



**CONSTITUTION
OF
TRUSTEES OF EDMUND RICE EDUCATION AUSTRALIA**

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**CONSTITUTION
OF
TRUSTEES OF EDMUND RICE EDUCATION AUSTRALIA**

1. Preamble

- 1.1. This is the Constitution of Trustees of Edmund Rice Education Australia (“the Association”).
- 1.2. The Religious Institute is missioned by the Church for the evangelisation of youth, and especially for the education and care of the materially poor.
- 1.3. The Religious Institute has, since 1868, been living out the charism of Edmund Rice in Australia through the establishment, conduct and leadership of schools and educational entities.
- 1.4. Expression of the life and mission of the Church is evidenced in the life of Blessed Edmund Rice and through those Christian Brothers who live in community and continue his vision in the ministry of education in Australia. Continued contemporary expression of this commitment is evident in lay people who advance this charism in a variety of ministries and educational entities, now known in Australia as Catholic Schools in the Edmund Rice Tradition.
- 1.5. To that end since 2000 the four previous Australian Provinces of the Religious Institute which owned and operated schools in Australia explored canonical and civil frameworks in order to sustain the purpose of the continuing vision of the charism of Edmund Rice in school ministry as Church mission.
- 1.6. The four previous Australian Provinces have now combined with St Joseph's Province, New Zealand and Edmund Rice Region, Papua New Guinea to form a new province of the Religious Institute known as the Oceania Province.
- 1.7. The Association has been formed to own, govern, manage and conduct the educational entities and services in the Commonwealth of Australia previously carried on by the Religious Institute through its four previous Australian Provinces.

2. Constitution and Name of the Association

- 2.1. The Association is constituted by this document in accordance with clause 4.2.2 of the Statutes.
- 2.2. The name of the Association is "Trustees of Edmund Rice Education Australia" which is incorporated under the Act.

3. Definitions

- 3.1 In this Constitution the following definitions apply:

Act means the Roman Catholic Church Communities' Lands Act 1942 (a NSW statute).

Affiliate means a school or educational entity that, although not governed by the Association, desires to be in harmony with the charism of Edmund Rice and to be known as a Catholic School in the Edmund Rice Tradition.

Annexure means an annexure to this Constitution.

Associate means a school or educational entity that, although not governed by the Association, seeks to have an involvement with the expression of the Edmund Rice tradition.

Association means the civil law entity called Trustees of Edmund Rice Education Australia, a body corporate under the Act which is intended to become a registrable Australian body with an Australian Registered Body Number (ARBN) under the Corporations Act.

Board means the persons for the time being constituting the Board of the Association.

Board Member means a member from time to time of the Board.

Canon Law means the universal law of the Church in the 1983 Code of Canon Law and universal legislation as well as particular and proper law enacted by the competent ecclesiastical authority and **Canonical** has a corresponding meaning.

Catholic School means a school conducted in accord with the mission of the Church and Canon Law.

Chair means the Board Member holding for the time being the office of Chair of the Board.

Charter means the articulation of the mission of a Catholic School in the Edmund Rice Tradition, a copy of which current at the date of this Constitution is contained in Annexure A.

Christian Brother means a member for the time being of the Religious Institute.

Church means the Roman Catholic Church.

Congregation Leader means the Congregation Leader of the Religious Institute for the time being.

Corporations Law means the *Corporations Act 2001* as amended and any statutory modification or re-enactment of it.

Council means the persons for the time being who are the sole members of the Association appointed by the Congregation Leader with the consent of his Council.

Councillor means a member from time to time of the Council.

Deputy Chair means the Board Member holding for the time being the office of Deputy Chair of the Board.

Deputy President means the Councillor holding for the time being the office of Deputy President of the Association.

Edmund Rice Network is an association of groups, institutions and people that look to the Edmund Rice story as their personal inspiration, or have a connection to the charism of Edmund Rice, or to a Christian Brothers inspired ministry.

EREA means Edmund Rice Education Australia being a public juridic person of Pontifical right constituted upon the petition of the Congregation Leader and approved by the Holy See.

Executive Director means the person acting as the chief executive of the Association for the time being.

Financial Plan means the documents establishing, from time to time, the current and future financial forecasts, including the budget and proposed loans and borrowings of the Association in accordance with good governance practices.

Financial Year means the year ending on the 31st December.

Formation means the response through baptism to nurturing spirituality, mission and ministry within the context of EREA, a copy of the policy for which current as at the date of this Constitution is contained in Annexure C.

Foundations means the statement of the elements which underpin the continuance of the charism of Edmund Rice in school ministry as Church mission, a copy of which current as at the date of this Constitution is contained in Annexure B.

Holy See means the central government of the Church.

Member means a school or educational entity owned, governed, managed and conducted by the Association.

Oceania Province means the province known as Oceania Province of the Religious Institute and includes any civil law constituted entity for the purposes of conducting the business of the province.

President means the person holding for the time being the office of President of the Association.

Religious Institute means the Catholic religious institute known as the Congregation of Christian Brothers (previously known as the Brothers of the Christian Schools of Ireland) founded by Blessed Edmund Rice in Ireland in 1802.

Renewal means the statement which defines and guides the process for authentication of a school as a Catholic School in the Edmund Rice Tradition, a copy of which current as at the date of this Constitution is contained in Annexure D.

Rule means a rule of this Constitution.

Statutes means the canonical statutes under Canon Law for EREA a copy of which is annexed to this Constitution.

Strategic Plan means the document establishing, from time to time, the intended strategic directions of the Association having regard to its capabilities, its strengths, its challenges, its opportunities and the risks that may occur in the effective and efficient operation of the Association and which includes the Financial Plan.

Tax Act means the Income Tax Assessment Act 1997 as amended and any statutory modification or re-enactment of it.

Treasurer means the Councillor holding for the time being the office of Treasurer of the Association.

- 3.2 Unless the context otherwise indicates words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and vice versa and references to a person shall be construed as including reference to an individual, firm, body corporate or unincorporated association (whether incorporated or not), trust, government, and statutory authority or agency.

4. Purpose of the Association

- 4.1. The purpose of Edmund Rice Education Australia is to own, govern, manage and conduct educational institutions and associated activities, in fulfilment of the mission of Jesus Christ in the Catholic tradition.
- 4.2. Edmund Rice Education Australia's work of evangelisation shall build on the sound traditions of the Congregation of Christian Brothers and ensure the continuation of the charism of Edmund Rice in school ministry as Church Mission.

- 4.3. Edmund Rice Education Australia shall ensure, through its governance policies and practices, that each of the works for which it is responsible operates in accordance with the teaching, discipline and laws of the Roman Catholic Church.
- 4.4. Each ministry of Edmund Rice Education Australia is an apostolic work in the local diocese and therefore, in accordance with its approved purposes, is subject to the authority of the diocesan Bishop as defined in canon law (cf. inter alia canons 394, 806 §1).
- 4.5. The Association is established also for the following purposes:
- 4.5.1 To own, manage and conduct educational entities and services in accord with the Statutes;
 - 4.5.2 To carry on, in conformity with the beliefs, teaching, discipline and laws of the Catholic Church, the ministry of Catholic education as an integral element of the mission of the Catholic Church;
 - 4.5.3 To assist in the carrying on of the contemporary expression of the charism of Edmund Rice through links and relationships with relevant ministries of the Oceania Province and with the Edmund Rice Network;
 - 4.5.4 To define the conditions by which a school or educational entity is defined as a Member, Associate or Affiliate.

5. Powers of the Association

- 5.1. The Association has all the powers given to it by the Act.
- 5.2. All of the income and property of the Association must be applied solely towards the promotion of the purposes of the Association and no portion of them shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Councillors or Board Members provided that this restriction does not prevent the payment in good faith of:
- 5.2.1 remuneration to Councillors or Board Members and any officers or employees in return for services actually rendered including for attending meetings and where the amount is not more than an amount which commercially would be reasonable payment for the service;
 - 5.2.2 interest on money lent to the Association by any of the Councillors or Board Members at a rate not exceeding the rate for the time being charged by the Association's bankers for overdrawn accounts;
 - 5.2.3 reasonable and proper rent, remuneration or return for any premises owned by any of the Councillors or Board Members;
 - 5.2.4 money for the support of retired Christian Brothers and money paid by way of contribution to the Religious Institute for its mission and works.

6. Roles and Relationships between the President, Councillors and Board Members

- 6.1. The Councillors are appointed by the Congregation Leader with the consent of his Council, and the Congregation Leader with the consent of his Council may at any time terminate the appointment of any Councillor by notice in writing to that Councillor.
- 6.2. The Council appoints Board Members to conduct and manage the educational entities and services of the Association and carry on the ministry of Catholic education in accord with this Constitution and in accord with the delegations given to

the Board. Notification of appointment of Board Members will be made by the President.

- 6.3. The Councillors on the one hand and the Board Members on the other hand, will be different persons.
- 6.4. The Council by majority resolution appoints the President, Deputy President and Treasurer.
- 6.5. If the position of President becomes vacant during a term of appointment, the Deputy President will assume the role of President until the Council makes an appointment of a new President.
- 6.6. In the absence of the President, the Deputy President will act in the place of the President.

7. Appointment of Board Members

- 7.1. The Board shall consist of not less than five (5) and not more than ten (10) persons.
- 7.2. The Board shall comprise persons who have suitable qualifications and experience, and who are considered by the Council to be competent to participate in the continuation of the charism of Edmund Rice in school ministry as Church Mission and Catholic education.
- 7.3. Board Members shall be appointed by the Council for a term not exceeding five (5) years and shall be eligible for re-appointment. A Board Member shall retire once such Board Member has held office for ten (10) consecutive years.
- 7.4. The Board will provide the Council with recommendations in respect to appointments of new Board Members.
- 7.5. The Council, after discussion with the Board, will appoint the Chair and Deputy Chair and the terms of office will be no more than three (3) years but a person so appointed shall be eligible for re-appointment.
- 7.6. A Board Member's position becomes vacant if such Board Member:
 - 7.6.1 is absent without the consent of the Board from three (3) successive meetings of the Board;
 - 7.6.2 resigns by notice in writing to the Board or the President;
 - 7.6.3 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - 7.6.4 becomes an insolvent under administration within the meaning of the Corporations Law;
 - 7.6.5 is directly or indirectly interested materially in any contract or proposed contract with the Association and fails to declare the interest as required by the Corporations Law;
 - 7.6.6 completes such member's term of appointment and is not re-appointed;
 - 7.6.7 upon resolution of the Council, is removed by a notice signed by the President to such Board Member and to the Board stating that such member is with effect from the date of service of the notice no longer a member of the Board.
- 7.7. The Board may, by majority resolution, request the President to issue a notice to a Board Member stating that such member is with effect from the date of service of the notice no longer a member of the Board.

- 7.8. A Board Member who is the subject of a proposed resolution in Rule 7.7 is entitled to make a formal presentation to the Board Meeting at which such a resolution is considered, and a copy of any written submissions by such Board Member is to be given to the Council.
- 7.9. Whenever a casual Board Member vacancy occurs, the Council may appoint a replacement. Such an appointment will be for only the time remaining in the term of office of the Board Member who is being replaced.
- 7.10. If the position of Chair becomes vacant during a term of appointment, the Deputy Chair will assume the role of Chair until the Council makes an appointment of a new Chair.
- 7.11. In the absence of the Chair, the Deputy Chair will act in the place of the Chair.
- 7.12. If the position of Deputy Chair becomes vacant the Council will endeavour to appoint a replacement within twenty eight (28) days of the vacancy occurring.
- 7.13. No employee of the Association shall be appointed as a Board Member.
- 7.14. Board Members shall be entitled to receive such amounts by way of reimbursement of expenses including travelling expenses incurred while on duty as may be approved by the Board.

8. Function and powers of the Board

- 8.1. Subject to Canon Law, the laws of the civil jurisdictions in which the Association operates and to this Constitution, the Board shall operate as a board in the interests of the Association and shall oversee the management of the Association and exercise all powers of the Association not required by Canon Law or by this Constitution to be exercised by the Council.
- 8.2. Without limiting the generality of Rule 8.1, the Board may exercise all the powers of the Association (within any limits set by the Council, from time to time) to borrow money, buy and sell property, to charge any property or business of the Association or give any other security for a debt, liability or obligation of the Association or of any person.
- 8.3. The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association for such purposes with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board) for such period and subject to such conditions as the Board thinks fit.
- 8.4. Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit.
- 8.5. All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Association shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Board determines.
- 8.6. The Board shall forward to the Council the minutes of its meetings, copies of any proposed or adopted Strategic Plans and financial reports (whether existing or proposed).

9. The Council's Reserve Powers

- 9.1. The approval of the Council which shall be communicated by the President shall be required as a pre-requisite to any decision of the Board becoming effective under the following reserve powers:
 - 9.1.1 Review of, or change to the Charter, Formation, Renewal and Foundations documents and other core policies as determined by the Council;
 - 9.1.2 Where the decision concerned requires changes in the core purpose of the services provided by the Association;
 - 9.1.3 Approval of the Strategic Plan and Financial Plan and any variation to them;
 - 9.1.4 Where the decision involves the appointment or removal of the Executive Director;
 - 9.1.5 A decision to end a relationship with a Ministry of the Oceania Province;
 - 9.1.6 Borrowing in excess of the amount set by the Council from time to time;
 - 9.1.7 Acquisitions or purchases in excess of the amount set by the Council, from time to time;
 - 9.1.8 Acceptance of any types of gifts which fall within any category of gifts as determined by the Council from time to time;
 - 9.1.9 The sale, lease, mortgage or encumbrance disposition, or other form of alienation of the stable patrimony of the Association.
- 9.2. The following actions of Council require the approval of the Holy See:
 - 9.2.1 Any change in the purposes of the Association;
 - 9.2.2 The suppression of the Association;
 - 9.2.3 The sale, lease, mortgage or encumbrance disposition, or other form of alienation of the stable patrimony of the Association in excess of the amount established by the Holy See from time to time.
- 9.3. If the Council resolves that any matter under consideration or presented for decision by the Board or any decision by the Board on any matter is of such a nature that it touches upon the philosophy of the Religious Institute or upon the purposes, policies or practices of the Association, or is considered contrary to the welfare or interest of the Religious Institute, the President may give to the Board or the Chair of the Board or, in the Chair's absence, to any Board Member, written notice to that effect and then either the consideration of the matter by the Board shall not proceed at all or the decision shall not take effect at all, or its taking of effect shall be postponed either for a limited period or indefinitely according to the terms of the written notice.
- 9.4.
 - 9.4.1 The Board may be dissolved by resolution of the Council advised by instrument in writing under the hand of the President, notice of which is given to each Board Member within seven (7) days next after the date on which the instrument was executed.
 - 9.4.2 A dissolution of the Board shall not of itself affect the continuity of this Constitution or invalidate any act or decision of the dissolved Board.
 - 9.4.3 The Association shall treat a dissolution of the Board as creating casual vacancies in the office of each Board Member and casual vacancies in, respectively, the office of Chair and the office of Deputy Chair, and these casual vacancies shall be filled, subject to this Constitution, by appointments

being made to the vacant offices as if such vacancies had occurred without any such dissolution of the Board.

- 9.4.4 Nothing in this Rule of itself shall cause a person who was a Board Member at the time of the dissolution to be ineligible to be appointed to fill any such casual vacancy.
 - 9.4.5 Upon a dissolution of the Board any committee established pursuant to this Constitution shall also be dissolved.
 - 9.4.6 Upon a dissolution of the Board, a delegation made by the Board may also be revoked and a subsequent Board may in accordance with this Constitution make a fresh delegation of the same matter in terms the same as or different from those of the revoked delegation.
- 9.5. All powers vested in the Council by Rule 9 must be exercised only by way of resolution passed by a four-fifths of all Councillors; and other powers vested in the Council shall, unless otherwise specified in this Constitution, be by way of majority resolution of those present at the meeting.

10. Board Procedures

- 10.1. The Board meets together for the despatch of business. It conducts and adjourns its meetings as the Board thinks fit. It will meet a minimum of six (6) times a year.
- 10.2. The Chair may at any time convene a meeting of the Board and must, on the requisition of three (3) Board Members, forthwith convene a meeting of the Board.
- 10.3. A quorum for a Board meeting is one half of the number of Board Members. No business shall be transacted at any such meeting unless a quorum is present.
- 10.4. The Board shall adopt a code of conduct as to its behaviour, standards, method of dealing with conflict of interest and performance; dealing with disputes and grievance, notices, retention of records and such other issues relevant to good governance as it sees fit. This code of conduct is to be regularly reviewed in the light of good corporate governance, but at least every two years.
- 10.5. A record of minutes will be kept and signed as true record of proceedings by the Chair when it is approved at the next Board meeting.
- 10.6. Subject to this Constitution, the Board shall endeavour to resolve matters arising at any meeting of the Board by consensus after discernment. However if the matter is put to the vote, the vote shall be decided by a majority of votes of those Board Members who are present. In the case of an equality of votes the Chair of the meeting shall not have a second or casting vote.
- 10.7. The Chair or a majority of the Board Members may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.

11. Delegation by Board

- 11.1. 11.1.1 The Board may, by resolution and instrument of delegation in writing, delegate to such one or more Board Members as it may decide the performance or exercise of such of the duties, functions, powers and authorities imposed or conferred on it by this Constitution as may be specified in the resolution and instrument of delegation, and it may in like manner revoke wholly or in part any such delegation.
- 11.1.2 A delegation made under this Rule may be subject to such conditions and/or limitations as to the performance or exercise of any of the specified duties,

functions, powers and authorities delegated or as to time or other circumstances as may be specified in the resolution and instrument of delegation.

11.1.3 An instrument of delegation shall be signed by the Chair and one other Board Member who is not a delegate pursuant to that instrument, provided that, if the Chair be a delegate pursuant to an instrument of delegation, that instrument shall be signed by two (2) Board Members who are not delegates pursuant to it.

11.1.4 A delegate or, where there is more than one (1) delegate, one of their number as determined by them, shall report to the next following ordinary meeting of the Board and subsequently as directed by the Board with regard to the performance or exercise by him or her or them of the duties, functions, powers and authorities delegated.

11.2. Subject to Rule 11.3, any act or thing done by the delegate or delegates when acting in pursuance of a delegation and within the terms of the delegation shall have the like force and effect as if the act or thing had been done by the Board.

11.3. Notwithstanding any delegation made under this Constitution the Board may continue to perform or exercise all or any of the duties, functions, powers and authorities delegated.

12. Establishment of Committees

12.1. The Board may establish such committee or committees of the Board as it may decide and shall appoint a finance committee to be chaired by a Board Member.

12.2. 12.2.1 A committee shall consist of such persons, whether Board Members or not, as the Board may appoint provided that at least one (1) Board Member shall be appointed to each committee.

12.2.2 The terms and conditions of appointment of persons appointed to be members of a committee shall be as the Board prescribes or otherwise fixes; provided that no person shall be appointed to be a member of a committee for more than three (3) consecutive years pursuant to any one appointment.

12.2.3 At the time it appoints the members of a committee, and thereafter as it deems necessary, the Board shall fix the number of such members that must be present at a meeting of the committee to constitute a quorum for such a meeting.

12.3. 12.3.1 The Board shall appoint a member of the committee who is a Board Member to be chair of the committee; provided that if the Board be of the opinion that there are special reasons arising from the nature of the duties and functions of a committee which make it in the interest of the Association and preferable that it should do so, it may appoint to be chair of that committee a member who is not a Board Member.

12.3.2 The terms and conditions of appointment as chair of the member of the committee appointed to that office, if that member be not a Board Member, shall be as the Board prescribes or otherwise fixes.

12.4. The duties, functions, powers and authorities of a committee shall be as the Board prescribes or otherwise fixes; and these duties, functions, powers and authorities shall be performed and exercised as the Board may prescribe or decide.

- 12.5. 12.5.1 A committee shall be deemed to be established when the name, duties, functions, powers and authorities of the committee are prescribed by the Board and the chair of the committee is appointed.
- 12.5.2 A committee shall not have power to perform any of its duties or functions while there is no chair of the committee appointed.
- 12.6. Subject to this Constitution, a committee shall be subject to the authority of the Board at all times and shall act in accordance with and not contrary to any direction of the Board.
- 12.7. The Board, at any time and either with or without notice of its intention so to do, may dissolve a committee by notice in writing to the chair of the committee.

13. General Meetings of Council

- 13.1. An Annual General Meeting of the Council shall be held within six (6) months after the expiration of each Financial Year. All General Meetings, other than Annual General Meetings, shall be called General Meetings.
- 13.2. A General Meeting may be convened by the President at any time.
- 13.3. Subject to the unanimous agreement by the Councillors as to shorter notice, twenty one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which notice is given) specifying the place, the day and the hour of meeting; where there is special business the general nature of that business shall be given to the Councillors.
- 13.4. The business of an Annual General Meeting shall include the following, even if not referred to in the notice of meeting:
- 13.4.1 consideration of the audited annual financial accounts;
 - 13.4.2 appointment of Board Members as provided in Rule 7;
 - 13.4.3 appointment or removal of the Auditor, if necessary;
 - 13.4.4 Report of the President;
 - 13.4.5 Report of the Chair which shall include a finance report and a particular report as to how the operation of the Association has been during the year consistent with the Statutes and achieved the carrying on of the ministry of Catholic education.
- Any other business, at an Annual General Meeting or a general meeting, shall be considered to be special business.
- 13.5. The Council shall have the right (but not the obligation) in general meeting to determine matters of policy to be followed by the Board in the management of the Association, including:
- 13.5.1 the Strategic Plan;
 - 13.5.2 philosophy, Catholicity and ethos;
 - 13.5.3 formation for mission effectiveness;
 - 13.5.4 succession planning for and the selection, appointment, reappointment, suspension and removal of the Executive Director and/or other members of the national executive team;
 - 13.5.5 succession planning for and the selection, appointment, reappointment, suspension and removal of the Principals of the schools, leaders of educational entities and the school board chairs;

13.5.6 policies, statements and protocols approved by the Association for use in all Members and where applicable in Associates and Affiliates.

If there is a doubt as to whether an issue involves a matter of policy the ruling of the President shall be final and conclusive.

- 13.6. The Council in general meeting may pass resolutions upon any matter that:
- 13.6.1 is referred to them for their attention as a matter of policy by any Councillor;
 - 13.6.2 is referred to them for their attention as a matter of policy by the Board.
- 13.7. The Councillors shall adopt a code of conduct as to their behaviour, standard, method of dealing with conflict of interest and performance; dealing with disputes and grievance, notices, retention of records and such other issues relevant to good governance as they see fit.
- 13.8. Board Members shall be active non-voting participants at the Annual General Meeting.

14. Proceedings at General Meetings of Council

- 14.1. No business shall be transacted at any general meeting unless a quorum of Councillors is present at the time when the meeting proceeds to business. A quorum shall be four (4) Councillors and a quorum must be present at all times during the meeting.
- 14.2. The Association may pass a resolution otherwise required or permitted to be passed at general meetings without the general meeting being held if all the Councillors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, in which case:
- 14.2.1 Separate copies of the document may be used for signing by the Councillors if the wording of the resolution is identical in each copy;
 - 14.2.2 The resolution is passed when the last Councillor signs the document;
 - 14.2.3 If the Association passes a resolution under this Rule, the Association is not required to comply with Rule 14.1;
 - 14.2.4 The passage of a resolution in accordance with this Rule satisfies any requirement of this Constitution that the resolution be passed at a general meeting.
- 14.3. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the President may determine; if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting is dissolved.
- 14.4. At any General Meeting at which a quorum is present the President may, with the consent of the Councillors present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as provided in this Rule it shall not be necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.
- 14.5. Subject to Rule 9 a resolution put to the vote at any general meeting shall be decided on a show of hands.

- 14.6. On a show of hands a declaration by the President is conclusive evidence of the result, provided that the declaration reflects the show of hands. Neither the President nor the minutes need state the number or proportion of the votes recorded in favour or against the resolution except as required to satisfy the four-fifths vote requirement under Rule 9.5 and 19.1.

15. Common Seal

- 15.1. The Council shall have the custody of the common seal of the Association, and the form of such seal and all other matters relating thereto shall be determined at a meeting of the Association.
- 15.2. The common seal of the Association shall only be affixed to any instrument pursuant to an appropriate resolution passed at a meeting of the Association.
- 15.3. Every instrument to which the common seal is so affixed shall be signed by the President and by two other Councillors.

16. Accounts and Audit

- 16.1. The Board shall ensure that financial statements are prepared on an annual basis for all the schools and educational entities owned and conducted by the Association together with a consolidated set of financial statements for the Association prepared in accordance with the relevant applicable Australian Accounting Standards.
- 16.2. The Council on recommendation from the Board shall appoint to the Association an auditor who is a registered company auditor within the meaning of the Corporations Law.
- 16.3. The Board shall ensure compliance with all audit requirements and will cooperate with the auditor appointed by the Council.
- 16.4. The accounts as audited in respect of each Financial Year shall be forwarded to the Council within twenty one (21) days of being signed by two Board Members.

17. Indemnity

- 17.1. The Association shall indemnify and keep indemnified any person who is, or at any time has been, a Councillor or Board Member, against every action or suit that shall be brought and maintained for anything done or omitted pursuant to the duties imposed as a Councillor or Board Member, provided that such indemnity shall not apply in respect of any fraudulent or criminal act or omission by a Councillor or Board Member.
- 17.2. Every officer of the Association will be indemnified out of the property of the Association against any liability incurred in that capacity to another person other than to the Association unless the liability arises out of conduct involving a lack of good faith.
- 17.3. A liability in Rule 17.2 includes, but is not limited to, any loss, cost or expense suffered or incurred by the officer, Councillor or Board Member:
- 17.3.1 in defending any criminal proceedings in which that person is acquitted;
 - 17.3.2 in defending any civil proceedings where the person has acted in good faith; and
 - 17.3.3 in connection with an application in relation to such proceedings, in which the Court grants relief to that person.

- 17.4. The Association may pay the premiums on any policy of insurance in relation to any liability of an officer, Councillor or Board Member, to the fullest extent permitted by law.

18. Meeting using technology

- 18.1. Meetings under this Constitution may be held using telephone, audiovisual link up or other instantaneous communication medium, or, if consented to by all Councillors or Board Members respectively, other technology. The consent may be a standing one. A Councillor or Board Member may only withdraw their consent within a reasonable period before the meeting.
- 18.2. If a Council meeting or Board meeting is held using any technology and all the Councillors or Board Members as the case may be take part in the meeting, they will be treated as having consented to the use of the technology for that meeting.
- 18.3. The following provisions apply to a technology meeting:
- 18.3.1 each of the participants taking part in the meeting must be able to hear and be heard by each of the other participants taking part in the meeting; and
- 18.3.2 at the commencement of the meeting each participant must announce his or her presence to all the other participants taking part in the meeting.
- 18.4. A participant may not leave a technology meeting by disconnecting the participant's link to the meeting unless that participant has previously notified the chair of the meeting.
- 18.5. A participant is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that participant has previously obtained the express consent of the chair to leave the meeting.
- 18.6. Subject to these rules, the procedure to be followed at any meeting under this Constitution shall be as the Council or Board as the case may be shall decide.

19. Amendment of Constitution

- 19.1. Subject to the Statutes this Constitution may be amended from time to time by the Council by way of resolution passed by a four-fifths of all Councillors. The consent of the Congregation Leader is required to vary rules 6.1, 9.5 and 19.1 of this Constitution. The Board should be advised in writing in all cases before the changes take effect.
- 19.2. The Council cannot alter the elements referring to or impacting on the role of the Board without first giving written notice to the Board and allowing the Board a minimum of fourteen (14) days to respond to the proposal.
- 19.3. The Board may recommend changes to the Constitution to the Council, who must meet to consider the proposed changes within sixty (60) days of receipt of the recommendation.

20. Winding up

- 20.1. If upon the winding up or dissolution of the Association there remains, after satisfaction of all debts and liabilities, any property or financial assets whatsoever, the same shall not be paid to or distributed amongst the Councillors but shall be given or transferred to an association or institution nominated by the Council in accordance with Canon Law which has similar objects to the Association and which association or institution has been granted income tax exempt status pursuant to the Tax Act.

21. Notice to Councillors or Board Members

- 21.1. Without prejudice to any other method of giving notice, it shall be sufficient compliance with any provision of these Rules requiring notice to be given to Councillors and/or Board Members if, with observance of the required time, notice is given:
- 21.1.1 in a document delivered to the Councillors and/or Board Members in person;
 - 21.1.2 in a pre-paid letter or other document addressed and posted to the Councillors and/or Board Members at his or her last known address two (2) days prior to the date by which notice must be given;
 - 21.1.3 by electronic mail to the email address supplied by the Councillors and/or Board Members to the Association for the purpose of giving notice to him or her in which case delivery shall be deemed to be effected when the sender receives acknowledgment of delivery receipt by the Councillors and/or Board Members; or
 - 21.1.4 in a resolution of the Board or of the Council made at a duly held meeting of the Board or Council and which sufficiently specifies that which is required to be notified, if the terms of that resolution, as recorded in the confirmed proceedings of that meeting, be delivered or posted by electronic mail to the Board Members or Councillors as the case may be.
- 21.2. Any such notice may be given in any manner of representing or reproducing words in visible and legible form, and may give notice of either one or more than one matter or event.



**EDMUND RICE EDUCATION
AUSTRALIA**

VERSION CONTROL		
Version Date	Author	Changes
20 September 2012	Paul Oakley	Original approved version
August 2020	Paul Linossier	In tracker in Council EO files.
2 September 2020	Paul Oakley/ Graham Goerke	Version approved by Council September 2020 for sending to VRQA
7 May 2021	Moore	In tracker in Council EO files.
24 May 2021	Graham Goerke	Minor change. Endorsed and sent to Rome for approval
21 June 2021	Graham Goerke / Moore	Inclusion of 'the Association' in Clause 8.
22 June 2021		Adopted at TEREAGM 22 June 2021

Constitution

Trustees of

Edmund Rice Education Australia

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Released under FOI Act 1982
 Australian Charities and Not-for-profits Commission

Constitution of Trustees of Edmund Rice Education Australia

1. Preamble

- (a) Edmund Rice Education Australia is recognised by the Catholic Church as a Public Juridic Person. The members of the Public Juridic Person are referred to as the Council.
- (b) Edmund Rice Education Australia is missioned by the Church to ensure the continuation of the Charism of Blessed Edmund Rice in school ministry.
- (c) Edmund Rice Education Australia carries out its activities in the civil sphere through a body corporate known as "Trustees of Edmund Rice Education Australia" (**the Association**) incorporated under the *Roman Catholic Church Communities Lands Act 1942* (NSW) (**the Act**).
- (d) The objects of the Association include the operation and conduct of educational bodies, known in Australia as Catholic Schools in the Edmund Rice tradition.
- (e) Under canon law, the Association is governed by the Statutes. The members of Council are the canonical stewards of the Association, responsible for ensuring the Association acts in accordance with the beliefs, teaching, discipline and canonical laws of the Church and that the Association's property administration is consistent with Canon Law.
- (f) The Statutes empower the Council to prepare and approve a Constitution for the Association. The Council has adopted this Constitution for the Association, establishing the Board as the governing body of the Association's Educational Bodies.

2. Name of the Association

The name of the Association is "Trustees of Edmund Rice Education Australia" (**the Association**).

3. Definitions and interpretation

- (a) In this Constitution the following definitions apply:

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

The **Act** means the *Roman Catholic Church Communities Lands Act 1942* (NSW)

Association means the statutory corporation called Trustees of Edmund Rice Education Australia.

Board means the persons for the time being constituting the Board of the Association.

Board Member means a member from time to time of the Board.

Canon Law means the universal law of the Church in the 1983 *Code of Canon Law* and universal legislation as well as particular and proper law enacted by the competent ecclesiastical authority and **Canonical** has a corresponding meaning.

Catholic School means a school conducted in accord with the mission of the Church and Canon Law.

Chair means the Board Member holding for the time being the office of Chair of the Board.

Charter means the articulation of the mission of a Catholic School in the Edmund Rice tradition.

Church means the Roman Catholic Church.

Congregation Leader means the Congregation Leader of the Catholic religious institute known as the Congregation of Christian Brothers (previously known as the Brothers of the Christian Schools of Ireland) founded by Blessed Edmund Rice in Ireland in 1802.

Committee Member means a member of a Committee established by the Board.

Corporations Act means the *Corporations Act 2001* as amended and any statutory modification or re-enactment of it.

Council means the members of the Association appointed by the Congregation Leader with the consent of his Council.

Councillor means a member from time to time of the Council.

Deputy Chair means the Board Member holding the office of Deputy Chair of the Board.

Deputy President means the Councillor holding the office of Deputy President of the Association.

Early Learning Centre means:

- (a) in respect of Educational Bodies located in Victoria:
 - (i) a not-for-profit approved education and care service (within the meaning of the *Education and Care Services National Law Act 2010* (Vic));
 - (ii) which provides education and care to children, including a three or four year old kindergarten program; and
 - (iii) that operates as a feeder for enrolments to a School located in Victoria; and
- (b) in respect of Educational Bodies located outside Victoria, a not-for-profit approved education and care service which provides education and care to children including children younger than the minimum compulsory school age.

Educational Body means a School or Early Learning Centre owned, governed, managed and conducted by the Association and **Educational Bodies** has the corresponding meaning.

EREA means Edmund Rice Education Australia being a public juridic person of Pontifical right constituted upon the petition of the Congregation Leader and approved by the Holy See.

Executive Director means the person appointed by the Board pursuant to clause 8.

Financial Plan means the documents establishing, from time to time, the current and future financial forecasts, including the budget and proposed loans and borrowings of the Association in accordance with good governance practices.

Financial Year means the year ending on the 31st December.

Formation means the response through baptism to nurturing spirituality, mission and ministry within the context of EREA.

Foundations means the statement of the elements which underpin the continuance of the charism of Edmund Rice in school ministry as Church mission.

Holy See means the central government of the Church.

Oceania Province means the province known as Oceania Province of the Religious Institute and includes any civil law constituted entity for the purposes of conducting the business of the province.

President means the person holding for the time being the office of President of the Association.

Principal Purpose means the purpose set out at clause 4.1.

Renewal means the statement which defines and guides the process for authentication of a school as a Catholic School in the Edmund Rice tradition.

Rule means a rule of this Constitution.

School means an Educational Body providing education to individuals of compulsory school age or older during normal school hours.

Statutes means the canonical statutes under Canon Law for EREA.

Strategic Plan means the document establishing, from time to time, the intended strategic directions of the Association having regard to its capabilities, its strengths, its challenges, its opportunities and the risks that may occur in the effective and efficient operation of the Association and which includes the Financial Plan.

Tax Act means the *Income Tax Assessment Act 1997* as amended and any statutory modification or re-enactment of it.

Treasurer means the Councillor holding for the time being the office of Treasurer of the Association.

- (b) Unless the context otherwise indicates words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and vice versa and references to a person shall be construed as including reference to an individual, firm, body corporate or unincorporated association (whether incorporated or not), trust, government, and statutory authority or agency.
- (c) Any reference to legislation is a reference to that Act as modified or amended from time to time, and includes any regulations made under those Acts, any exemption or modification to those Acts, and also includes any legislation or regulation which replaces or supplements those Acts.

4. Principal Purpose of the Association

4.1 Principal Purpose

The Principal Purpose of the Association is to advance Catholic education, including by:

- (a) supporting and advancing Catholic education in the Edmund Rice tradition in fulfilment of the mission of Jesus Christ;
- (b) owning, governing, managing and conducting Educational Bodies in accordance with the Statutes and all relevant legislation; and
- (c) providing support, services, direction and leadership to those Educational Bodies.

4.2 Furthering the Principal Purpose

- (a) The Association has all the powers given to it by the Act, which it may only exercise:
 - (i) in furtherance of the Principal Purpose; and
 - (ii) in accordance with the beliefs, teaching, discipline and canonical laws of the Church.

- (b) The Association may further the Principal Purpose by (without limitation):
 - (i) employing principals and other staff in the Educational Bodies;
 - (ii) owning the assets of the Educational Bodies;
 - (iii) assisting Educational Bodies with, or managing on behalf of Educational Bodies, business and compliance activities;
 - (iv) assisting Educational Bodies to develop curricula and provide ongoing curriculum management and support;
 - (v) providing Educational Bodies with access to resources, development opportunities, support services and similar operational support; and
 - (vi) such further ancillary means and activities, as in the opinion of the Association, further the Principal Purpose.

5. Not-for-profit

- (a) The income and property of the Association must be applied solely towards the promotion of the Principal Purpose.
- (b) No portion of the profits, income or property of the Educational Bodies may be paid or transferred directly or indirectly to a Councillor or Board Member except where the Board confirms that all legal and regulatory requirements have been met and approves a payment:
 - (i) in return for any services rendered (other than in the capacity of Councillor or Board Member) or goods supplied at fair and reasonable rates or rates more favourable to the Association in the ordinary and usual course of business to the Association; or
 - (ii) of out of pocket expenses properly incurred in performing a duty as Board Member or Councillor.
- (c) The Association may pay reasonable fees to a Board Member or Councillor for acting in those capacities but not from the profits, income or property of the Educational Bodies.
- (d) If the Association closes a School, any surplus assets of the School remaining after payment of the School's liabilities must be:
 - (i) used by the Association to provide education services to school-age children or for other not-for-profit purposes; or
 - (ii) given to a not-for-profit entity operating within Australia that provides education services to school-age children or that has similar purposes to the Association.

6. Council

6.1 Role of the Council

- (a) The members of the Council are the canonical stewards of the Association.
- (b) In addition to exercising the rights and responsibilities set out in this Constitution, Council is responsible for ensuring that the Association acts in accordance with the beliefs, teaching, discipline and canonical laws of the Church and that the Association's property administration is consistent with Canon Law and the Principal Purpose.

6.2 Council Composition

- (a) The Council comprises the members of EREA appointed pursuant to the Statutes from time to time.
- (b) The Council must appoint a Council President, Deputy President and Treasurer by majority resolution.
- (c) The Council President, Deputy President and Treasurer may be removed by majority resolution.
- (d) If the position of President becomes vacant during a term of appointment, the Deputy President will assume the role of President until the Council appoints a new President.
- (e) If the President is absent or unable or unwilling to act, the Deputy President will act in the place of the President.

6.3 Convening General Meetings

- (a) A General Meeting of the Council may be convened by the Council President at any time or at the request of the Board.
- (b) 21 days' notice of General Meetings must be given to Councillors (excluding the day on which the notice is served or deemed to be served and the day of the meeting). Council may waive this requirement by unanimous resolution.
- (c) The notice of General Meeting must state the place, day and the hour of meeting and where there is special business the general nature of that business.
- (d) An Annual General Meeting of the Council must be held within six (6) months after the expiration of each Financial Year.
- (e) The business of an Annual General Meeting may include the following, even if not referred to in the notice of meeting:
 - (i) consideration of the audited annual financial accounts;
 - (ii) appointment or removal of Board Members;
 - (iii) appointment, removal and remuneration of the Auditor;
 - (iv) report of the President;
 - (v) Report of the Chair, which must include a finance report and a particular report as to how the operation of the Association has been consistent with the Statutes and achieved the carrying on of the ministry of Catholic education.
- (f) Any other business, at an Annual General Meeting or a General Meeting, shall be considered to be special business.

6.4 Adjournment

- (a) The President may, with the consent of the Councillors present (and must if so directed by the Councillors present), adjourn a General Meeting.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the original meeting.
- (c) If a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

6.5 Quorum

- (a) No business shall be transacted at any General Meeting unless a quorum of Councillors

is present. A quorum is four (4) Councillors.

- (b) If a quorum is not present within 30 minutes of the commencement time, the meeting shall stand adjourned to the same day, time and place in the following week (or to such other day and at such other time and place as the President may determine).
- (c) If at the adjourned meeting a quorum is not present within 30 minutes of the commencement time, the meeting is dissolved.

6.6 Voting

- (a) Subject to this Constitution, the Council must endeavour to resolve matters arising at any General Meeting by consensus after discernment. However if the matter is put to the vote, it must be decided:
 - (i) on a show of hands; and
 - (ii) by majority vote (unless otherwise specified under clause 6.8 or clause 16).
- (b) A declaration by the President is conclusive evidence of the result of a vote by show of hands, provided that the declaration reflects the show of hands.
- (c) Neither the President nor the minutes need state the number or proportion of the votes recorded in favour or against the resolution (unless the vote relates to a matter specified under clause 6.8 or clause 16).

6.7 Circulated Resolutions

The Council may pass a resolution otherwise required or permitted to be passed at General Meetings without the General Meeting being held if all the Councillors who are entitled to vote on the resolution respond saying that they are in favour, as follows:

- (a) The wording of the resolution may be circulated by mail, email or other form of electronic transmission;
- (b) Councillors may respond by:
 - (i) signing and returning a copy of the posted document; or
 - (ii) responding by email or other form of electronic transmission including the wording of the resolution;stating whether or not the Councillor is in favour;
- (c) Provided all Councillors are in favour, the resolution is passed when the last Councillor responds.

6.8 The Council's Reserve Powers

- (a) In addition to any other approvals required under this Constitution, the approval of four fifths of the Council (which may be communicated by the President) must be obtained before any Board decision takes effect to:
 - (i) amend the Charter, Formation, Renewal and Foundations documents;
 - (ii) set or materially change the Strategic Plan or Financial Plan of the Association;
 - (iii) appoint or remove the Executive Director;
 - (iv) borrow in excess of the amount set in the Financial Plan or prescribed in the Delegations of Authority Manual;
 - (v) sell, lease, mortgage, transfer, assign or encumber any property of the Association;

- (vi) acquire land or buildings;
 - (vii) act beyond any limits with respect to capital expenditure or other financial arrangements set by the Council from time to time or prescribed in the Delegations of Authority Manual;
 - (viii) incur expenditure in excess of any Financial Plan approved by the Council;
 - (ix) consolidate or merge the Association with any other organisation;
 - (x) cease to operate any Educational Body;
 - (xi) establish a new Educational Body;
 - (xii) grant any power of attorney; and
 - (xiii) end a relationship with a Ministry of the Oceania Province.
- (b) Contracts for the purchase of land may only be executed by the Council.
- (c) The following actions of the Association also require the approval of the Holy See:
- (i) any change to the Principal Purpose;
 - (ii) the suppression of the Association;
 - (iii) the sale, lease, mortgage or encumbrance disposition, or other form of alienation of the stable patrimony of the Association in excess of any amount established by the Holy See from time to time.
- (d) If there is a doubt as to whether a Board decision involves a reserve power under this clause 6 the ruling of the President shall be final and conclusive.

7. The Board

7.1 Role and Powers of the Board

- (a) The Board is the governing body of the Educational Bodies.
- (b) The Board must ensure that the Association complies with:
 - (i) all legal and regulatory requirements of civil law;
 - (ii) Canon Law; and
 - (iii) this Constitution.
- (c) The Board must govern the Educational Bodies and exercise all powers of the Association not required by Canon Law or this Constitution to be exercised by the Council.
- (d) All activities of the Educational Bodies are under the direction of, the Board.
- (e) Without limiting the generality of clause 7.1(c) but subject always to clause 6.8 and the terms of this Constitution, the Board may exercise all the powers of the Association to direct and defend litigation, borrow money, buy and sell property, charge any property or business of the Association or give any other security for a debt, liability or obligation of the Association or of any person.

7.2 Appointment of Board Members

- (a) The Council appoints the Board Members.
- (b) The Board may recommend individuals to the Council for appointment to the Board.
- (c) There must be at least 5 and no more than ten Board Members.

- (d) The Board must comprise persons who:
 - (i) are not Councillors;
 - (ii) are not employees of the Association;
 - (iii) have suitable qualifications and experience;
 - (iv) are considered by the Council to be competent to participate in the continuation of the charism of Blessed Edmund Rice in school ministry as Church Mission and Catholic education;
 - (v) are not ineligible to be:
 - (A) a director under the *Corporations Act*; or
 - (B) a responsible person under the ACNC legislation; and
 - (vi) are “fit and proper persons” (or any equivalent requirement) for the purpose of any law pertaining to Educational Bodies.
- (e) Board Members may be appointed for a term not exceeding 3 years.
- (f) Board Members are eligible for re-appointment, provided that a Board Member must not serve continuously for more than ten (10) consecutive years.

7.3 Office bearers

- (a) The Council will appoint the Chair and Deputy Chair (**office bearers**) following discussion with the Board.
- (b) Office bearers may be appointed for a term not exceeding 3 years. Office bearers are eligible for re-appointment.
- (c) If the position of Chair becomes vacant during their term, the Deputy Chair may assume the role of Chair until the Council appoints a new Chair.
- (d) In the absence of the Chair, the Deputy Chair will act in the place of the Chair.
- (e) If the position of Chair or Deputy Chair becomes vacant the Council must endeavour to appoint a replacement within twenty eight (28) days of the vacancy occurring.
- (f) Office bearers may be removed from office prior to completion of their term by the Council.
- (g) The position of an office bearer will become vacant if they cease to be a Board Member.

7.4 Removal of Board Members

- (a) The Council may remove a Board Member by written notice signed by the President to the individual and the Board, stating that (as at the date stated on the notice) the individual is no longer a Board Member.
- (b) The Board may resolve to request that the Council removes a Board Member.
- (c) A Board Member who is the subject of a proposed resolution under clause 7.4(b) is entitled to make an oral and/or written submission to the Board Meeting at which the resolution is considered. If the Board resolves to make the request, a copy of any written submission by the Board Member must be given to the Council together with the request.

7.5 Ceasing to be a Board Member

- (a) A Board Member’s position becomes vacant if the Board Member:
 - (i) is absent without leave of the Board from three (3) successive Board meetings;

- (ii) resigns by notice in writing to the Chair and the President;
- (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (iv) fails to declare a material interest (whether direct or indirect) in any contract or proposed contract with the Association;
- (v) completes their term and are not re-appointed;
- (vi) is removed pursuant to clause 7.4; or
- (vii) cease to meet the eligibility requirements set out in clause 7.2.

7.6 Appointment of attorneys

- (a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association for such purposes with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board) for such period and subject to such conditions as the Board thinks fit.
- (b) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit.

7.7 Conflicts of interest

- (a) A Board Member must disclose the nature and extent of any perceived or actual material conflict of interest to the other Board Members (or the Councillors if the other Board Members share that conflict).
- (b) A Board Member who has a material personal interest in a matter that is being considered by the Board:
 - (i) must not be present while the matter is being considered at a Board meeting; or
 - (ii) vote on the matter;
 unless permitted by clause 7.7(c).
- (c) Provided the Board approves and it is permitted by law, a Board Member may be present or vote if:
 - (i) the interest relates to an insurance contract that insures, or would insure, the Board Member against liabilities that the Board Member incurs as an officer of the Association;
 - (ii) the interest relates to any payment by the Association under clause 10 in respect of an indemnity or any contract relating to such an indemnity;
 - (iii) the interest relates to a contract the Association is proposing to enter into that:
 - (A) is subject to approval by the Council; and
 - (B) will not impose any obligation on the Association if it is not approved by the Council; or
 - (iv) the Board Members who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Board Member, the nature and extent of the Board Member's interest in the matter and how it relates to the affairs of the Association; and
 - (B) states that those Board Members are satisfied that the interest should not stop the Board Member from voting or being present.

7.8 Permissible conduct

Provided a Board Member complies with clause 7.7 and the conduct is otherwise permitted by law, they may:

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

7.9 Board meetings

- (a) The Board must meet together at least 6 times a year.
- (b) The Chair may at any time (and must, on the requisition of 3 Board Members) convene a meeting of the Board.
- (c) A quorum for a Board meeting is a majority of Board Members. No business may be transacted at any Board meeting unless a quorum is present.
- (d) The Chair or a majority of the Board Members may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.
- (e) Board meeting minutes must be kept and signed as a true record of proceedings by the Chair following approval at the subsequent Board meeting.
- (f) The Board must provide a copy of all Board meeting minutes to the Council.
- (g) Subject to this Constitution, the Board must endeavour to resolve matters arising at any meeting of the Board by consensus after discernment. However if the matter is put to the vote, it must be decided by a majority of votes of Board Members present.
- (h) In the case of an equality of votes the chair of the meeting shall not have a second or casting vote.

7.10 Circulated Resolutions

The Board may pass a resolution outside of a Board Meeting if all the Board Members who are entitled to vote on the resolution respond saying that they are in favour of the resolution, as follows:

- (a) The wording of the resolution may be circulated by mail, email or other form of electronic transmission;
- (b) Board Members may respond by:
 - (i) signing and returning a copy of the posted document; or
 - (ii) responding by email or other form of electronic transmission including the wording of the resolution;

- stating whether or not the Board Member is in favour;
- (c) Provided all Board Members are in favour, the resolution is passed when the last Board Member responds.

7.11 Delegation

- (a) The Board may delegate all or any of its powers and functions (other than those which by law must be dealt with directly by the Board) to:
- (i) one or more Board Members;
 - (ii) a Committee;
 - (iii) the Executive Director;
 - (iv) a Principal of an Educational Body; or
 - (v) any other person.
- (b) The Board may revoke or vary any delegation.
- (c) A delegation made under this clause:
- (i) may include the power of sub-delegation (if appropriate);
 - (ii) must be consistent with the Delegations of Authority Manual (as amended by the Board from time to time);
 - (iii) must be by instrument of delegation; and
 - (iv) may be subject to such conditions and/or limitations as to the performance or exercise of any of the specified functions, powers and authorities delegated or as to time or other circumstances as may be specified in the resolution, instrument of delegation or terms of reference.
- (d) Notwithstanding any delegation made under this Constitution the Board may continue to perform or exercise all or any of the functions, powers and authorities delegated.

8. Executive Director

The Board may (subject to clause 6.8) appoint an Executive Director to be responsible for the day to day management and general administration of the Association and the Educational Bodies, subject to the Board's supervision and lawful direction.

9. Committees

- (a) The Board may establish Committees.
- (b) A Committee may include, or be comprised of, non-Board Members (provided that at least one Board Member must be appointed to each Committee).
- (c) The meetings and proceedings of Committees are:
- (i) subject to any terms of reference and/or instrument of delegation prescribed by the Board; and
 - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

10. Indemnity and insurance

- (a) The Association must indemnify and keep indemnified any person who is, or at any time has been, a Councillor, Board Member or Committee Member, against every action or

suit that shall be brought and maintained for anything done or omitted pursuant to the duties imposed as a Councillor, Board Member or Committee Member, provided that such indemnity shall not apply in respect of any fraudulent or criminal act or omission by that individual.

- (b) Every officer of the Association will be indemnified out of the property of the Association against any liability incurred in that capacity to another person other than to the Association unless the liability arises out of conduct involving a lack of good faith.
- (c) A liability in clause 10(a) and 10(b) includes, but is not limited to, any loss, cost or expense suffered or incurred by the officer, Councillor, Board Member or Committee Member:
 - (i) in defending any criminal proceedings in which that person is acquitted;
 - (ii) in defending any civil proceedings where the person has acted in good faith; and
 - (iii) in connection with an application in relation to such proceedings, in which the Court grants relief to that person.
- (d) The Association may pay the premiums on any policy of insurance in relation to any liability of an officer, Councillor, Board Member or Committee Member, to the fullest extent permitted by law.

11. Meeting using technology

- (a) Meetings under this Constitution may be held using telephone, audio-visual link up or other instantaneous communication medium, or, if consented to by all Councillors, Board Members or Committee Members (as the case may be), other technology. The consent may be a standing one. A Councillor, Board Member or Committee Member may only withdraw their consent within a reasonable period before the meeting.
- (b) If a meeting is held using any technology and all the Councillors, Board Members or Committee Members as the case may be take part in the meeting, they will be treated as having consented to the use of the technology for that meeting.
- (c) The following provisions apply to a meeting by technology:
 - (i) each of the participants taking part in the meeting must be able to hear and be heard by each of the other participants taking part in the meeting; and
 - (ii) at the commencement of the meeting each participant must announce his or her presence to all the other participants taking part in the meeting.
- (d) A participant may not leave a technology meeting by disconnecting the participant's link to the meeting unless that participant has previously notified the chair of the meeting.
- (e) A participant is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that participant has previously obtained the express consent of the chair to leave the meeting.

12. Notices

Without prejudice to any other method of giving notice, it shall be sufficient compliance with any provision of the Constitution requiring notice to be given if, with observance of the required time, notice is given:

- (a) in a document delivered to the individual in person;
- (b) in a pre-paid letter or other document addressed and posted to the individual's last known address two (2) days prior to the date by which notice must be given; or

- (c) by electronic mail to the email address supplied by individual to the Association for the purpose of giving notice to him or her in which case delivery shall be deemed to be effected when the sender receives acknowledgment of delivery receipt by the individual.

13. Common Seal

- (a) The Council shall have the custody of the common seal of the Association, and the form of such seal and all other matters relating thereto shall be determined at a meeting of the Association.
- (b) The common seal of the Association must only be affixed to any instrument pursuant to an appropriate resolution passed at a meeting of the Association.
- (c) Every instrument to which the common seal is so affixed shall be signed by the President and by two other Councillors.

14. Records, Accounting and Audit

14.1 Accounts and other records of the Association

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

14.2 Audit

- (a) The Council must appoint an auditor (or auditors) for the Association and the Educational Bodies..
- (b) The Association must remunerate any auditor.
- (c) Any auditor is entitled to attend any General Meeting and to be heard by the Council on any business of the meeting that concerns the auditor in their capacity as auditor.
- (d) The Association may give any auditor all communications relating to the General Meeting that the Council are entitled to receive.

14.3 Financial statements

- (a) The Board must ensure that financial statements are prepared annually for all Educational Bodies together with a consolidated set of financial statements for the Association in accordance with all legal and regulatory requirements.
- (b) The accounts as audited in respect of each Financial Year must be forwarded to the Council within twenty one (21) days of being signed by two Board Members.

14.4 Financial instruments

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Association shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Board determines.

15. Winding up

- (a) The Association may be wound up in accordance with the Act.

- (b) If upon the winding up or dissolution of the Association there remains, after satisfaction of all debts and liabilities (and complying with clause 5(d)), any property or financial assets whatsoever, the same shall not be paid to or distributed amongst the Councillors but shall be given or transferred to an association or institution nominated in accordance with the Act which:
 - (i) is charitable at law; and
 - (ii) has a similar purpose to the Principal Purpose.

16. Amendment of Constitution

- (a) Subject to the Statutes this Constitution may be amended from time to time by the Council by way of resolution passed by a four-fifths of all Councillors. The consent of the Congregation Leader is required to vary clauses 6.8 and 16 of this Constitution. The Board must be advised in writing before any amendment takes effect.
- (b) The Council cannot alter the elements referring to or impacting on the role of the Board without first giving written notice to the Board and allowing the Board a minimum of fourteen (14) days to respond to the proposal.
- (c) The Board may recommend changes to the Constitution to the Council, who must meet to consider the proposed changes within thirty (30) days of receipt of the recommendation.



EDMUND RICE EDUCATION
AUSTRALIA

Constitution

Trustees of

Edmund Rice Education Australia

First prepared	## 2021 with assistance from Moores
Revised and Approved	12 March, 2023
Review date	To be determined by the Board

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Constitution of Trustees of Edmund Rice Education Australia

1. Preamble

Edmund Rice Education Australia was established to ensure the continuation of the Charism of Blessed Edmund Rice in the educational mission of the Catholic Church, especially through its schools governed and conducted in the Edmund Rice tradition.

Edmund Rice Education Australia was constituted, in accordance with the norms of Canon Law, as a public juridic person within the Catholic Church on 20 September 2012 and carries on its mission in the name of the Church.

Edmund Rice Education Australia is regulated by its own Statutes approved by the Holy See on 20 September 2012. The Members of Edmund Rice Education Australia, also referred to in the statutes as the 'Council', are the college or group of persons holding ultimate responsibility for ensuring that all schools and other apostolic activities of Edmund Rice Education Australia are conducted in conformity with the beliefs, teachings and laws of the Church.

Edmund Rice Education Australia, for the purposes of having recognition in civil law, established a body corporate known as Trustees of Edmund Rice Education Australia incorporated pursuant to the provisions of the *Roman Catholic Church Communities Lands Act 1942* (NSW). The Members of Edmund Rice Education Australia are also the members of this body corporate - Trustees of Edmund Rice Education Australia (**the Association**).

The Statutes empower the Council to prepare and approve a Constitution for the Association. The Council has adopted this Constitution for the Association.

2. Purpose of the Association

2.1 Purpose

The Purpose of the Association is to advance Catholic education in the Edmund Rice tradition in the civil sphere in fulfilment of the mission of Jesus Christ, including by:

- (a) defining and authenticating official expressions of the philosophy and mission of Edmund Rice Education Australia;
- (b) ensuring the continuation of the Charism of Edmund Rice in school ministry as Church Mission;
- (c) ensuring that the works for which it is responsible operate in accordance with the teaching, discipline and laws of the Church;
- (d) preserving the stable patrimony of Edmund Rice Education Australia, including by approving the alienation by gift, sale, transfer or otherwise of temporal goods belonging to the stable patrimony of Edmund Rice Education Australia in accordance with Canon Law; and
- (e) approving all acquisition by gift, purchase, transfer or otherwise for Edmund Rice Education Australia.

2.2 Furthering the Purpose

- (a) The Association has all the powers given to it by the Act, which it may only exercise:
 - (i) in furtherance of the Purpose; and
 - (ii) in accordance with the beliefs, teaching, discipline and canonical laws of the Church and with the Statutes.
- (b) The Association may further the Purpose by (without limitation) such ancillary means and activities, as in the opinion of the Association, further the Purpose.

3. Not-for-profit

- (a) The income and property of the Association must be applied solely towards the promotion of the Principal Purpose.
- (b) No portion of the profits, income or property of the Association may be paid or transferred directly or indirectly to a Councillor except where the Council confirms that all legal and regulatory requirements have been met and approves a payment:
 - (i) in return for any services rendered (other than in the capacity of Councillor) or goods

supplied at fair and reasonable rates or rates more favourable to the Association in the ordinary and usual course of business to the Association; or

- (ii) for out of pocket expenses properly incurred in performing a duty as Councillor.
- (c) The Association may pay reasonable fees to a Councillor for acting in that capacity.

4. Council

4.1 Role of the Council

- (a) The members of the Council are the canonical stewards of the Association.
- (b) In addition to exercising the rights and responsibilities set out in this Constitution, Council is responsible for ensuring that:
 - (i) the Association acts in accordance with the beliefs, teaching, discipline and canonical laws of the Church; and
 - (ii) the Association's property administration is consistent with Canon Law, the Statutes and the Principal Purpose.

4.2 Council Composition

- (a) The Council comprises the members of Edmund Rice Education Australia appointed pursuant to the Statutes from time to time.
- (b) The Council must appoint a Council President, Deputy President and Treasurer for a term of three years by majority resolution.
- (c) The Council President, Deputy President and Treasurer may be removed by majority resolution.
- (d) If the position of President becomes vacant during a term of appointment, the Deputy President will assume the role of President until the Council appoints a new President.
- (e) If the President is absent or unable or unwilling to act, the Deputy President will act in the place of the President.

4.3 Convening General Meetings

- (a) A General Meeting of the Council may be convened by the Council President at any time.
- (b) 21 days' notice of General Meetings must be given to Councillors (excluding the day on which the notice is served or deemed to be served and the day of the meeting). Council may waive this requirement by unanimous resolution.
- (c) The notice of General Meeting must state the place, day and the hour of meeting and where there is special business the general nature of that business.
- (d) An Annual General Meeting of the Council must be held within six (6) months after the expiration of each Financial Year.
- (e) The business of an Annual General Meeting may include the following, even if not referred to in the notice of meeting:
 - (i) consideration of the audited annual financial accounts;
 - (ii) receiving reports from subsidiary entities and exercising the reserve powers of the Association in relation to subsidiary entities;
 - (iii) report of the President;
 - (iv) report of the Chair, which must include a finance report and a particular report as to how the operation of the Association has been consistent with the Statutes and achieved the carrying on of the ministry of Catholic education.
- (f) Any other business, at an Annual General Meeting or a General Meeting, shall be considered to be special business.

4.4 Adjournment

- (a) The President may, with the consent of the Councillors present (and must if so directed by the Councillors present), adjourn a General Meeting.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the original meeting.

- (c) If a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

4.5 Quorum

- (a) No business shall be transacted at any General Meeting unless a quorum of Councillors is present. A quorum is four (4) Councillors.
- (b) If a quorum is not present within 30 minutes of the commencement time, the meeting shall stand adjourned to the same day, time and place in the following week (or to such other day and at such other time and place as the President may determine).
- (c) If at the adjourned meeting a quorum is not present within 30 minutes of the commencement time, the meeting is dissolved.

4.6 Voting

- (a) Subject to this Constitution, the Council must endeavour to resolve matters arising at any General Meeting by consensus after discernment. However, if the matter is put to the vote, it must be decided:
 - (i) on a show of hands; and
 - (ii) by majority vote (unless otherwise specified under clause 12).
- (b) A declaration by the President is conclusive evidence of the result of a vote by show of hands, provided that the declaration reflects the show of hands.
- (c) Neither the President nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution (unless the vote relates to clause 12).

4.7 Resolutions without meetings

The Council may pass a resolution otherwise required or permitted to be passed at General Meetings without the General Meeting being held if all the Councillors who are entitled to vote on the resolution respond saying that they are in favour, as follows:

- (a) The wording of the resolution may be circulated by mail, email or other form of electronic transmission;
- (b) Councillors may respond by:
 - (i) signing and returning a copy of the posted document; or
 - (ii) responding by email or other form of electronic transmission including the wording of the resolution;
 stating whether or not the Councillor is in favour;
- (c) Provided all Councillors are in favour, the resolution is passed when the last Councillor necessary to constitute unanimous consent in favour of the resolution responds.

5. Relationship to the Diocesan Bishop

The Association must:

- (a) ensure that the diocesan Bishop has the right to visit the schools administered by Edmund Rice Education Australia in his diocese (canon 806);
- (b) acknowledge and respect the exercise of the responsibilities of the diocesan Bishop concerning the pastoral care of persons, the exercise of divine worship and the teachings of the Church in regard to its apostolic works in his diocese and in accordance with canon law;
- (c) comply with the directives of the diocesan Bishop which pertain to the general regulation of Catholic schools in accordance with canon law (canon 806 §1).
- (d) consult with the local Bishop and the Congregation Leader of the Congregation of Christian Brothers prior to the alienation of the temporal goods of Edmund Rice Education Australia where the value exceeds the limit established by the Episcopal Conference for the region.

6. Relationship to the Holy See

The Approval of the Holy See is required for the sale, lease, mortgage, encumbrance, disposition or other form of alienation of the stable patrimony of Edmund Rice Education Australia in excess of the

amount established by the Holy See from time to time.

7. Indemnity and insurance

- (a) The Association must indemnify and keep indemnified any person who is, or at any time has been, a Councillor against every action or suit that shall be brought and maintained for anything done or omitted pursuant to the duties imposed as a Councillor, provided that such indemnity shall not apply in respect of any fraudulent or criminal act or omission by that individual.
- (b) Every officer of the Association will be indemnified out of the property of the Association against any liability incurred in that capacity to another person other than to the Association unless the liability arises out of conduct involving a lack of good faith.
- (c) A liability in clause 6(a) and 6(b) includes, but is not limited to, any loss, cost or expense suffered or incurred by the officer or Councillor:
 - (i) in defending any criminal proceedings in which that person is acquitted;
 - (ii) in defending any civil proceedings where the person has acted in good faith; and
 - (iii) in connection with an application in relation to such proceedings, in which the Court grants relief to that person.
- (d) The Association may pay the premiums on any policy of insurance in relation to any liability of an officer or Councillor to the fullest extent permitted by law.

8. Meeting using technology

- (a) Meetings under this Constitution may be held using any technology that is agreed to by all Councillors.
- (b) The agreement by the Councillors may be a standing one.
- (c) A person who attends by technology is deemed to be present at a meeting.

9. Notices

Without prejudice to any other method of giving notice, it shall be sufficient compliance with any provision of the Constitution requiring notice to be given if, with observance of the required time, notice is given:

- (a) in a document delivered to the individual in person;
- (b) in a pre-paid letter or other document addressed and posted to the individual's last known address two (2) days prior to the date by which notice must be given; or
- (c) by electronic mail to the email address supplied by individual to the Association for the purpose of giving notice to the person in which case delivery shall be deemed to be effected when the sender receives acknowledgment of delivery receipt by the individual.

10. Common Seal

- (a) The Council shall have the custody of the common seal of the Association, and the form of such seal and all other matters relating thereto shall be determined at a meeting of the Association.
- (b) The common seal of the Association must only be affixed to any instrument pursuant to an appropriate resolution passed at a meeting of the Association.
- (c) Every instrument to which the common seal is so affixed shall be signed by the President and by two other Councillors.

11. Records, Accounting and Audit

11.1 Accounts and other records of the Association

- (a) The Council must:
 - (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements; and
 - (ii) ensure that records of its operations are kept; and

- (iii) take reasonable steps to ensure that the Association's records are kept safe.
- (b) The Association must retain its records for at least seven years.

11.2 Audit

- (a) The Council may appoint an auditor (or auditors) for the Association.
- (b) The Association must remunerate the auditor.
- (c) Any auditor is entitled to attend any General Meeting and to be heard by the Council on any business of the meeting that concerns the auditor in their capacity as auditor.
- (d) The Association may give any auditor all communications relating to the General Meeting that the Council is entitled to receive.

12. Winding up

- (a) The Association may be wound up in accordance with the Act.
- (b) If upon the winding up or dissolution of the Association there remains, after satisfaction of all debts and liabilities, any property or financial assets whatsoever, the same shall not be paid to or distributed amongst the Councillors but shall be given or transferred to an association or institution nominated in accordance with the Act which:
 - (i) is charitable at law; and
 - (ii) has a similar purpose to the Purpose.

13. Amendment of Constitution

Subject to the Statutes this Constitution may be amended from time to time by the Council by way of resolution passed by a four-fifths of all Councillors. The consent of the Congregation Leader is required to vary clause 11 of this Constitution.

14. Interpretation

14.1 Definitions

In this Constitution:

“**the Act**” means the *Roman Catholic Church Communities Lands Act 1942* (NSW).

“**Canon Law**” means the universal law of the Church in the 1983 Code of Canon Law and universal legislation as well as particular and proper law enacted by the competent ecclesiastical authority and Canonical has a corresponding meaning.

“**Church**” means the Roman Catholic Church.

“**Congregation Leader**” means the Congregation Leader of the Catholic religious institute known as the Congregation of Christian Brothers (previously known as the Brothers of the Christian Schools of Ireland) founded by Blessed Edmund Rice in Ireland in 1802.

“**Council**” means the members of the Association appointed by the Congregation Leader with the consent of his Council.

“**Councillor**” means a member from time to time of the Council.

“**Deputy President**” means the Councillor holding the office of Deputy President of the Association.

“**Financial Year**” means the year ending on the 31st December.

“**President**” means the person holding for the time being the office of President of the Association.

“**Purpose**” means the purpose set out at clause 3.1.

“**Statutes**” means the canonical statutes under Canon Law for Edmund Rice Education Australia.

“**the Association**” means the Trustees of Edmund Rice Education Australia, being a body corporate incorporated under the *Roman Catholic Church Communities Lands Act 1942* (NSW).

“**Treasurer**” means the Councillor holding for the time being the office of Treasurer of the Association.

14.2 Interpretation

In this Constitution:

- (a) Unless the context otherwise indicates words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and vice versa and references to a person shall be construed as including reference to an individual, firm, body corporate or unincorporated association (whether incorporated or not), trust, government, and statutory authority or agency.
- (b) Any reference to legislation is a reference to that Act as modified or amended from time to time, and includes any regulations made under those Acts, any exemption or modification to those Acts, and also includes any legislation or regulation which replaces or supplements those Acts.

Released under FOI Act 1982
Australian Charities and Not-for-profits Commission