

CONSTITUTION
DOWNLANDS COLLEGE
ACN 071 878 478

CARROLL & O'DEA
Lawyers
Level 18
111 Elizabeth Street
SYDNEY NSW 2000
DX 183 SYDNEY
Tel: 92917100
Ref: MOD:152053

DOWNLANDS COLLEGE
ACN 071 878 478

A Company Limited by Guarantee

PREFACE

MSC PHILOSOPHY OF EDUCATION

The Missionaries of the Sacred Heart were founded by Fr Jules Chevalier at Issoudun, France in 1854. He had a vision of regenerating society through devotion to the Sacred Heart. Included among the ways of achieving this vision was the education of youth.

Mindful that the teaching closest to Jesus' heart is his command to *Love one another as I have loved you*, Missionaries of the Sacred Heart especially value love, concern, compassion, understanding, respect and acceptance of every individual.

*I give you a new commandment
love one another;
just as I have loved you,
you also must love one another.
By this love you have for one another
everyone will know that you are my disciples.*

John 13:34ff

These qualities are enshrined in the charism handed on by Jules Chevalier and embodied in the current MSC Constitutions:

*As Missionaries of the Sacred Heart,
we live our faith in the Father's love
revealed in the Heart of Christ.
We want to be like Jesus
who loved with a human heart;
we want to love through him and with him,
and to proclaim his love to the world.* #10

*Ours is a spirit of family
and a spirit of brotherhood,
formed by kindness and understanding,
by compassion and mutual forgiveness,
by gentleness, humility and simplicity,
by hospitality and a sense of humour.* #32

This charism generates the spirit in which various MSC ministries are carried out.

In all their ministries, Missionaries of the Sacred Heart value every human person and hold as precious the healthy growth of body, mind and spirit of each individual. And in determining how best to promote this, Missionaries of the Sacred Heart recognised the importance of meeting the specific needs of our times.

*In a constant effort to share in the sentiments
of the Heart of Christ,
we will be attentive
to all human needs and aspirations,
such as,
the need to be respected as persons,
the need for love and peace,
for freedom, justice and truth,
and the search for meaning in life.*

*We will become all things to all people,
by respecting different cultures,
and by being ready to undertake
whatever apostolic services people may need* #24

The Missionaries of the Sacred Heart in Australia have had a long involvement in the education of youth. Beginning with an Apostolic School at Douglas Park, NSW, in the 1920's, they later opened schools in Toowoomba, Bowral, Hamilton, Darwin and Canberra, and they also accepted responsibility for two schools in Papua New Guinea.

The Australian Catholic Church has been extensively involved in the education of youth for over 100 years. The Missionaries of the Sacred Heart see this as still an effective ministry for meeting the needs of the times. Hence MSC schools proclaim and give witness to the love of God in our world. They seek to engender a strong belief in God's love for all as manifested through the heart of Jesus Christ. *Fortes in Fide (Strong in Faith)* is the common motto of MSC schools.

Father Chevalier saw particular value in the education of youth as a means of remedying the indifference of secular society to the love of God. In the first MSC Constitutions, which were approved in 1877 and which he himself wrote, we find the following:

The Society (of the Missionaries of the Sacred Heart) has education as one of its principal tasks. All among us who accept the care of young people should never lose sight of the sublimity of such an important mission. Considering the great usefulness of this ministry, they will apply themselves to it with all the more keenness and zeal, in so far as it is often enough a thankless task... They should not forget that the salvation of civil and ecclesiastical society depend on the Christian education of youth. "Train young people in the way they should go; even when they grow old they will not swerve from it". (Prov. 22/6). It follows from this that the main hope for the Church for better times rests on the religious instruction of youth.

It was also part of the vision of Jules Chevalier that the mission to regenerate society would be carried out not only by professed religious, but also by an association of lay people who would form another branch of the Congregation. Among the staff of MSC

schools are lay people who share the mission and charism of the Missionaries of the Sacred Heart, and who work with them in a special way to proclaim and witness to the love of God.

Chevalier also gives advice for those involved in the ministry of education:

In order that a ministry of this nature be completely fruitful, it is necessary that those among us who take it on combine forces, and work with a spirit of unity... It is also necessary that they commend themselves to their students by the goodness of their lives as well as by their teachings.

They should be tireless in teaching their students whatever is needed for them to gain academic results with distinction... And they should never forget that the first task required of them is that their students become "fortes in fide" (strong in faith), dedicated with great love to the practice of all Christian virtues.

MSC VISION IN EDUCATION

MSC schools exist to proclaim and witness to the love of God. They aim to make gospel values real in the lives of young people, their families and the staff who serve them.

With care, compassion and understanding as their hallmark qualities, MSC schools strive to build a community of faith among staff, parents and students. Great value is placed on commitment, trust and acceptance of others in fostering the growth of the community. In the spirit of a loving and supportive family, members help one another grow in knowledge, faith and service.

While aiming for excellence in the search for truth, MSC schools recognise the importance of balanced human development and strive to help young people to achieve their full potential in all areas of life, and to be ready to show initiative in parish, religious and civic life. They are attentive to the aspirations and needs of individuals, especially of those who are disadvantaged or isolated: mentally, physically, financially, emotionally or geographically.

Staff relate to students with compassion and availability, creating a sense of family which permeates their attitude as professional teachers and caring adults. Staff also relate to each other with the same sense of understanding and care, ministering to each other in an atmosphere of friendship and collegiality.

Staff strive to improve their professional appreciation of their work by sharing in prayer and staff development exercises, and participate regularly in programs which enable them to collaborate with greater understanding in the MSC style of education at their school.

Founded on love and built on love, MSC schools offer a vision of hope for humankind, one to which all their members can contribute as they grow strong in faith.

INDEX OF CONSTITUTION

PREFACE

MSC Philosophy of Education

MSC Vision in Education

	Rule No.
Interpretation	1.
Exclusion of Replaceable Rules	2.
Nature of the Company	3.
Objects of the Company	4.
Powers of the Company	5.
Income and property of the Company	6.
Payments to Directors	7.
Winding Up	8.
Liability of Company Members	9.
Company Membership	10.
Register of Company Members	11.
Retirement and Removal of Company Members	12.
Entrance Fee and Annual Subscription	13.
Meetings of the Company Members ‘EMC)	14.
Proceedings at General Meetings of Company Members	15.
Delegate of the Provincial	16.
Board of Directors	17.
Chairperson and Deputy Chairperson	18.
Function and Duties of the Board	19.
Relationship of Board and Company Members	20.
Meeting of the Board	21.
Relationship of Board and the Provincial	22.
Delegation by the Board	23.
Establishment of Committees	24.
College Rules	25.
The Principal	26.
The Secretary	27.
Seal	28.
The College Property	29.
Notice	30.
Dissolution of Board	31.
Repeal, Variation and Amendment of Constitution	32.
Accounts	33.

Audit	34.
Notice	35.
Indemnity	36.

1. INTERPRETATION

1.1. Definitions

In this Constitution, unless there is something in the subject or context inconsistent therewith:-

- (a) "Act" means the *Corporations Act 2001* (Cth) and any amendment from time to time;
- (b) "Acting Principal" means the Acting Principal for the time being of the College;
- (c) "Auditor" means the person appointed and authorised to examine the accounts and records of the Company in accordance with Rule 34;
- (d) "Board" means the Directors of the Company;
- (e) "Business Day" means any day that is not a Saturday, Sunday or public holiday in the State;
- (f) "Canon Law" means the body of law known as canon law within the Catholic Church;
- (g) "Chairperson" means the Chairperson for the time being of the Board;
- (h) "College" means the Catholic school for boys and girls conducted by the Congregation and known as Downlands College in the State;
- (i) "College Property" means the assets from time to time allocated to the Company by the Corporation;
- (j) "Company" means the company limited by guarantee and called Downlands College;
- (k) "Company Members" are those persons who are appointed as Company Members pursuant to Rule 10;
- (l) "Conflict of Interest" means any situation where the personal interest of a Director, whether real or perceived, conflicts with his or her duties as a Director;

- (m) "Congregation" means the persons from time to time constituting the religious congregation known as Society of the Missionaries of the Sacred Heart and using the initials M.S.C.;
- (n) "Constitution" means this constitution as amended from time to time;
- (o) "The Corporation" means the body corporate known as The Corporation of the Society of the Missionaries of the Sacred Heart A.C.N. 004 222 306;
- (p) "Delegate of the Provincial" means the person appointed as such pursuant to Rule 16;
- (q) "Directors" means the members of the Board;
- (r) "EMC" refers to the meeting of Company Members which meetings are known as "MSC Education Members Council";
- (s) "Financial Year" means the twelve (12) months commencing on the 1st January each year;
- (t) "Mission Statement and Aims of the College" means:
 - (i) to help all Students grow in "age, grace and wisdom", in solidarity with each other and the God who loves them;
 - (ii) to prepare its Students for life, intellectually and socially, but also instil in its Students an abiding belief in the goodness of God and of other people;
 - (iii) to work with parents in the task of education; creating an environment that reflects the spirit of Christ in a strong and faithful way, and calls forth the best in those who are part of the College; and
 - (iv) to encourage all Students to strive for the greatest level of achievement of which they are capable;
- (u) "Objects" means the objects of the Company set out in Rule 4;
- (v) "Philosophy" means the Congregation's Philosophy of Education set forth in the Preface to the Constitution;

- (w) "Principal" means the Principal for the time being of the College;
- (x) "Provincial" means the Provincial for the time being of the Congregation or in his absence the Acting Provincial of the Congregation;
- (y) "The Provincial Council of the Congregation" is the Council elected or nominated from time to time by the Rule of the Congregation to assist the Provincial;
- (z) "The Provincial-in-Council" means the Provincial acting with the advice and/or consent of the Provincial Council of the Congregation;
- (aa) "Rule" means a rule contained in this Constitution;
- (bb) "Rule of the Congregation" is the constitution and statutes for the time being of the Congregation;
- (cc) "Seal" means the common seal of the Company;
- (dd) "Secretary" means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary;
- (ee) "Students" means students of the College from time to time;
- (ff) "Superior General" means the Superior General for the time being of the Congregation;
- (gg) "State" means Queensland; and
- (hh) "Vision" means the Congregation's vision for education set forth in the Preface to the Constitution.

1.2. Interpretation

In this Constitution, the context requires otherwise:

- (a) words or expressions contained in this Constitution shall be interpreted in accordance with the Act as in force from time to time;
- (b) words importing the singular only include the plural and vice versa;

- (c) words importing the masculine gender only include the feminine gender and vice versa;
- (d) words importing persons include corporations;
- (e) a reference to a function includes a reference to a power, authority or duty;
- (f) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;
- (g) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (h) references to a Rule refers to a Rule in this Constitution;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
- (j) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.

2. EXCLUSION OF REPLACEABLE RULES

- 2.1. The replaceable rules provided for in the Act do not apply to the Company.

3. NATURE OF THE COMPANY

- 3.1. The Company:

- (a) is a public company limited by guarantee under the Act;
- (b) is established solely for the Objects;
- (c) will apply its surplus income (if any) to promoting the Objects; and
- (d) is not carried on for the purpose of profit or gain to the Company Members.

4. OBJECTS OF THE COMPANY

4.1. The objects for which the Company is established are:-

- (a) to carry on the administration and conduct of the College:
 - (i) in conformity with Canon Law and as part of the mission of the Catholic Church;
 - (ii) in collaboration with local parish communities in the State;
 - (iii) in conformity with the Philosophy and Vision;
 - (iv) to be inclusive of Company Members, Directors, the Principal and staff, Students and ex-Students, families and interested community groups, so that each in their appropriate way may be empowered in their ministry of leadership and governance;
 - (v) to encourage co-responsibility in leadership and governance by which all are challenged to foster the life and promote the common good of the College;
 - (vi) to respect subsidiarity which ensures that decisions are taken at the levels where they can be made in a responsible fashion;
 - (vii) to accept accountability by which the justice of systems of leadership and governance are enhanced; and
 - (viii) to encourage initiative and promote unity;
- (b) to foster within the College the Philosophy and Vision;
- (c) to develop, have implemented and review, policies, systems, and practices of:
 - (i) education management in accord with best professional practice and the Philosophy and Vision;
 - (ii) staff recruitment, and staff development that accord with the Philosophy, Vision and the Mission Statement and Aims of the College;

- (iii) Student enrolment, welfare and management that accord with the Philosophy and Vision and with the Mission Statement and the Aims of the College;
- (iv) financial and resource management based on principles of justice and Gospel stewardship and the acquire assets and pay debts on behalf of the College;

5. POWERS OF THE COMPANY

- 5.1.** The powers of the Company shall include all such powers as are necessary to enable the Company to carry out its Objects and do all things it is required or permitted to do.
- 5.2.** The Company's Objects are to be interpreted independently and not as limiting any other object.
- 5.3.** It is intended that this Rule and the other provisions of this Constitution shall be construed to:
 - (a) prevent the application of the doctrine of ultra vires to the powers of the Company to further its Objects; and
 - (b) ensure that the Company is able to give effect to its Objects set out in this Constitution without the necessity to specifically include a power.

6. INCOME AND PROPERTY OF THE COMPANY

- 6.1.** The income and property of the Company will be applied solely towards the promotion of the Objects and no portion will be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to the Company Members, except in the case of a Director of the Company who may only be paid by the Company in the circumstances outlined in Rule 7.
- 6.2.** Nothing in this Rule prevents the payment in good faith of remuneration to any officers or employees of the Company nor to any Company Member thereof or any other person in return for any service actually rendered to the Company.

7. PAYMENTS TO DIRECTORS

- 7.1.** The Company will not make payments to any Director other than:

- (a) for the payment of out-of-pocket expenses incurred by the Director in the performance of any duty as Director where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for payment of any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service; or
- (c) for payment of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors.

8. WINDING UP

- 8.1.** If upon the winding up or dissolution (other than for the purposes of reconstruction or amalgamation) of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the Company Members but shall be given or transferred to a corporation or association which is tax exempt pursuant to Division 50 of the *Income Tax Assessment Act 1997* (Cth) as amended and is chosen by the Provincial or failing such choice by The Corporation or further failing such choice then by the Superior General. The objects of such association or corporation shall be restricted to a charitable purpose as provided for in the Act, and which by its constitution is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend or any other income or any amount on the winding up of the Company, to its Company Members.

9. LIABILITY OF COMPANY MEMBERS

- 9.1.** The liability of the Company Member of the Company is limited.
- 9.2.** The Company Members of the Company undertakes to contribute to the property of the Company in the event of the same being wound up it is a Company Member or within one year after it ceases to be a Company Member for payment of the debts and liabilities of the Company (contracted before he/she ceases to be a

Company Member) and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding One hundred dollars (\$100.00).

10. COMPANY MEMBERSHIP

- 10.1.** The Company Members shall prescribe an application form to be used by those persons eligible to become Company Members to apply to become Company Members of the Company. Upon receipt by the Company of a signed application in the prescribed form an eligible applicant shall be entered in the register of Company Members.
- 10.2.** Any Company Member may at any time resign as Company Member.
- 10.3.** The only persons eligible to be a Company Member shall be the Provincial or such other person as the Provincial has nominated in writing.
- 10.4.** A Company Member who is the Provincial shall cease to be a Company Member three (3) months after that Provincial ceases to hold office as Provincial.

11. REGISTER OF COMPANY MEMBERS

The Company Secretary shall keep and maintain a register of Company Members in which shall be entered the full name, address and date of entry of the name of each Company Member and the register shall be available for inspection and copying by Company Members upon request.

12. RETIREMENT AND REMOVAL OF COMPANY MEMBERS

Any Company Member shall cease to be a Company Member upon the happening of any one of the following events:-

- (a) upon notice in writing signed by or on behalf of the Provincial being given to the Secretary that the Company Member has been removed by the Provincial-in-Council;
- (b) if the Company Member resigns from being a Company Member by notice in writing to the Company Secretary and the Provincial.

- (c) Upon a person ceasing to be a Company Member, the Secretary shall make in the Register of Company Members an entry recording the date on which the Company Member ceased to be a Company Member.

13. ENTRANCE FEE AND ANNUAL SUBSCRIPTION

There shall be no entrance fees, annual subscription or other fees payable by Company Members with respect to their membership.

14. MEETING OF THE COMPANY MEMBERS (“EMC”)

14.1. Meetings of the Company Members shall be known as meetings of the “MSC Education Members Council” (“EMC”).

14.2. An annual general meeting of the EMC shall be held in accordance with the provisions of the Act.

14.3. All meetings of the EMC other than annual general meetings, shall be called general meetings.

14.4. A general meeting shall be convened on such requisition or otherwise as provided for in the Act.

14.5. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, fourteen days’ notice at the least (exclusive of the day of 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 and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the Company.

14.6. All business shall be special that is transacted at a general meeting and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance sheets and the reports of the Board and Auditors, the election of officers and other directors in the place of those retiring, and the appointment of the auditors, if necessary.

15. PROCEEDINGS AT GENERAL MEETINGS OF COMPANY (“EMC”)

15.1. No business shall be transacted at any general meeting unless a quorum of Company Members is present at the time when the meeting proceeds to business.

Save as herein otherwise provided four (4) Company Members present in person shall be a quorum. For the purpose of this Rule "Company Members" includes a person attending as a proxy. Directors who are not also Company Members may attend the annual general meeting but shall not be counted for the purpose of constituting a quorum and shall not be entitled to vote.

- 15.2.** EMC meetings may be held at two or more venues using any technology consented to by all Company Members which consent shall be a standing one unless a majority of Company Members agree otherwise.
- 15.3.** If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Company Members, shall be dissolved; in any other case it 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 Provincial may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Company Members present (being not less than three) shall be a quorum.
- 15.4.** The Provincial shall preside as chairman at every general meeting of EMC or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, then the Company Members present shall elect one of their numbers to be the chairman of the EMC.
- 15.5.** The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but 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. Save as aforesaid it shall not be necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.
- 15.6.** At any general meeting of EMC a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded -
 - (a) by the chairman, or

(b) by at least three Company Members present in person or by proxy.

Unless a poll is so demanded a declaration by the chairman that a resolution has on show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the EMC shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- 15.7.** If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded by a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
- 15.8.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a second or casting vote.
- 15.9.** A Company Member may vote in person or by proxy or by attorney and on show of hands every person present who is a Company Member or a representative of a Company Member shall have one vote and on a poll every Company Member present in person or by proxy or by attorney or other duly authorised representative shall have one vote (provided that the chairman shall have a second or casting vote in the case of an equality of votes).
- 15.10.** Notwithstanding anything contained in these Rules all decisions of the EMC shall be capable of being vetoed by the Provincial.
- 15.11.** A Company Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may not vote.
- 15.12.** The instrument appointing a proxy shall be in writing under the hand of the appointer or of his/her attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Company Member shall be entitled to instruct his/her proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as he/she thinks fit.

15.13. The instrument appointing a proxy may be in the following form or in a common or usual form.

I, of

.....being a company member of Downlands College (ACN 071 878 478) hereby appoint (being a member of the Company)

of.....

..... or failing him/her

of as my proxy to vote for me on my behalf at the (annual/extraordinary), as the case may be, of EMC to be held on the day of..... .. and at any adjournment thereof. My proxy is hereby authorised to vote +in favour of/+against the following resolutions.

Signed this day of.....,....

NOTE: In the event of a Company Member desiring to vote for or against any resolution he or she shall instruct his or her proxy accordingly. Unless otherwise instructed, the proxy may vote as he or she thinks fit.

+ Delete whichever is not desired.

15.14. The instrument appointing a proxy shall be deposited at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default of the above the instrument of proxy shall not be treated as valid unless the Provincial in his absolute discretion waives such requirements.

15.15. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed if no intimation in writing of such death, unsoundness of

mind or revocation has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

15.16. Subject to the provisions of the Act the Company Members consent to be bound by all acts matters and things done or permitted in accordance with this Constitution by or on behalf of or by reference to the Congregation.

16. DELEGATE OF THE PROVINCIAL

16.1. The Provincial will by notice in writing to the Chairperson appoint to the Board a Delegate of the Provincial, and a further person to be the acting Delegate of the Provincial, and any such appointment may be revoked in similar manner.

16.2. Subject to this Constitution, the Delegate of the Provincial will have and perform the duties and functions, congregational and otherwise, and will have and may exercise the power and authorities, congregational and otherwise, given to him/her by the Provincial and, in addition, the duties, functions, powers and authorities imposed or conferred on him/her, expressly or impliedly, by this Constitution.

16.3. In extraordinary circumstances, as determined by the Provincial in writing to the Chairperson, the Delegate of the Provincial will have, and at his request, will be given full, free and unhindered access to all persons, places, things and information relating to the administration and management of the Company.

16.4. The particulars of any duty, function, power or authority given by the Provincial to the Delegate of the Provincial will be notified in writing by the Provincial to the Delegate of the Provincial and to the Board.

16.5. In the case of the absence of the Delegate of the Provincial all the duties, functions, powers and authorities of the Delegate shall devolve on the Acting Delegate of the Provincial but only in the absence of the Delegate of the Provincial.

16.6. In this Rule 16 "absence" includes absence from office, from a meeting of the Board or of the Company, from a meeting of a committee of the Board and from a meeting of a Delegate or Delegates acting pursuant to Rule 16.

17. BOARD OF DIRECTORS

17.1. The management of the Company will be vested in the Board.

17.2. The Board will consist of not more than twelve (12) persons being:

- (a) the Delegate of the Provincial;
- (b) the Principal; and
- (c) not less than five (5) and not more than ten (10) persons who subject to this Constitution, will be appointed by the Company Members in the manner provided in this Constitution and upon appointment each such person shall be a Director.

17.3. Directors shall generally be appointed for a three (3) year term expiring at the third annual general meeting held after their appointment, and shall be eligible for a second three (3) year term but generally shall not be re-appointed after that.

17.4. Other than the Principal, staff members of the College are not eligible to be appointed as Directors, except in the case of members of staff who are also members of the Congregation.

17.5. The office of a Director will become and be vacant –

- (a) on expiry of the Director's appointment;
- (b) by death of the Director; or
- (c) if the Director be absent from three (3) successive meetings of the Board without leave granted by resolution of the Board; or
- (d) by the Director's written resignation from the office; or
- (e) if the Company Members so resolve which is confirmed by the Provincial in writing; or
- (f) if the Director is declared bankrupt; or
- (g) is convicted of any offence that is punishable by imprisonment for a period of twelve (12) months or more; or

- (h) becomes of mentally incapacitated or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (i) in accordance with the Act.

17.6. For the purposes of this Rule-

- (a) a vacancy in the office of Director arising by expiration of the period of time for which the Director vacating the office was appointed will be a "regular" vacancy; and
- (b) a vacancy in the office of Director which is not a regular vacancy shall be a "casual" vacancy.

17.7. The Company Members will, subject to this Constitution, fill the regular vacancies in the office of Director occurring in a particular year with each Director being appointed for a three year term.

17.8. If a casual vacancy in the office of Director occurs, the Company Members will, subject to this Constitution, fill the vacancy by appointing some person to the vacant office as Director for the unexpired period of time for which the Director who last vacated the office was appointed.

17.9. A person who ceases to be a Director pursuant to any provision of this Constitution will be eligible to be re-appointed a Director (subject to the appointee's consent).

17.10. Appointment and removal of Directors will be by notice in writing addressed to the Chairperson or Secretary under the hand of the Provincial.

17.11. Subject to this Constitution the Board may continue to act notwithstanding the existence of a vacancy in its membership.

18. CHAIRPERSON AND DEPUTY CHAIRPERSON

18.1. One of the Directors shall be Chairperson of the Board being appointed by the Provincial after consultation with the Company Members and the Board.

18.2. The office of Chairperson will become and be vacant -

- (a) if the Chairperson ceased to be a Director; or
 - (b) by the Chairperson's written resignation from the office.
- 18.3.** Whenever a vacancy in the office of Chairperson occurs the procedure in Rule 18.1 will apply.
- 18.4.** One of the Directors will be Deputy Chairperson of the Board appointed by the Board.
- 18.5.** The Chairperson will have such duties and functions and may exercise such powers and authorities as are imposed or conferred on him/her by this Constitution and by any resolution of the Board including the following:
- (a) to decide any question of procedure arising at a meeting of the Board which is not provided for by this Constitution or any prior resolution of the Board;
 - (b) to request such officers or employees of the Company as he/she deems proper to carry out or give effect to any or all decisions or directions of the Board;
 - (c) to maintain, through the Delegate of the Provincial, a constant liaison with the Provincial as to the administration and management, present and future, of the College; and
 - (d) to perform such other duties or functions as the Board may decide.
- 18.6.** The Deputy-Chairperson will have such duties and functions and may exercise such powers and authorities as are imposed or conferred on him/her by this Constitution and by any resolution of the Board including the following:
- (a) to assist the Chairperson in the performance and exercise of his/her office as requested;
 - (b) to act in and perform and exercise the office of Chairperson in the absence of the Chairperson or in the event of his/her inability to perform or exercise his/her office; and
 - (c) to perform such other duties and functions as the Board may decide.

18.7. The provisions this Rule will apply, mutatis mutandis, to the Deputy Chairperson and to the office of Deputy Chairperson.

18.8. Subject to this Constitution the Board may continue to act notwithstanding the existence of a vacancy in its membership.

19. FUNCTIONS AND DUTIES OF THE BOARD

19.1. Subject to the Act and this Constitution, the functions and duties of the Board are:-

- (a) to manage the business of the Company by developing policies by which the Objects may be realised;
- (b) to develop policies and processes that enhance collaborative leadership in the Board and College;
- (c) to exercise all powers of the Company as are not, by the Act or by this Constitution required to be exercised by the Company in general meeting.
- (d) to pay all expenses incurred in promoting and forming the Company.

19.2. In carrying out these functions and duties, all cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, will be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) Directors, or in such manner as the Directors determine.

20. RELATIONSHIP OF BOARD AND THE COMPANY MEMBERS (“EMC”)

20.1. The relationship of the Board and the Company Members shall be as described in the Objects of the Company.

20.2. The Company Members will provide to the Board

- (a) statements of any policy changes that may impact on the management of the Company or the College;
- (b) statements of plans and proposals for future development of the Company or the College;

- (c) statements of any Congregational legal or policy changes from chapters of the Catholic Church or other policy making bodies that may impact on the management of the Company or the College

20.3. The Board must provide to the Company Members, by notice from the Secretary to the Provincial:

- (a) the annual budget of income and expenditure after it has been adopted by the Board;
- (b) notice and explanation of any proposed over expenditure of more than 25% in the major categories of the budget;
- (c) notice and explanation of any loan commitment which will require a guarantee or letter of comfort from The Corporation;
- (d) copies of all minutes of all Board meetings;
- (e) copies of annual accounts for the Company.
- (f) statements of proposed acquisition, disposal or changes to the use of, land and buildings used for the College;
- (g) statements of proposed major administrative, curriculum, pastoral and religious changes at the College.

20.4. If, at a meeting of the Board, the Delegate of the Provincial is of the opinion that any matter presented for decision by the Board is of such a nature that it conflicts with the Objects, including the Philosophy and Vision, and if after discussion by the Board, the Board decides there is a possible conflict or the Delegate of the Provincial is convinced of a possible conflict, then:

- (a) the matter for decision will be delayed;
- (b) within seven (7) days, the Chairperson and the Delegate of the Provincial will write to the Provincial detailing the matter for decision, the reasons for the decision and the possible conflict;
- (c) within a further period of 14 days, the Provincial will reply to the Chairperson and the Delegate of the Provincial, stating either that the proposed decision

may go ahead, that the proposed decision may not go ahead at all, or establishing the further processes for resolving the possible conflict.

21. MEETINGS OF THE BOARD

21.1. Convening Board meetings

The Board will meet for the dispatch of business at such times and places as it may determine provided that:

- (a) it will meet not less frequently than eight (8) times a year including preferably at least twice during each school term;
- (b) it will meet whenever the Delegate of the Provincial or the Chairperson may require by notice in writing to each Director; and
- (c) on request to the Chairperson made in writing and signed by not fewer than four (4) Directors, it shall meet by notice as prescribed in this Constitution.

21.2. Notice of Board meeting

- (a) Not less than three (3) clear days' notice in writing of an ordinary meeting, and such notice as is practicable of a special meeting will be given to Directors provided, however, that, if less notice is given of a meeting, that meeting will not be invalidated if all Directors, excluding, if need be, a Director who has requested and been granted by the Board leave or absence from that meeting, are present at the notified place and time and unanimously agree to waive, in respect of such meeting, the provisions of this Rule.
- (b) A notice of a special meeting must state the business to be considered at that meeting, and no business other than the business stated will be considered at that meeting.

21.3. Use of Technology

A Board meeting may be called or held using any technology consented to by all Directors which consent once given will be a standing one unless 75% of Directors agree otherwise.

21.4. Quorum

- (a) At a meeting of the Board, fifty percent (50%) of the Directors will constitute a quorum.
- (b) If a quorum is not present within thirty minutes after the time appointed for a meeting of the Board, that meeting will lapse and all business proposed to be transacted will be brought before the next following ordinary meeting of the Board.
- (c) If a quorum is not present for thirty minutes at any time after a meeting of the Board has commenced, that meeting will be deemed to be adjourned to the next following ordinary meeting of the Board.

21.5. Chairperson

At a meeting of the Board, the Chairperson, and in his or her absence the Deputy Chairperson, will preside; and if both the Chairperson and the Deputy Chairperson are absent, the Directors present will appoint a chairperson for the meeting.

21.6. Decisions at Board meetings

At a meeting of the Board each Director present will have one vote. Where the votes cast for and against any matter:

- (a) are equal, the Chairperson will decide the question; and
- (b) where the votes cast for and against any matter are not equal, the question will be decided on the majority of votes cast.

21.7. Procedural Rules

Subject to this Constitution, the procedure to be followed at a meeting of the Board will be decided by the Board.

21.8. Written resolutions

- (a) If all Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour

of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

- (b) For the purposes of this Rule 21.8:
 - (i) two (2) or more separate documents in identical terms, each of which is signed by one (1) or more Directors, are treated as one (1) document; and
 - (ii) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

21.9. Conflicts

- (a) A Director must declare their interest in any:
 - (i) contractual matter;
 - (ii) disciplinary matter; or
 - (iii) other financial matter,

in which a Conflict of Interest arises or may arise and must, unless otherwise determined by the Board, absent him or herself from discussion of such matter and will not be entitled to vote in respect of such matter. In the event of any uncertainty as to whether it is necessary for a Director to absent him or herself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter must be adjourned or deferred.

- (b) The Secretary must maintain a register of declared interests.

22. RELATIONSHIP OF BOARD AND THE PROVINCIAL

22.1. The Provincial, as of right, may attend and take part in, but may not unless he is a Director, vote on any matter at any meeting of the Board or of a committee of the Board or of delegates acting pursuant to Rule 20.

22.2. The Provincial and the Board, or either of them may request the attendance at any meeting of the Board of any person who in the opinion of the Provincial or the

Board, as the case may be, may be able to assist the Board regarding any matter before it.

23. DELEGATION BY BOARD

23.1. The Board may delegate to one or more Directors as it may decide (**Delegate** or **Delegates**, as the case may be) the performance or exercise of such of the duties, functions, powers and authorities imposed or conferred on it by this Constitution.

23.2. 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.

23.3. An instrument of delegation will be signed by the Chairperson and one other Director who is not a Delegate pursuant to that instrument, provided that, if the Chairperson is a Delegate pursuant to an instrument of delegation, that instrument must be signed by two Directors who are not Delegates pursuant to it.

23.4. A Delegate or, where there is more than one Delegate, one of their number as determined by them, must report to the next following ordinary meeting of the Board and thereafter as directed by the Board with regard to the performance or exercise by him/her or them of the duties, functions, power and authorities delegated.

23.5. Subject to Rule 23.1, any act or thing done by the Delegate or Delegates when acting in pursuance and within the terms of a delegation will have the force and effect as if the act or thing had been done by the Board.

23.6. 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.

24. ESTABLISHMENT OF COMMITTEES

24.1. The Board may establish such committee or committees of the Board as it may decide.

24.2. Membership of committees

- (a) A committee will consist of such persons, whether Directors or not, as the Board may appoint to be members, provided that at least one Director must be appointed to be a member.
- (b) The terms and conditions of appointment of persons appointed to be members of a committee will be as the Board prescribes or otherwise fixes.
- (c) At the time it appoints the members of a committee, and as it deems necessary, the Board will fix the number of such members that must be present at a meeting of the committee to constitute a quorum for such a meeting.

24.3. Chairperson of committees

- (a) The Board will appoint a member of the committee who is a Director to be chairperson of the committee; provided that if the Board is 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 Company and preferable that it should do so, it may appoint to be chairperson of that committee a member who is not a Director.
- (b) The terms and conditions of appointment as chairperson of the member of the committee appointed to that office, if that member be not a Director, shall be as the Board prescribes or otherwise fixes.

24.4. Functions of committees

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

- 24.5.** A committee will only be validly established when the name, duties, functions, powers and authorities are prescribed or fixed and the chairperson of the committee is appointed.

24.6. Subject to this Constitution a committee will be subject to the authority of the Board at all times and will act in accordance with and not contrary to any direction of the Board.

24.7. The Board, at any time and either with or without notice of its intention to do so, may dissolve a committee by notice in writing to the chairperson of the committee.

25. COLLEGE RULES

25.1. The Board has the power to make, revoke and amend policies for the management of the College and rules for the conduct of the business of the Board provided that in doing so, no policies made, revoked or amended by the Board pursuant to this Rule will in any way be inconsistent with this Constitution or any directive issued from time to time by The Corporation or the Provincial.

26. THE PRINCIPAL

26.1. The Principal is appointed by the Provincial after due consultation with the Company Members and the Board.

26.2. The Principal is appointed, inter alia, to further the Objects and work with the Board for the management and performance of the College and the Company.

27. SECRETARY

27.1. The Secretary will be appointed by the Board in accordance with the Act and for such terms and upon such conditions as the Board thinks fit, and any secretary so appointed may be removed by the Board.

28. SEAL

28.1. The Company will have a Seal and the Board will provide for safe custody of the Seal.

28.2. The Seal will only be used by authority of the Board, or by a committee of Directors authorised by the Board to authorise the use of the Seal.

28.3. The Company may execute a document using the Seal if the Seal is fixed to the document and the fixing of the Seal is witnessed by:

- (a) two Directors of the Company; or
- (b) a Director and the Secretary or by some person appointed by the Board for that purpose.

28.4. The Company may execute a document without using the Seal if the document is signed by:

- (a) two Directors of the Company; or
- (b) a Director and the Secretary or by some other person appointed by the Board for that purpose.

29. THE COLLEGE PROPERTY

29.1. Title to the College real property remains vested in The Corporation and the Board must not without the prior written consent of The Corporation:

- (a) make any major alterations or improvements to the College real property; or
- (b) sell, let, assign, mortgage, charge, pledge or part with the possession of the College real property or any part thereof.

29.2. The Board must ensure that the College real property is kept in a state of good repair and condition and from time to time as and when necessary must ensure that it is renewed or replaced as the case requires.

30. NOTICE

30.1. Notices generally

- (a) Any notice required by law or by or under this Constitution to be given to any person may be given:
 - (i) personally; or
 - (ii) by sending it by post to the address for the person; or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the person;

- (b) where a notice is delivered personally on a Business Day, it is taken to be received on that Business Day;
- (c) where a notice has been sent by post, service of a notice will be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice and to have been effected in case of a notice of meeting, on the Business Day after the date of its posting and, in any other case, at the time in which the letter would be delivered in the ordinary course of post;
- (d) where a notice is sent by facsimile, service of the notice shall be deemed to be served on receipt by the Company of a transmission report confirming successful transmission;
- (e) where a notice is sent by electronic mail, service of the notice shall be deemed to be served on receipt by the Company of a delivery receipt confirming successful relay of the notice.

30.2. Notice of every general meeting shall be given in the manner set out in this Constitution to:

- (a) every Company Member;
- (b) the Auditor; and
- (c) every Director and Secretary;

and no other person shall be entitled to receive notices of general meetings.

30.3. Notices to directors

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

- (a) in a document delivered to the Director in person on a Business Day; or
- (b) in a pre-paid letter or other document addressed and posted to the Director at his or her last-known address two (2) Business Days prior to the date by which notice must be given; or

- (c) sent by facsimile to the facsimile number (if any) nominated by that person;
or
- (d) sent by electronic message to the electronic address (if any) nominated by that person; or
- (e) in a resolution of the Board made at a duly held meeting of the Board 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 to the Director.

30.4. 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.

31. DISSOLUTION OF BOARD

31.1. The Board may be dissolved by the Company Members in general meeting or by instrument in writing under the hand of the Provincial, notice of which is given to each Director within seven (7) days next after the date on which the instrument was executed, provided that such instrument of dissolution shall not take effect earlier than thirty days next after the date on which it was executed.

31.2. A dissolution of the Board will not of itself affect the continuity of this Constitution or invalidate any act or decision of the dissolved Board.

31.3. The Company will treat a dissolution of the Board as creating casual vacancies in the office of each Director and casual vacancies in, respectively, the office of Chairperson and the office of Deputy-Chairperson, and thereupon the several said 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.

31.4. Nothing in this Rule of itself shall cause a person who was a Director at the time of that dissolution to be ineligible to be appointed to fill any such casual vacancy.

31.5. Upon a dissolution of the Board any committee established pursuant to this Constitution will be dissolved.

31.6. Upon a dissolution of the Board a delegation made by the Board will 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.

32. REPEAL, VARIATION AND AMENDMENT OF CONSTITUTION

32.1. This Constitution may be varied or amended from time to time by a special resolution of the Company Members in accordance with the Act provided that the consent of the Provincial to such proposal has been given in writing.

32.2. The Board may propose a variation or amendment to this Constitution provided that the proposal has been adopted at a meeting of the Board in respect of which notice in writing of the proposal and of the date, time and place of the meeting of the Board at which it was to be considered was given to the Directors not less than one month prior to the date of that meeting.

32.3. These Rules acknowledge that with the consent of all Company Members and the Provincial the requirement to give notice of a meeting of Company Members to amend the Constitution may be waived.

33. ACCOUNTS

33.1. The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) comply with the Act;
- (c) would enable true and fair financial statements to be prepared and audited, and must allow a Director, the Company Members, the auditor and the auditor of the Company Members to inspect those records at all reasonable times.

34. AUDIT

34.1. A properly qualified Auditor or Auditors will be appointed and his/her or their duties regulated in accordance with the Act.

35. NOTICE

35.1. (1) Any notice required by law or by or under this Constitution to be given to any Company Member may be given:

- (a) personally; or
 - (b) by sending it by post to the address for the Company Members in the register of members or the alternative address (if any) nominated by the Company Member; or
 - (c) by sending it to the fax number or electronic address (if any) nominated by the member;
- (2) Where a notice has been sent by post, service of a notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice and to have been effected in case of a notice of meeting, on the day after the date of its posting and, in any other case, at the time in which the letter would be delivered in the ordinary course of post.
- (3) Where a notice is sent by facsimile, service of the notice shall be deemed to be served on receipt by the Company of a transmission report confirming successful transmission.
- (4) Where a notice is sent by electronic mail, service of the notice shall be deemed to be served on receipt by the Company of a delivery receipt confirming successful relay of the notice.

35.2. Notice of every general meeting shall be given in the manner set out in this Constitution to:

- (a) Every Company Member;
- (b) the auditor or auditors for the time being of the Company; and
- (c) every Director and the Secretary of the Company;

and no other person shall be entitled to receive notices of general meetings.

36. INDEMNITY

36.1. Every Director, Auditor, manager, employee or agent of the Company shall be indemnified, to the full extent permitted by the law, out of the property or assets of the Company against any liability incurred by them in their capacity as Director, Auditor, manager, employee or agent in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him or her by the Court.

36.2. The Company will indemnify its Directors and employees, to the full extent permitted by the law, against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Company; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Company.

36.3. Each of the indemnities contained in this Rule applies automatically to the persons referred to in those Rules unless the Directors in their absolute discretion determine that the indemnity should not so apply in any particular case.

36.4. Insurance

- (a) The Company shall pay a premium for a contract insuring a person who is or has been a Director or other officer of the Company against:
 - (i) any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; and
 - (ii) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company whether civil or criminal, and whatever their outcome.