a resolution to make by-laws to give effect to this **constitution**.
- 62.2 **Members** and **directors** must comply with by-laws as if they were part of this **constitution**.

## Notice

#### 63. What is notice

- 63.1 Anything written to or from the **company** under any clause in this **constitution** is written notice and is subject to clauses 64 to 66, unless specified otherwise.
- 63.2 Clauses 64 to 66 do not apply to a notice of proxy under clause 36.6.

#### 64. Notice to the company

Written notice or any communication under this **constitution** may be given to the **company**, the **directors** or the secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **company** to the **members** as the **company's** email address or other electronic address, or
- (d) sending it to the fax number notified by the **company** to the **members** as the **company's** fax number.

#### 65. Notice to members

- 65.1 Written notice or any communication under this **constitution** may be given to a **member**:
  - (a) in person

- (b) by posting it to, or leaving it at the address of the **member** in the **register of members** or an alternative address (if any) nominated by the **member** for service of notices
  - (c) sending it to the email or other electronic address nominated by the **member** as an alternative address for service of notices (if any)
  - (d) sending it to the fax number nominated by the **member** as an alternative address for service of notices (if any), or
  - (e) if agreed to by the **member**, by notifying the **member** at an email or other electronic address nominated by the **member**, that the notice is available at a specified place or address (including an electronic address).
- 65.2 If the **company** does not have an address for the **member**, the **company** is not required to give notice in person.

#### 66. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, 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, is taken to be given on the business day after it is sent, and
- (d) given under clause 65.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

#### 67. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the **directors** pass a resolution to change the financial year.

## Indemnity, insurance and access

#### 68. Indemnity

- 68.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 68.2 In this clause, 'officer' means a **director** or secretary and includes a **director** or secretary after they have ceased to hold that office.
- 68.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by **law** (including the **Corporations Act**) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 68.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

## 69. Insurance

To the extent permitted by **law** (including the **Corporations Act**), and if the **directors** consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

## 70. Directors' access to documents

- 70.1 A **director** has a right of access to the financial records of the **company** at all reasonable times.
- 70.2 If the **directors** agree, the **company** must give a **director** or former **director** access to:
- (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## Winding up

### 71. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a **member** or a former **member** of the **company**, unless that **member** or former **member** is a charity described in clause 72.1.

### 72. Distribution of surplus assets

- 72.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 72.4) that remain after the **company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6
  - (b) which also prohibit the distribution of any surplus assets to its **members** to at least the same extent as the **company**, and
  - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- 72.2 The decision as to the charity or charities to be given the surplus assets must be made by a **special resolution of members** at or before the time of winding up. If the **members** do not make this decision, the company may apply to the Supreme Court to make this decision.
- 72.3 If the **company's** deductible gift recipient endorsement is revoked (whether or not the **company** is to be wound up), any surplus gift funds must be transferred to 1 or more charities that meet the requirements of 72.1(a), (b) and (c), as decided by the **directors**.
- 72.4 For the purpose of this clause:
- (a) 'gift funds' means:
    - (i) gifts of money or property for the principal purpose of the **company**
    - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the **company**, and
    - (iii) money received by the **company** because of such gifts and contributions.
  - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).



## Definitions and interpretation

### 73. Definitions

In this constitution:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- (b) **board** means the board of **directors** of the **company**;
- (c) **company** means the **company** referred to in clause 1;
- (d) **constitution** means this constitution of the Company, subject to any amendments made from time to time;
- (e) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (f) **directors' resolution** means a proposed resolution of **directors** to be move at a **general meeting**;
- (g) **elected chairperson** means a person elected by the **directors** to be the **company's** chairperson under clause 42;
- (h) **general meeting** means a meeting of **members** and includes the annual **general meeting**, under clause 20.1;
- (i) **government agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;
- (j) **initial member** means a person who is named in the application for registration of the **company**, with their consent, as a proposed **member** of the **company**;
- (k) **law** means:
  - i. principles of law or equity established by decisions of courts;
  - ii. statutes, regulations or by-laws of the Commonwealth, or any State or Territory of the Commonwealth of Australia or a **government agency**; and
  - iii. requirements and approvals (including conditions) of the Commonwealth or any State or Territory of the Commonwealth of Australia or a **government agency** that have the force of **law**;
- (l) **member** means a person whose name is entered on the Register as the holder of one or more shares of the **company**;
- (m) **member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting;
- (n) **members' resolution** means a proposed resolution of **members** to be move at a **general meeting**;
- (o) **members' statement** means a statement about a proposed resolution or any other matter that may be considered at a **general meeting**;
- (p) **nominations committee** means the committee established pursuant to clause 38;
- (q) **principal** means the person appointed by the **directors** who is responsible for the operation and management of the **school**;
- (r) **registered charity** means a charity that is registered under the **ACNC Act**;
- (s) **register of members** means the register of **members** of the **company**;
- (t) **school** means the educational institution Bacchus Marsh Grammar;
- (u) **special resolution** means a resolution:

- iv. of which notice has been given under clause 21.5(c), and
- v. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution;
- (v) **student** means a person enrolled as a student at the **school**;
- (w) **surplus assets** means any assets of the company that remain after paying all debts and other liabilities of the **company**, including the costs of winding up; and
- (x) **visiting expert** means a person appointed by the **board** pursuant to clause 57.2 that the **board** deems to have the required skill and knowledge to make a determination on a specific matter.

#### **74. Reading this constitution with the Corporations Act**

- 74.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 74.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this **constitution** which are inconsistent with those Acts.
- 74.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this **constitution** which is inconsistent with that Act.
- 74.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this **constitution**.

#### **75. Interpretation**

In this **constitution**:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).