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# Constitution

Xavier College Ltd

(ACN 621 514 172)

(A public company limited by guarantee)

Dated: 1 May 2018

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## 2 Nature and powers of the Company and liability

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

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## Part B – Purpose

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### 3 Purpose of the Company

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

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

(Charitable Purpose )

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## Part C – Members and membership

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### 4 Membership

#### 4.1 Sole member of the Company

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

#### 4.2 Membership is transferable

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

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

#### 4.3 Membership fees

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

#### 4.4 Resolutions of single member company

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

#### 4.5 Member rights and powers

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

- (a) this constitution (including the requirements set out in Schedule 3); and
- (b) its own constitution by the provisions of section 125(3) of the Companies Act 2006.

### 5.3 Operation of schools

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

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

## Part E – Directors, Secretary, Principal and Rector

### 6 Directors

#### 6.1

(d)



(i)



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

#### 6.7 Directors' meetings

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

#### 6.8 Convening of meetings of Directors

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

#### 6.9 Notice of, and attendance at, Directors' meetings

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



- (g) If both the Chair and Deputy-Chair are unable to attend a Directors' meeting or are unwilling

6.15 Delegation to individuals

- (a) So long as doing so is consistent with any directives, policies, procedures and protocols of the Member and the Provincial and with any delegations the Provincial may have made in accordance with Jesuit Education Delegations:
  - (i) the Directors may resolve to delegate any of their powers to one or more Directors, or to one or more employees, or to one or more members of the Societov



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- (b) This indemnity:
  - (i) may only be for losses or liabilities incurred as a Director or other officer of the Company; and
  - (ii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the Company may taM4.s-12.3 (m-0.002 Tc 0.002 /))JTJ0 Tc 0 Tw

## Schedule 1 Dictionary

### 1 Defined terms

In this constitution unless the context otherwise requires:

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

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

Charitable Purpose has the meaning given in rule 3.

Company means Xavier College Ltd.

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

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

Director means a director of the Company.

Eligible Recipient means an organisation in Australia that:

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

IAG means the Society of Jesus publi.1 (ent)-ento.2 (y)-835d38 (us)-8.1 (s)-8.1 (I.1 (s)-6835d38 (us)-8.





## Schedule 2 Requirements relating to certain decisions of Directors

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

Purchase of land or buildings		<ul style="list-style-type: none"> <li>The Directors must ensure that the Company does not purchase land or buildings, and does not permit or approve, the purchase of land or buildings without the Member's prior written approval;</li> </ul>
Approve the strategic plans and master plans for the School		The Directors must not approve strategic plans or the School master plan without the Member's prior written approval

Constructing or renovating a building

The Directors must ensure that the Company does not undertake construction or renovation of a building above the delegated limit contained in the Jesuit Education Delegations without the Member's prior written approval.

