

**CONSTITUTION  
OF  
Saints Cyril and Methodius  
Orthodox Institute Limited**

Australian Company Number (ACN) 623 975 913

Australian Business Number (ABN) 63 623 975 913

A company limited by guarantee

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## Preliminary and this Constitution

### Article 1. The Company

#### 1.1. The Name

Name of the Company is **SAINTS CYRIL AND METHODIUS ORTHODOX INSTITUTE LIMITED**

#### 1.2. Type of Company

The Company is a not-for-profit public company limited by guarantee which has been established as the educational and research institution of the Australian and New Zealand Diocese of the Russian Orthodox Church Outside Russia.

#### 1.3. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in **clause 1.4**.

#### 1.4. The guarantee

Each Member must contribute an amount not more than \$50 to the property of the Company if the Company is wound up while the Member is a Member, or within twelve [12] months after they stop being a Member, and this contribution is required to pay for the:

- 1.4.1. debts and liabilities of the Company incurred before the Member stopped being a Member; or
- 1.4.2. costs of winding up.

#### 1.5. Definitions and Interpretation

In this Constitution of this Company, unless the contrary intention appears:

**'ACNC Act'** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and includes every amendment, re-enactment, or replacement and any subordinate legislation and regulations made under that Act;

**'Auditor'** means the auditor of the Company;

**'Board'** means the board of Directors of the Company;

**'Canon and Regulations'** means those regulations of the Australian-New Zealand Diocese of the Russian Orthodox Church Abroad confirmed by the Synod of Bishops of this church between 14/27 February and 9/22 August 1957;

**'Chair'** means the Ruling Bishop of the Australian and New Zealand Diocese of the Russian Orthodox Church Outside Russia or his nominee or else as otherwise provided for under **Articles 16 and 32**;

**'Church'** means The Australian & New Zealand Diocese of the Russian Orthodox Church Outside of Russia (ABN: 41 201 553 691) or its successor provided that if The Australian & New

Zealand Diocese of the Russian Orthodox Church Outside of Russia (ABN: 41 201 553 691) or its successor becomes an externally administered body corporate within the meaning of the *Corporations Act 2001* pursuant to the provisions of part 5 of the *Associations and Corporations Act 1985* **'Church'** shall mean the association (whether incorporated or otherwise) established in substitution for The Australian & New Zealand Diocese of the Russian Orthodox Church Outside of Russia (ABN: 41 201 553 691) with a Basis and Objects and Canons substantially the same as The Australian & New Zealand Diocese of the Russian Orthodox Church Outside of Russia (ABN: 41 201 553 691);

**'circular resolution'** means a resolution and voting managed electronically or by a manner other than at a face-to-face meeting;

**'Company'** means Saints Cyril and Methodius Orthodox Institute Limited;

**'conflict of duty'** means those who have other duties or responsibilities that may be in conflict with their duties and responsibilities to the College;

**'Constitution'** means the constitution of the Company as amended from time to time;

**'Corporations Act'** means the *Corporations Act 2001* (Cth) and includes every amendment, re-enactment, or replacement and any subordinate legislation and regulations made under that Act;

**'Director'** includes any person occupying the position of Director of the Company;

**'Diocese'** means The Australian & New Zealand Diocese of the Russian Orthodox Church Outside of Russia (ABN: 41 201 553 691);

**'Diocesan Council'** means the duly appointed Diocesan Council of the Diocese;

**'General Meeting'** means a meeting of Members and includes the Annual General Meeting, under **Articles 10** and **11**;

**'Institute'** means the educational and research facility operated by the Company;

**'Institute Director'** means the person appointed to direct the educational and research activity of the Institute, and to oversee the administration and management of the Institute, including students and staff.

**'Member'** means a member of the Company under **Article 8**;

**'Member(s) Present'** means, in connection with a General Meeting, a Member or Members present in person, at the venue or venues for the meeting;

**'Officer'** has the same meaning as in Section 9 of the Corporations Act and includes the Institute Director, the Public Officer and the Secretary;

**'Orthodox Church'** for the purposes of this Constitution means the canonical Church of Russia, including the Russian Orthodox Church Outside Russia, and other Orthodox jurisdictions that the Church of Russia recognises through Eucharistic Communion;

**'Public Officer'** means the person appointed by the Directors to be the Company's representative to the Australian Taxation Office and is responsible for the Company's obligations under Section 252 of the *Income Tax Assessment Act 1936* (Cth);

**'Register'** means the register of Members of the Company;

**'Registered Charity'** means a charity that is registered under the ACNC Act;

**'Registered Office'** means the registered office of the Company for the purposes of ASIC notices;

**'Ruling Bishop'** means the hierarch installed by the Synod of the Russian Orthodox Church Outside Russia to govern the Diocese;

**'Seal'** means the Company's common seal;

**'Secretary'** means any person appointed by the Directors to perform any of the duties of the secretary of the Company;

**'Special Resolution'** means a resolution of which notice has been given under **Article 41** and that has been passed by at least seventy-five percent [75%] of the votes cast by Members Present and entitled to vote on the resolution;

**'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;

**'Supreme Court'** means the Supreme Court of South Australia.

**1.6.** In reading this Constitution with the Corporations Act:

1.6.1. the replaceable rules set out in the Corporations Act do not apply to the Company;

1.6.2. 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;

1.6.3. if the Company is not a Registered Charity, even if it remains a charity, the Corporations Act overrides any Article or clause in this Constitution which is inconsistent with that Act;

1.6.4. words and expressions defined in the Corporations Act have the same meaning in this Constitution;

1.6.5. an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act.

**Article 2. Confessional Basis**

**2.1.** The Company asserts and maintains the faith and practice of the One, Holy, Catholic and Apostolic Church as expressed in the Nicene-Constantinopolitan Creed, the Holy Scriptures of the Old and New Testaments, the teaching of the Holy Ecumenical Councils, the Canon Law of

the Church, the Liturgical forms of the Church, the teachings of the Holy Fathers and all else contained in the Holy Tradition received by the Orthodox Church.

- 2.2.** All Directors and Members of the Company and all who teach in and administer the affairs of the Institute shall be bound to carry out their duties in accordance with this confession.

**Article 3. Amending this Constitution**

- 3.1.** Notwithstanding any provision of the Corporations Act, this Constitution can only be amended in accordance with the provisions of **clauses 3.2 and 3.3.**
- 3.2.** No amendments shall be made to all of **clause 3.2.** which shall be considered fundamental and unalterable in intent and meaning:
- 3.2.1. **Article 2.** The Confessional Basis; and
- 3.2.2. **Article 7.** Not-for-profit, to cause the Company to no longer be 'not for profit' or otherwise ineligible to be a Registered Charity:
- 3.3.** The Diocesan Council may subject to **clause 3.2** by ordinary resolution amend, alter, add to, or repeal any of the other clauses of this Constitution.

**Article 4. Relationships**

- 4.1** The Institute declares that all its activities and programs shall be consistent with and in conformity to the Canons and Regulations of the Church.
- 4.2** The Institute is the tertiary education and research institution of the Church.
- 4.3** The Institute has relationships with other higher education bodies for the purposes of granting degrees and awards. Relationships shall always be consistent with and in conformity to the Constitution of this Company and the Canons and Regulations of the Church.

## Charitable purposes and powers

**Article 5. Objects**

The Company shall pursue the following objects for charitable purposes:

- 5.1** to prepare candidates for the clerical service of the Church;
- 5.2** to prepare candidates to be lay workers and educators in the Church;
- 5.3** to provide continuing education, undergraduate and postgraduate studies in theology and related disciplines;

- 5.4 to provide education leading to degrees, awards and qualifications in theology and Christian service;
- 5.5 to provide training for the clergy, officers of congregations and organisations of the Church and the Australian Russian community;
- 5.6 to undertake research that assists in the understanding of Orthodox faith and culture;
- 5.7 establish and maintain relations with any relevant board, committee or institution of the Church and with Orthodox education bodies overseas; and
- 5.8 to undertake such other activities that may advance Orthodox culture and education.

#### **Article 6. Powers and Authority**

Subject to **Article 7**, the Company has the following powers, which may only be used to carry out its purposes set out in **Article 5** and shall be exercised consistently with the Canons and Regulations of the Church:

- 6.1 the powers of an individual, and;
- 6.2 all the powers of a company limited by guarantee under the Corporations Act.

#### **Article 7. Not-for-profit**

The income and property of the Company shall only be used for the objects of the Company set out in **Article 5**.

- 7.1 The Company must not distribute any income or assets directly or indirectly to its Directors and Members, except as provided in **clauses 7.2**
- 7.2 **Clause 7.1** does not stop the Company from doing the following things, provided they are done in good faith:
  - 7.2.1 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
  - 7.2.2 making a payment to a Member in carrying out the Company's charitable purposes.

## Members

#### **Article 8. The Members and Membership**

- 8.1 The Members of the Company are the Directors.

**8.2** Membership of the Company will cease:

- 8.2.1 on the date that the Secretary receives written notice of resignation;
- 8.2.2 when the appointment of the Member as a Director ends or is terminated;
- 8.2.3 where the Member
  - 8.2.3.1 dies; or
  - 8.2.3.2 becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - 8.2.3.3 is convicted of a serious criminal offence; or
  - 8.2.3.4 is declared bankrupt.

## Dispute resolution

### **Article 9. Dispute resolution and discipline**

Dispute resolution and discipline shall be in accordance with the principles of the Orthodox pastoral tradition.

- 9.1** The dispute resolution procedure in this clause applies to disputes and disagreements under this Constitution between a Member/Director and:
  - 9.1.1 one [1] or more Members/Directors;
  - 9.1.2 the Company.
- 9.2** A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under **Article 9** until the disciplinary procedure is completed.
- 9.3** Those involved in the dispute must try to resolve it between themselves within fourteen [14] days of knowing about it.
- 9.4** If those involved in the dispute do not resolve it under **clause 9.3** they must within ten [10] days:
  - 9.4.1 tell the Directors about the dispute in writing
  - 9.4.2 agree or request that a mediator be appointed, and
  - 9.4.3 attempt in good faith to settle the dispute by mediation.
- 9.5** The mediator must:
  - 9.5.1 be chosen by agreement of those involved, or
  - 9.5.2 where those involved do not agree:



9.5.2.1 for disputes between Members/Directors, the Directors shall choose a person; or

9.5.2.2 for other disputes, 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 shall choose a person.

**9.6** A mediator chosen by the Directors under **clause 9.5.2.1**:

9.6.1 may be a Member or former Member of the Company;

9.6.2 must not have a personal interest in the dispute; and

9.6.3 must not be biased towards or against anyone involved in the dispute.

**9.7** When conducting the mediation, the mediator must:

9.7.1 allow those involved a reasonable chance to be heard;

9.7.2 allow those involved a reasonable chance to review any written statements;

9.7.3 ensure that those involved are given natural justice; and

9.7.4 not make a decision on the dispute.

**9.8** **Disciplining Members**

9.8.1 In accordance with this clause, the Directors may resolve to warn, suspend or recommend the Ruling Bishop expel a Member from the Company if the Directors consider that:

9.8.1.1 the Member has breached this Constitution; or

9.8.1.2 the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.

**9.9** At least fourteen [14] days before the Directors' meeting at which a resolution under **clause 9.8.1** will be considered, the Secretary must notify the Member in writing:

9.9.1 that the Directors are considering a resolution to warn, suspend or expel the Member;

9.9.2 that this resolution will be considered at a Directors' meeting and the date of that meeting;

9.9.3 what the Member is said to have done or not done;

9.9.4 the nature of the resolution that has been proposed; and

9.9.5 that the Member may provide an explanation to the Directors, and details of how to do so.

- 9.10** Before the Directors pass any resolution under **clause 9.9.1**, the Member must be given a chance to explain or defend themselves by:
- 9.10.1 sending the Directors a written explanation before that Directors' meeting, and/or;
  - 9.10.2 speaking at the meeting.
- 9.11** After considering any explanation under **clause 9.10**, the Directors may:
- 9.11.1 take no further action;
  - 9.11.2 warn the Member;
  - 9.11.3 suspend the Member's rights as a Member for a period of no more than twelve [12] months;
  - 9.11.4 recommend the Ruling Bishop expel the Member;
  - 9.11.5 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
  - 9.11.6 require the matter to be determined at a General Meeting.
- 9.12** The Directors cannot fine a Member.
- 9.13** The Secretary must give written notice to the Member of the decision under **clause 9.11** as soon as possible.
- 9.14** Disciplinary procedures must be completed as soon as reasonably practical.
- 9.15** 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.

## Meetings

### **Article 10. General Meetings of the Company**

- 10.1** General Meetings may be called by
- 10.1.1 the Chair; or
  - 10.1.2 two [2] Directors;
- 10.2** For a General Meeting to be held,
- 10.2.1 a written request must be submitted to the Company; and
  - 10.2.2 within twenty-one [21] days of the request, give all Directors notice of the request for a General Meeting; and
  - 10.2.3 hold the General Meeting within two [2] months of the request.

**10.3** The Directors who make the request for a General Meeting must:

10.3.1 state in the request any motion to be proposed at the meeting;

10.3.2 sign the request; and

10.3.3 give the request to the Secretary.

**Article 11. Annual General Meeting**

**11.1** Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include the:

11.1.1 review of the Company's activities;

11.1.2 review of the Company's finances;

11.1.3 Auditor's report;

11.1.4 election of Secretary;

11.1.5 appointment and remuneration of the Auditor.

**11.2** Before or at the Annual General Meeting, the Members must be given information on the Company's activities and finances during the period since the last Annual General Meeting.

**11.3** The Chair 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.

**Article 12. Notice of General Meetings**

**12.1** Notice of a General Meeting must be given to:

12.1.1 each Member entitled to vote at the meeting;

12.1.2 each Director, and

12.1.3 the Auditor.

**12.2** Notice of a General Meeting must be provided in writing at least twenty-one [21] days before the meeting.

**12.3** Notice of a meeting may be provided less than twenty-one [21] days before the meeting if:

12.3.1 for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand, or

12.3.2 for any other General Meeting, with at least ninety-five percent [95%] of the votes of the Members in favour beforehand.

**12.4** Notice of a General Meeting must include:

- 12.4.1 the place, date and time for the meeting, and if the meeting is to be held in two [2] or more places, the technology that will be used to facilitate this;
  - 12.4.2 the general nature of the meeting's business; and
  - 12.4.3 if applicable, that a **Special Resolution** is to be proposed and the words of the proposed resolution.
- 12.5** If a General Meeting is adjourned for one [1] month or more, the Members must be given new notice of the resumed meeting.

### **Article 13. Quorum at General Meetings**

- 13.1** For a General Meeting to be held, a quorum must be present for the whole meeting. A quorum is the Chair and a majority of the Members at the time appointed for the meeting.
- 13.2** No business may be conducted at a General Meeting if a quorum is not present.
- 13.3** If there is no quorum present within thirty [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 Chair specifies. If the Chair does not specify one [1] or more of those things, the meeting is adjourned to:
- 13.3.1 if the date is not specified – the same day in the next week;
  - 13.3.2 if the time is not specified – the same time; and
  - 13.3.3 if the place is not specified – the same place.
- 13.4** If no quorum is present at the resumed meeting within thirty [30] minutes after the starting time set for that meeting, the meeting is cancelled.

### **Article 14. Auditor's right to attend meetings**

- 14.1** The Auditor 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.
- 14.2** The Company must give the Auditor any communications relating to the General Meeting that a Member of the Company is entitled to receive.

### **Article 15. Using technology to hold meetings**

**15.1** The Company may hold a General Meeting at two [2] or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including access to documentation, to hear and be heard.

**15.2** Anyone using this technology is taken to be a Member Present at the meeting.

**Article 16. Chair for General Meetings**

**16.1** The Chair is the Ruling Bishop of the Diocese or else a Director nominated by him to fill that role in his absence.

**16.2** The Chair shall chair General Meetings.

**16.3** The Members Present and entitled to vote at a General Meeting may choose a Director/ Member to be the Chair for that meeting if:

16.3.1 the Ruling Bishop and his nominee as Chair are not present within thirty [30] minutes after the starting time set for the meeting, or

16.3.2 the person nominated as Chair by the Ruling Bishop is present but says he does not wish to act as chair of the meeting.

**16.4** The Chair is responsible for the conduct of the General Meeting, and for this purpose must give Members and the Auditor a reasonable opportunity to make comments and ask questions.

**Article 17. Role of the Chair**

**17.1** The Chair is responsible for the conduct of the General Meeting, and for this purpose must give Members and the Auditor a reasonable opportunity to make comments and ask questions.

**17.2** The Chair does not have a casting vote.

**Article 18. Adjournment of meetings**

**18.1** If a quorum is present, a General Meeting must be adjourned if a majority of Members Present approve a motion that the Chair adjourn it.

**18.2** Only unfinished business may be dealt with at a meeting resumed after an adjournment.

**18.3** An adjourned General Meeting may resume at a different venue to the initial General Meeting.

**Voting at Meetings**

**Article 19. Voting at meetings**

- 19.1** Each Member has one [1] vote.
- 19.2** There shall be no proxy voting.
- 19.3** The Chair does not have a casting vote in addition to the normal vote as a Member.
- 19.4** Voting must be conducted and decided by:
- 19.4.1 a show of hands; or
  - 19.4.2 a vote in writing; or
  - 19.4.3 another method chosen by the Chair that is fair and reasonable in the circumstances.
- 19.5** On a show of hands the:
- 19.5.1 Chair's decision is conclusive evidence of the result of the vote;
  - 19.5.2 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.
- 19.6** A vote in writing may be demanded on any motion instead of or after a vote by a show of hands by:
- 19.6.1 at least three [3] members present; or
  - 19.6.2 the Chair.
- 19.7** A vote in writing must be taken when and how the Chair directs, unless **clause 19.6.1** applies.
- 19.8** A vote in writing must be held immediately if it is demanded.
- 19.9** A demand for a vote in writing may be withdrawn.

## Directors

### **Article 20. Election and appointment of Directors**

- 20.1** The Directors of the Company are nominated by the Diocesan Council and appointed by the Ruling Bishop.
- 20.2** The Company shall have a Board which shall consist initially of not less than three [3] Directors and no more than nine [9] Directors comprising:
- 20.2.1 the Ruling Bishop of the Diocese;
  - 20.2.2 an Assistant Bishop of the Diocese (if one be installed);
  - 20.2.3 the Chancellor of the Diocese (if one be appointed);

- 20.2.4 no more than three [3] clerics of the Diocese (or no more than four [4] clerics in the event that there is no Assistant Bishop of the Diocese or no Chancellor of the Diocese); and
- 20.2.5 no more than three [3] lay members of the Orthodox Church, of whom at least one [1] shall be a member or former member of the academic teaching staff of an accredited Australian institution of higher education.

**20.3** The Board may continue to operate with up to two [2] casual vacancies provided the minimum number of Directors is not less than three [3].

#### **Article 21. Consultants to the Directors**

Consultants are the:

- 21.1** Institute Director
- 21.2** A senior member of the teaching or research staff of the Institute
- 21.3** Business Manager of the Institute
- 21.4** Auditor; and
- 21.5** others that can provide specific expertise.

#### **Article 22. Appointment of the Secretary**

- 22.1** The Company must have at least one [1] Secretary, who shall be a Director.
- 22.2** A Secretary must be appointed by the Directors and may be removed by the Directors.
- 22.3** The term of Secretary is three [3] years.
- 22.4** At the end of the term of appointment a Secretary may be re-appointed.

#### **Article 23. Term of office**

- 23.1** A Director appointed by the Ruling Bishop holds office for a term of three [3] years commencing from the date of an edict (*ukase*) from the Ruling Bishop to the effect that they have been appointed to the Board.
- 23.2** At the end of the term of appointment a Director may be reappointed.
- 23.3** All Directors shall be eligible to stand subject to the requirements of the Corporations Act and the ACNC Act
- 23.4** Casual vacancies may be filled by the Ruling Bishop provided that a casual vacancy of a:
- 23.4.1 lay Director will be filled by a lay person; and a

23.4.2 clerical Director will be filled by a priest or deacon;

**23.5** The term of a Director filling a casual vacancy will expire three [3] months after the next Convention of General Synod.

**23.6** The term of Office bearers' is three [3] years.

**23.7** If the Director is unable to hold the position for the full term, the Diocesan Council must elect another of the Directors to the office.

**23.8** If an Office bearer who is not a Director is unable to hold the position for the full term, the Board must elect another of the Directors to the office.

#### **Article 24. Removal of a Director**

A Director stops being a Director for any of the following reasons:

**24.1** give written notice of resignation as a Director to the Company;

**24.2** dies;

**24.3** are removed by an edict (*ukase*) of the Ruling Bishop for conduct which he considers risks the reputation of the Church or the objects of the Company;

**24.4** are absent for three [3] consecutive Directors' meetings without approval from the Directors;

**24.5** are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Corporations Act;

**24.6** are liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Board incapable of performing his or her duties;

**24.7** become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

### **Powers and Duties of Directors**

#### **Article 25. Powers and Duties of Directors**

**25.1** The Directors are responsible for managing and directing the activities of the Company to achieve the objects as set out in Article 7.



Subject to the Corporations Act and this Constitution the affairs of the Company are managed by the Board who may exercise all powers of the Company and the Board may delegate any of its powers to any Officer of the Company on such terms as it thinks fit.

**25.2** The Board of Directors shall provide to the Diocesan Council:

25.2.1 an annual report to the Diocesan Council which includes:

25.2.1.1 a record of the past year's activities in relation to planned objectives;

25.2.1.2 audited financial statements and balance sheet;

25.2.1.3 details for the ensuing two [2] years of its:

25.2.1.3.1 proposed work program;

25.2.1.3.2 estimates of capital;

25.2.1.3.3 operating costs; and

25.2.1.3.4 income.

**25.3** The Board of Directors provide to the triennial Diocesan Assembly a report covering the three [3] year period prior to the meeting of the Diocesan Assembly which includes:

25.3.1 general activity; and a

25.3.2 financial statement.

**25.4** The Board shall recommend to the Ruling Bishop candidates to be appointed as Institute Director and teaching staff, including the terms and conditions of each appointment.

**25.5** The Board shall adopt policies for:

25.5.1 the Institute Director to employ non-teaching staff.

**25.6** The Board shall:

25.6.1 appoint sub-committees, which may include personnel who are not Directors, and define the terms of reference;

25.6.2 endorse programs of study and professional development to be offered by the Institute;

25.6.3 endorse courses of study leading to degrees and awards;

25.6.4 administer the financial affairs of the College and manage the real and personal estate under its care;

25.6.5 review tuition fees;

25.6.6 adopt a budget;

25.6.7 receive regular reports from the Institute Director; and

26.7.8 decide on the responsible financial management of the Company.

**25.7** The Directors must comply with their duties as directors under legislation and common law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

25.7.1 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;

25.7.2 to act in good faith in the best interests of the Company and to further the not-for profit purposes of the Company set out in **Article 7**;

25.7.3 to disclose any perceived or actual material conflicts of interest in the manner set out in **Article 29**;

25.7.4 to ensure that the financial affairs of the Company are managed responsibly;

25.7.5 not to misuse their position as a Director;

25.7.6 not to misuse information they gain in their role as a Director; and

25.7.7 not to allow the Company to operate while it is insolvent.

#### **Article 26. Delegation of Powers**

**26.1** The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company or any other person, as they consider appropriate.

**26.2** The delegation must be recorded in the Company's minutes.

#### **Article 27. Payments to Directors**

**27.1** The Company must not pay fees to a Director for acting as a Director.

**27.2** The Company may:

27.2.1 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

27.2.2 reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

**27.3** The Company may pay premiums for insurance indemnifying Directors, as allowed for by law and this Constitution.

#### **Article 28. Execution of documents**

If authorisation is not required by Diocesan Council, the Company may execute a document without using a common seal if the document is signed by two [2] Directors of the Company.

**Article 29. Conflicts of interest and Duty**

- 29.1** A Director must disclose the nature and extent of any actual or perceived conflict of interest and duty in a matter that is being considered at a meeting of Directors or that is proposed in a circular resolution:
- 29.2.1 to the other Directors; or
  - 29.2.2 to the General Church Council, if all of the Directors have the same conflict of interest.
- 29.2** The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 29.3** 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 29.4**:
- 29.3.1 be present at the meeting while the matter is being discussed; or
  - 29.3.2 vote on the matter.
- 29.4** A Director may still be present and vote if:
- 29.4.1 their interest arises because they are a Member of the Company, and the other Members have the same interest;
  - 29.4.2 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 as referred to in **Article 45**;
  - 29.4.3 their interest relates to a payment by the Company under **Article 44.**, or any contract relating to an indemnity that is allowed under the Corporations Act;
  - 29.4.4 the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
  - 29.4.5 the Directors who do not have a material personal interest in the matter pass a resolution that:
    - 29.4.5.1 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
    - 29.8.5.2 says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## Directors' meetings

### **Article 30. Directors' meetings and use of technology to hold Directors' meetings**

- 30.1** The Directors may decide how often, where and when they meet.
- 30.2** The Directors may hold their meetings by using any technology such as video or teleconferencing or that is agreed to by all of the Directors.
- 30.3** A Director may only withdraw their consent to hold meeting using technology within a reasonable period before the meeting.

### **Article 31. Calling Directors' meetings**

A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors in writing or by any other means of communication that has previously been agreed to by all of the Directors.

### **Article 32. Chair for Directors' meetings**

- 32.1** The Ruling Bishop is entitled to chair Directors' meetings.
- 32.2** The Directors at a Directors' meeting may choose a Director to be the Chair for that meeting if the Ruling Bishop is
  - 32.2.1** not present within thirty [30] minutes after the starting time set for the meeting; and
  - 32.2.2** has not nominated a Director to act as Chair in his absence; or
  - 32.2.3** the Director nominated as Chair by the Ruling Bishop is not present at the meeting.
- 32.3** The Chair of a Directors' meeting has a vote as a Director but does not have a casting vote.

### **Article 33. Quorum at Directors' meetings**

- 33.1** The quorum for a Directors' meeting is a majority of the Directors.
- 33.2** A quorum must be present for the whole Directors' meeting.

### **Article 34. Directors' Resolutions**

A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the motion and for the purposes of this constitution a Director will be deemed to be present in circumstances where the Directors' meeting is being conducted using technology contemplated in **Article 30**.

#### **Article 35. Circular resolutions of Directors**

- 35.1** The Directors may pass a circular resolution without a Directors' meeting being held.
- 35.2** 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 35.3** .
- 35.3** Each Director may sign:
- 35.3.1 a single document setting out the motion and containing a statement that they agree to the motion be resolved; or
  - 35.3.2 separate copies of that document, as long as the wording of the resolution is the same in each copy.
  - 35.3.3 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.
  - 35.3.4 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in **clauses 35.3.1 or 35.3.2 or 35.3.3**.

### Secretary

#### **Article 36. Role of the Secretary**

- 36.1** The role of the Secretary includes dealing with correspondence as directed by the Board, maintaining the minutes and other records of General Meetings, notices of meetings, Directors' meetings and circular resolutions.
- 36.2.** Some duties of the Secretary may be delegated to others under the direction of the Board.

### Minutes and records

#### **Article 37. Minutes and records**

- 37.1** The Company must, within one [1] month, make and keep the following records of General Meetings:
- 37.1.1 minutes of proceedings and resolutions;
  - 37.1.2 minutes of circular resolutions of members; and
  - 37.1.3 a copy of a notice of each General Meeting.

- 37.2** The Company must, within one [1] month, make and keep the following records of Directors meetings:
- 37.2.1 minutes of proceedings and resolutions;
  - 37.2.2 minutes of meetings of any committees; and
  - 37.2.3 minutes of circular resolutions of Directors.
- 37.3** To allow Members to inspect the Company's records the:
- 37.3.1 Company must give a Member access to the records set out in **clause 37.2**; and
  - 37.3.2 Directors may authorise a Member to inspect other records of the Company, including records referred to in **clause 37.1** and **clause 37.3.1**
- 37.4** The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by the:
- 37.4.1 Chair of the meeting; or
  - 37.4.2 Chair of the next meeting.
- 37.5** 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.

#### **Article 38. Financial and related records**

- 38.1** The Company must make and keep written financial records that:
- 38.1.1 correctly record and explain its transactions and financial position and performance, and
  - 38.1.2 enable true and fair financial statements to be prepared and to be audited.
- 38.2** The Company must also keep written records that correctly record its operations.
- 38.3** The Company must retain its records for at least seven [7] years.
- 38.4** The Directors must take reasonable steps to ensure that the Company's records are kept safe.

### By-Laws

#### **Article 39. Governance Policies**

- 39.1** The Directors may pass a resolution to adopt Governance Policies to give effect to this Constitution.

- 39.2** Members and Directors must comply with Governance Policies as if they were part of this Constitution.

## Notice

### **Article 40. Notice to the Company**

- 40.1** Written notice or any communication under this Constitution may be given to the Company, the Directors or the Secretary by:
- 40.1.1 delivering it to the Company's Registered Office;
  - 40.1.2 posting it to the Company's Registered Office or to another address chosen by the Company for notice to be provided;
  - 40.1.3 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
  - 40.1.4 sending it to the fax number notified by the Company to the Members as the Company's fax number.

### **Article 41. Notice to members**

- 41.1** Written notice or any communication under this Constitution may be given to a Member:
- 41.1.1 in person;
  - 41.1.2 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;
  - 41.1.3 sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
  - 41.1.4 sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or
  - 41.1.5 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).
- 41.2.** If the Company does not have an address for the Member, the Company is not required to give notice in person.

### **Article 42. When notice is taken to be given**

**42.1** A notice:

- 42.1.1 delivered in person, or left at the Member's address, is taken to be given on the day it is delivered;
- 42.1.2 sent by post, is taken to be given on the fifth day after it is posted with the correct payment of postage costs;
- 42.1.3 sent by email, fax or other electronic method, is taken to be given on the business day after it is sent providing that no notice of failure to send has been received by the sender; and
- 42.1.4 given under **clause 41.1.5** is taken to be given on the business day after the notification that the notice is available is sent providing that no notice of failure to send has been received by the sender.

## Financial year

### **Article 43. 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

### **Article 44. Indemnity of Directors**

- 44.1** In this **Article 44** and **Article 45** 'Officer' includes Directors after they have ceased to hold that office.
- 44.2** The Company indemnifies each Officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities, costs, expenses and charges incurred by that person as an Officer of the Company.
- 44.3** In this clause, 'to the relevant extent' means:
  - 44.3.1 to the extent that the Company any is not precluded by law from doing so; and
  - 44.3.2 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.
- 44.4** The indemnity is a continuing obligation and is enforceable by an Officer even though that person is no longer an Officer of the Company.



**Article 45. Insurance**

- 45.1** In this **Article 44** and **Article 45** 'Officer' includes Directors after they have ceased to hold that office.
- 45.2** To the extent permitted by law, 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.

**Article 46. Directors' access to documents**

- 46.1** A Director has a right of access to the financial records of the Company at all reasonable times.
- 46.2** If the Directors agree, the Company must give a Director or former Director access to:
- 46.2.1 certain documents, including documents provided for or available to the Directors; and
- 46.2.2 any other documents referred to in those documents.

## Deductable Gift Recipient Fund

**Article 47. Establishment and Operation of a Foundation and Gift Fund**

- 47.1** The Company may maintain for the objects of the Company a Foundation or Gift Fund in which it may deposit any:
- 47.1.1 money, investments and assets paid or transferred to and accepted by the Company as additions to the Gift Fund;
- 47.1.2 accretions to the Gift Fund;
- 47.1.3 accumulations of income; and
- 47.1.3 money, investments and property from time to time representing the above or into which they are converted, and includes any part of the Gift Fund.
- 47.2** The Company must use the property described in **clause 47.1** above only for the objects of the Company as described in **Article 5**. of this Constitution.
- 47.3** The Company shall upon receiving a gift, issue a receipt to the donor. Receipts issued for gifts must state the:
- 47.3.1 name of the Gift Fund or Foundation;
- 47.3.2 Australian Business Number of the Company;
- 47.3.3 date of the gift;

47.3.4 description of the contributed property; and

47.3.5 the fact that the receipt is for a gift.

## Winding up

### **Article 48. Winding up and Surplus assets**

**48.1** If the Company is wound up, any surplus remains following the winding up of the Company, shall not be paid to or distributed amongst Members.

**48.2** Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed or transferred to another corporation or organisation of the Church which, by its constitution, is:

48.2.1 required by its Objects to use its assets for the support of the Church or its successor or any body whether incorporated or otherwise under the umbrella of the Church or the members of the Church;

48.2.2 required to apply its surplus (if any) or other income in promoting its objects; and

48.2.3 prohibited from making any distribution to its members,

**48.3** Such corporation or organisation shall to be determined by the Diocesan Council at or before the winding up and in default, by application to the Supreme Court for determination.

We, the undersigned, being each person specified in the application for the Company's registration as a person who consents to become a Member, hereby agree to the terms of this Constitution:

**Dated:** \_\_\_\_\_