CLIFFORD GOULDSON
LAWYERS

THE CONSTITUTION OF

Toowoomba Anglican School Foundation Limited

ACN 010 856 621

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The Constitution of Toowoomba Anglican School Foundation Limited ACN 010 856 621

1 Name of the company

1.1 The name of the company is Toowoomba Anglican School Foundation Limited ACN 010 856 621 (the Foundation).

2 Type of company

2.1 The Foundation is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3 Limited liability of members

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

4 The guarantee

4.1 Each member must contribute the Guarantee Amount (the guarantee) to the property of the Foundation if the Foundation is wound up:

(a) while the member is a member, or within 12 months after they stop being a member, and

(b) if at the time of winding up, the debts and liabilities of the Foundation, including the costs of winding up, incurred before the member stopped being a member exceed the company's assets.

5 Definitions

5.1 In this constitution:

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

(b) **"Approved Fund"** means a fund established by the Foundation for the benefit of the School;

(c) **"Bursary"** means a monetary grant awarded by the Foundation to an individual or group;

(d) **"company"** means the Foundation as a not-for-profit public company limited by guarantee under the Corporations Act

(e) **"Corporations Act"** means the *Corporations Act 2001* (Cth);

(f) **"Constitution"** means this constitution of the Foundation;

(g) **"Director"** means a person appointed in the role as director of the Foundation and is registered as a Director in accordance with the requirements of ASIC;

(h) **"Foundation"** means the Toowoomba Anglican School Foundation Limited ACN 010 856 621;

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(i) **"Foundation Board"** means the board of directors of the Foundation responsible for the management of the Foundation and consists of the Foundation Board Members;

(j) **"Foundation Board Members"** means the people included in clause 41;

(k) **"elected chairperson"** means the President or another person elected by the Foundation Board to be the Foundation's chairperson under clause 43;

(l) **"general meeting"** means a meeting of members and includes the annual general meeting, under clause 23.1;

(m) **"gift"** means a gift of cash or a gift of asset made by the Foundation or a member of the Foundation;

(n) **'Guarantee Amount'** means the amount of ten Australian dollars ($10.00);

(o) **"Head of School"** means the Head of Toowoomba Anglican School or person appointed by the school council as acting Head of School.

(p) **"initial member"** means a person who is named in the application for registration of the Foundation as a company, with their consent, as a proposed member of the Foundation;

(q) **"historical members"** means a person who became a member under any previous constitution of the Foundation in accordance with the provisions of that constitution which operated up until the date this Constitution was adopted to be the current Constitution of the company.

(r) **"member present"** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting;

(s) **"proxy form"** means a form to appoint a proxy in the same format as Schedule 1;

(t) **"registered charity"** means a charity that is registered under the ACNC Act;

(u) **"School"** means the Toowoomba Anglican School;

(v) **"special resolution"** means a resolution:

(i) of which notice has been given under clause 24.5(c), and;

(ii) that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and;

(w) **"surplus assets"** means any assets of the Foundation that remain after paying all debts and other liabilities of the Foundation, including the costs of winding up.

6 Reading this constitution with the Corporations Act

6.1 The replaceable rules set out in the Corporations Act do not apply to the Foundation.

6.2 While the Foundation is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.

6.3 If the Foundation is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.

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6.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

7 Interpretation

7.1 In this constitution:

(a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and

(b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

8 Object

8.1 The object of the Foundation is to support and promote Toowoomba Anglican School and provide charitable assistance in alignment with the schools Strategic Plan.

9 Powers

9.1 Subject to clause 10, the Foundation has the following powers, which may only be used to carry out its charitable purposes set out in clause 8:

(a) the powers of an individual; and

(b) all the powers of a company limited by guarantee under the Corporations Act.

10 Not-for-profit

10.1 The Foundation must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 10.2 and 71.

10.2 Clause 10.1 does not stop the Foundation from doing the following things, provided they are done in good faith:

(a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Foundation; or

(b) making a payment to a member in carrying out the Foundation's charitable purposes.

11 Amending the constitution

11.1 Subject to clause 11.2, the members may amend this constitution by passing a special resolution.

11.2 The members must not pass a special resolution that amends this constitution if passing it causes the Foundation to no longer be a charity.

12 Membership and register of members

12.1 The members of the Foundation are:

(a) initial members;

(b) historical members; and

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(c) any other person that the Foundation Board allow to be a member, in accordance with this constitution.

12.2 The Foundation must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

(a) for each current member:

(i) name;

(ii) address;

(iii) any alternative address nominated by the member for the service of notices; and

(iv) date the member was entered on to the register.

(b) for each person who stopped being a member in the last 7 years:

(i) name;

(ii) address;

(iii) any alternative address nominated by the member for the service of notices; and

(iv) dates the membership started and ended.

12.3 The classes of membership set out in clause 14 should be reviewed by the Foundation Board every 3 years.

13 Who can be a member

13.1 A person who supports the charitable purposes of the Foundation is eligible to apply to be an member of the Foundation under clause 15.6(c).

13.2 In this clause, ‘person’ means an individual or incorporated body.

14 Classes of membership

14.1 Other than initial members and historical members, the membership of the Foundation shall consist of the following classes of members:

(a) Patron

(b) Governor;

(c) Fellow;

(d) Associate;

(e) Affiliate;

(f) Supporter; and

(g) such other class of members that the Foundation Board determines.

(who are all Members);

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15 Membership Donation

15.1 To become a member of the Foundation, each person must make a donation to the Foundation which accords to the levels described in clause 14.1 and the donation amount as defined by the Foundation Board from time to time.

15.2 In making its determination, the Foundation Board may prescribe different membership donation amounts for different classes of members

15.3 The minimum donation amount that the Foundation Board can prescribed for any class of member is the Guarantee Amount.

15.4 The Foundation Board shall have the power to determine varied levels of membership classes and donation amounts based on such criteria as the Foundation Board may, from time to time, decide is appropriate.

15.5 Where a member makes a donation in accordance with clause 15.1 on multiple occasions, the donations are considered to be cumulative and their class of membership may change over time at the discretion of the Foundation Board.

15.6 The donations made to the Foundation must be used by the Foundation for charitable purposes and the person making the donation can nominate whether the donations will be applied to:

(a) The Toowoomba Preparatory School Foundation Scholarship Fund;

(b) The Toowoomba Preparatory School Foundation Limited Building Fund; or

(c) such other Fund created by the Foundations for the purposes of accepting charitable donations.

15.7 For the Supporter membership class, the Foundation Board will consider the non-financial support that the person has contributed to the Objects of the Foundation.

16 How to apply to become a member

16.1 A person (as defined in clause 13.2) may apply to become a member of the Foundation by writing to the secretary stating that they:

(a) want to become a member;

(b) support the purposes of the Foundation;

(c) complete the relevant membership application form (if applicable); and

(d) agree to comply with the Foundation's constitution, including paying the membership donation under clause 15 if required.

17 The Foundation Board to decide whether to approve membership

17.1 The Foundation Board must consider an application for membership within a reasonable time after the secretary receives the application.

17.2 If the Foundation Board approves an application, the secretary must as soon as possible:

(a) enter the new member on the register of members; and

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(b) write to the applicant to tell them that their application was approved, and the date that their membership started.

17.3 The membership starts on the date that they the members name is entered into the register of members of the Foundation.

17.4 If the Foundation Board reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

17.5 For the avoidance of doubt, the Foundation Board may approve an application even if the application does not state the matters listed in clauses 16.1(a), 16.1(b) and 16.1(d). In that case, by applying to be a member, the applicant agrees to those three matters.

18 When a person stops being a member

18.1 A person immediately stops being a member if they:

(a) die;

(b) are wound up or otherwise dissolved or deregistered (for an incorporated member);

(c) resign, by writing to the secretary;

(d) for Supporter members, stop providing non-financial support to further the Objects of the Foundation for a period of three (3) months as determined by the Foundation Board;

(e) are expelled under clause 20; or

(f) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

19 Dispute resolution

19.1 The dispute resolution procedure in this clause applies to disputes or disagreements under this constitution between a member or director and:

(a) one or more members;

(b) one or more directors; or

(c) the Foundation.

19.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 20 until the disciplinary procedure is completed.

19.3 Those involved in the dispute must try to resolve it between themselves within 14 days of becoming aware of it.

19.4 If those involved in the dispute do not resolve the dispute under clause 19.3, they must within 10 days:

(a) tell the Foundation Board about the dispute in writing;

(b) agree or request that a mediator be appointed; and

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(c) attempt in good faith to settle the dispute by mediation.

19.5 The mediator must:

(a) be chosen by agreement of those involved; or

(b) where those involved do not agree:

(i) for disputes between members, a person chosen by the Foundation Board; or

(ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Foundation has its registered office.

19.6 A mediator chosen by the Foundation Board under clause 19.5(b)(i):

(a) may be a member or former member of the Foundation;

(b) must not have a personal interest in the dispute; and

(c) must not be biased towards or against anyone involved in the dispute.

19.7 When conducting the mediation, the mediator must:

(a) allow those involved a reasonable chance to be heard;

(b) allow those involved a reasonable chance to review any written statements;

(c) ensure that those involved are given natural justice; and

(d) not make a decision on the dispute.

20 Disciplining members

20.1 In accordance with this clause, the Foundation Board may resolve to warn, suspend or expel a member from the Foundation if the Foundation Board considers that:

(a) the member has breached this constitution; or

(b) the member's behaviour is causing, has caused, or is likely to cause harm to the Foundation.

20.2 At least 14 days before the Foundation Board meeting at which a resolution under clause 20.1 will be considered, the secretary must notify the member in writing:

(a) that the Foundation Board is considering a resolution to warn, suspend or expel the member;

(b) that this resolution will be considered at a Foundation Board meeting and the date of that meeting;

(c) what the member is said to have done or not done;

(d) the nature of the resolution that has been proposed; and

(e) that the member may provide an explanation to the Foundation Board, and details of how to do so.

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20.3 Before the directors pass any resolution under clause 20.1, the member must be given a chance to explain or defend themselves by:

(a) sending the Foundation Board a written explanation before that Foundation Board meeting; and/or

(b) speaking at the meeting.

20.4 After considering any explanation under clause 20.3, the Foundation Board may:

(a) take no further action;

(b) warn the member;

(c) suspend the member's rights as a member for a period of no more than 12 months;

(d) expel the member;

(e) refer the decision to an unbiased, independent person on conditions that the Foundation Board consider appropriate (however, the person can only make a decision that the Foundation Board could have made under this clause); or

(f) require the matter to be determined at a general meeting.

20.5 The Foundation Board cannot fine a member.

20.6 The secretary must give written notice to the member of the decision under clause 20.4 as soon as possible.

20.7 Disciplinary procedures must be completed as soon as reasonably practical.

20.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General Meetings

21 General meetings called by the Foundation Board

21.1 The Foundation Board may call a general meeting.

21.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the Foundation for a general meeting to be held, the Foundation Board must:

(a) within 21 days of the members' request, give all members notice of a general meeting; and

(b) hold the general meeting within 2 months of the members' request.

21.3 The percentage of votes that members have (in clause 21.2) is to be worked out as at midnight before the members request the meeting.

21.4 The members who make the request for a general meeting must:

(a) state in the request any resolution to be proposed at the meeting;

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(b) sign the request; and

(c) give the request to the Foundation.

21.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

22 General meetings called by members

22.1 If the Foundation Board does not call the meeting within 21 days of being requested under clause 21.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.

22.2 To call and hold a meeting under clause 22.1 the members must:

(a) as far as possible, follow the procedures for general meetings set out in this constitution;

(b) call the meeting using the list of members on the Foundation's member register, which the Foundation must provide to the members making the request at no cost; and

(c) hold the general meeting within three months after the request was given to the Foundation.

23 Annual general meeting

23.1 A general meeting, called the annual general meeting, must be held:

(a) within 18 months after registration of the Foundation as a company; and

(b) after the first annual general meeting, at least once in every calendar year.

23.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:

(a) a review of the Foundation's activities;

(b) a review of the Foundation's finances;

(c) any auditor's report;

(d) the election of directors; and

(e) the appointment and payment of auditors.

23.3 Before or at the annual general meeting, the Foundation Board must give information to the members on the Foundation's activities and finances during the period since the last annual general meeting.

23.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Foundation.

24 Notice of general meetings

24.1 Notice of a general meeting must be given to:

(a) each member entitled to vote at the meeting;

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(b) each director; and

(c) the auditor.

24.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

24.3 Subject to clause 24.4, notice of a meeting may be provided less than 21 days before the meeting if:

(a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or

(b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

24.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

(a) remove a director;

(b) appoint a director in order to replace a director who was removed; or

(c) remove an auditor.

24.5 Notice of a general meeting must include:

(a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)

(b) the general nature of the meeting's business;

(c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;

(d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:

(i) the proxy does not need to be a member of the Foundation;

(ii) the proxy form must be delivered to the Foundation at its registered address or the address (including an electronic address) specified in the notice of the meeting; and

(iii) the proxy form must be delivered to the Foundation at least 48 hours before the meeting.

24.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

25 Quorum at general meetings

25.1 For a general meeting to be held, at least three (3) members or members making up at least 50% of the total members of the Foundation (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

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25.2 No business may be conducted at a general meeting if a quorum is not present.

25.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

(a) if the date is not specified – the same day in the next week;

(b) if the time is not specified – the same time; and

(c) if the place is not specified – the same place.

25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

26 Auditor's right to attend meetings

26.1 The auditor is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

26.2 The Foundation must give the auditor any communications relating to the general meeting that a member of the Foundation is entitled to receive.

27 Representatives of members

27.1 An incorporated member may appoint as a representative:

(a) one individual to represent the member at meetings and to sign circular resolutions under clause 34; and

(b) the same individual or another individual for the purpose of being appointed or elected as a director.

27.2 The appointment of a representative by a member must:

(a) be in writing;

(b) include the name of the representative;

(c) be signed on behalf of the member; and

(d) be given to the Foundation or, for representation at a meeting, be given to the chairperson before the meeting starts.

27.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

27.4 The appointment may be ongoing unless stated otherwise.

28 Using technology to hold meetings

28.1 The Foundation may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

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28.2 Anyone using this technology is taken to be present in person at the meeting.

29 Chairperson for general meetings

29.1 The elected chairperson is entitled to chair general meetings.

29.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:

(a) there is no elected chairperson;

(b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting; or

(c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

30 Role of the chairperson

30.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor).

30.2 The chairperson does not have a casting vote.

31 Adjournment of meetings

31.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.

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

32 Members' resolutions and statements

32.1 Members with at least 5% of the votes that may be cast on a resolution may give:

(a) written notice to the Foundation of a resolution they propose to move at a general meeting (members' resolution); and/or

(b) a written request to the Foundation that the Foundation give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).

32.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

32.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

32.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

32.5 The percentage of votes that members have (as described in clause 32.1) is to be worked out as at midnight before the request or notice is given to the Foundation.

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32.6 If the Foundation has been given notice of a members' resolution under clause 32.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.

32.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

33 The Foundation must give notice of proposed resolution or distribute statement

33.1 If the Foundation has been given a notice or request under clause 32:

(a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Foundation's cost; or

(b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Foundation in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the Foundation will pay these expenses.

33.2 The Foundation does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

(a) it is more than 1000 words long;

(b) the Foundation Board consider it may be defamatory;

(c) clause 33.1(b) applies, and the members who proposed the resolution or made the request have not paid the Foundation enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or

(d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

34 Circular resolutions of members

34.1 Subject to clause 34.3, the Foundation Board may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).

34.2 The Foundation Board must notify the auditor as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.

34.3 Circular resolutions cannot be used:

(a) for a resolution to remove an auditor, appoint a director or remove a director;

(b) for passing a special resolution; or

(c) where the Corporations Act or this constitution requires a meeting to be held.

34.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 34.5 or clause 34.6.

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34.5 Members may sign:

(a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or

(b) separate copies of that document, as long as the wording is the same in each copy.

34.6 The Foundation may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

35 How many votes a member has

35.1 Each member has one vote.

36 Challenge to member's right to vote

36.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.

36.2 If a challenge is made under clause 36.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

37 How voting is carried out

37.1 Voting must be conducted and decided by:

(a) a show of hands;

(b) a vote in writing; or

(c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

37.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

37.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

37.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

38 When and how a vote in writing must be held

38.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

(a) at least five members present;

(b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or

(c) the chairperson.

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38.2 A vote in writing must be taken when and how the chairperson directs, unless clause 38.3 applies.

38.3 A vote in writing must be held immediately if it is demanded under clause 38.1:

(a) for the election of a chairperson under clause 29.2; or

(b) to decide whether to adjourn the meeting.

38.4 A demand for a vote in writing may be withdrawn.

39 Appointment of proxy

39.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf by completing a proxy form.

39.2 A proxy does not need to be a member.

39.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

(a) speak at the meeting;

(b) vote in a vote in writing (but only to the extent allowed by the appointment); and

(c) join in to demand a vote in writing under clause 38.1.

39.4 An proxy form must be signed by the member appointing the proxy and must contain:

(a) the member's name and address;

(b) the Foundation's name;

(c) the proxy's name or the name of the office held by the proxy; and

(d) the meeting(s) at which the appointment may be used.

39.5 A proxy appointment may be ongoing unless stated otherwise.

39.6 Proxy forms must be received by the Foundation at the address stated in the notice under clause 24.5(d) or at the Foundation's registered address at least 48 hours before a meeting.

39.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

39.8 Unless the Foundation receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

(a) dies;

(b) is mentally incapacitated;

(c) revokes the proxy's appointment; or

(d) revokes the authority of a representative or agent who appointed the proxy.

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39.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

40 Voting by proxy

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

40.2 When a vote in writing is held, a proxy:

(a) does not need to vote, unless the proxy appointment specifies the way they must vote;

(b) if the way they must vote is specified on the proxy form, must vote that way; and

(c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

41 Composition of the Foundation Board

41.1 The Foundation Board is to consists of the following roles:

(a) the President who is also the chairperson;

(b) Vice President;

(c) Treasurer

(d) Secretary; and

(e) other Foundation Board members as elected from time to time.

41.2 A Foundation Board meeting shall occur within two weeks after the date of the annual general meeting of the Foundation each year to elect the people to fill the roles contained in clause 41.1.

41.3 In the event of a vacancy of any of the roles in clause 41.1 the Foundation Board must as soon as practicable fill the vacancy.

41.4 The people appointed to roles in clause 41.1(d) and 41.1(e) are not required to directors of the Foundation.

41.5 The Foundation must have at least three people as directors.

42 Election and appointment of directors

42.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Foundation as a company.

42.2 Apart from the initial directors and directors appointed under clause 42.5, the members may elect a director by a resolution passed in a general meeting.

42.3 Each of the directors must be appointed by a separate resolution, unless:

(a) the members present have first passed a resolution that the appointments may be voted on together; and

(b) no votes were cast against that resolution.

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42.4 A person is eligible for election as a director of the Foundation if they:

(a) are:

(i) a member of the Foundation, or a representative of a member of the Foundation (appointed under clause 27); or

(ii) nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director);

(b) give the Foundation their signed consent to act as a director of the Foundation; and

(c) are not ineligible to be a director under the Corporations Act or the ACNC Act.

42.5 The Foundation Board may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

(a) is a member of the Foundation, or a representative of a member of the Foundation (appointed under clause 27);

(b) gives the Foundation their signed consent to act as a director of the Foundation; and

(c) is not ineligible to be a director under the Corporations Act or the ACNC Act.

42.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

43 Election of chairperson

The Foundation Board must elect a director as the Foundation's elected chairperson.

44 Term of office

44.1 At each annual general meeting:

(a) any director appointed by the Foundation Board to fill a casual vacancy or as an additional director must retire; and

(b) at least one-third of the remaining directors must retire

unless this would result in the Foundation having less than 3 directors after new directors are appointed.

44.2 The directors who must retire at each annual general meeting under clause 44.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

44.3 Other than a director appointed under clause 42.5, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.

44.4 Each director must retire at least once every three years.

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44.5 A director who retires under clause 44.1 may nominate for immediate election or re-election at that annual general meeting, subject to clause 44.6.

44.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.

45 When a director stops being a director

45.1 A director stops being a director if they:

(a) give written notice of resignation as a director to the Foundation;

(b) die;

(c) are removed as a director by a resolution of the members;

(d) stop being a member of the Foundation;

(e) are a representative of a member, and that member stops being a member;

(f) are a representative of a member, and the member notifies the Foundation that the representative is no longer a representative;

(g) are absent for 3 consecutive Foundation Board' meetings without approval from the Foundation Board; or

(h) become ineligible to be a director of the Foundation as a company under the Corporations Act or the ACNC Act.

Powers of Foundation Board

46 Powers of Foundation Board

46.1 The Foundation Board is responsible for managing and directing the activities of the Foundation to achieve the charitable purpose set out in clause 8.

46.2 The Foundation Board may use all the powers of the Foundation except for powers that, under the Corporations Act or this constitution, may only be used by members.

46.3 The Foundation Board must decide on the responsible financial management of the Foundation including:

(a) any suitable written delegations of power under clause 47; and

(b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

46.4 The Foundation Board cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

47 Delegation of directors' powers

47.1 The Foundation Board may delegate any of their powers and functions to a committee, a director, an employee of the Foundation (such as a chief executive officer) or any other person, as they consider appropriate.

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47.2 The delegation must be recorded in the Foundation's minute book.

48 Payments to directors

48.1 The Foundation must not pay fees to a director for acting as a director.

48.2 The Foundation may:

(a) pay a director for work they do for the Foundation, other than as a director, if the amount is no more than a reasonable fee for the work done; or

(b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Foundation.

48.3 Any payment made under clause 48.2 must be approved by the Foundation Board.

48.4 The Foundation may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

49 Execution of documents

49.1 The Foundation may execute a document without using a common seal if the document is signed by:

(a) the President and Treasurer;

(b) the President and the secretary; or

(c) two other directors at the direction of the Foundation Board.

Duties of directors

50 Duties of directors

50.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

(a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Foundation;

(b) to act in good faith in the best interests of the Foundation and to further the charitable purposes of the Foundation set out in clause 8;

(c) not to misuse their position as a director;

(d) not to misuse information they gain in their role as a director;

(e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;

(f) to ensure that the financial affairs of the Foundation are managed responsibly; and

(g) not to allow the Foundation to operate while it is insolvent.

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(h) To follow the Code of Conduct published by the Anglican School Commission

51 Conflicts of interest

51.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

(a) to the other directors; or

(b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

51.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

51.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 51.4:

(a) be present at the meeting while the matter is being discussed; or

(b) vote on the matter.

51.4 A director may still be present and vote if:

(a) their interest arises because they are a member of the Foundation, and the other members have the same interest;

(b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Foundation (see clause 69);

(c) their interest relates to a payment by the Foundation under clause 68 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;

(d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or

(e) the directors who do not have a material personal interest in the matter pass a resolution that:

(i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Foundation; and

(ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Foundation Board' meetings

52 When the Foundation Board meet

The Foundation Board may decide how often, where and when they meet.

53 Calling Foundation Board' meetings

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53.1 A director may call a Foundation Board' meeting by giving reasonable notice to all of the other directors.

53.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

54 Chairperson for Foundation Board' meetings

54.1 The elected chairperson is entitled to chair Foundation Board' meetings.

54.2 The directors at a Foundation Board' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:

(a) not present within 30 minutes after the starting time set for the meeting; or

(b) present but does not want to act as chairperson of the meeting.

55 Quorum at Foundation Board' meetings

55.1 Unless the Foundation Board determine otherwise, the quorum for a Foundation Board' meeting is three directors.

55.2 A quorum must be present for the whole Foundation Board' meeting.

56 Using technology to hold Foundation Board' meetings

56.1 The Foundation Board may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

56.2 The Foundation Board' agreement may be an ongoing one unless stated otherwise.

56.3 A director may only withdraw their consent within a reasonable period before the meeting.

57 Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

58 Circular resolutions of directors

58.1 The directors may pass a circular resolution without a Foundation Board' meeting being held.

58.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 58.3 or clause 58.4.

58.3 Each director may sign:

(a) a single document setting out the resolution and containing a statement that they agree to the resolution; or

(b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

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58.4 The Foundation may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

58.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

59 Secretary

59.1 The Foundation must have at least one secretary, who may also be a director.

59.2 A secretary must be appointed by the Foundation Board (after giving the Foundation their signed consent to act as secretary of the Foundation) and may be removed by the Foundation Board.

59.3 The Foundation Board must decide the terms and conditions under which the secretary is appointed, including any remuneration.

59.4 The role of the secretary includes:

(a) maintaining a register of the Foundation's members; and

(b) maintaining the minutes and other records of general meetings (including notices of meetings), Foundation Board' meetings and circular resolutions.

60 Minutes and records

60.1 The Foundation must, within one month, make and keep the following records:

(a) minutes of proceedings and resolutions of general meetings;

(b) minutes of circular resolutions of members;

(c) a copy of a notice of each general meeting; and

(d) a copy of a members' statement distributed to members under clause 33.

60.2 The Foundation must, within one month, make and keep the following records:

(a) minutes of proceedings and resolutions of Foundation Board' meetings (including meetings of any committees); and

(b) minutes of circular resolutions of directors.

60.3 To allow members to inspect the Foundation's records:

(a) the Foundation must give a member access to the records set out in clause 60.1; and

(b) the Foundation Board may authorise a member to inspect other records of the Foundation, including records referred to in clause 60.2 and clause 61.1.

60.4 The Foundation Board must ensure that minutes of a general meeting or a Foundation Board' meeting are signed within a reasonable time after the meeting by:

(a) the chairperson of the meeting; or

(b) the chairperson of the next meeting.

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60.5 The Foundation Board must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

61 Financial and related records

61.1 The Foundation must make and keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance; and

(b) enable true and fair financial statements to be prepared and to be audited.

61.2 The Foundation must also keep written records that correctly record its operations.

61.3 The Foundation must retain its records for at least 7 years.

61.4 The Foundation Board must take reasonable steps to ensure that the Foundation's records are kept safe.

62 By-laws

62.1 The Foundation Board may pass a resolution to make by-laws to give effect to this constitution.

62.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

63 What is notice

63.1 Anything written to or from the Foundation under any clause in this constitution is written notice and is subject to clauses 63 to 65, unless specified otherwise.

63.2 Clauses 63 to 65 do not apply to a notice of proxy under clause 39.6.

64 Notice to the Foundation

64.1 Written notice or any communication under this constitution may be given to the Foundation, the Foundation Board or the secretary by:

(a) delivering it to the Foundation’s registered office;

(b) posting it to the Foundation’s registered office or to another address chosen by the Foundation for notice to be provided;

(c) sending it to an email address or other electronic address notified by the Foundation to the members as the Foundation’s email address or other electronic address; or

(d) sending it to the fax number notified by the Foundation to the members as the Foundation’s fax number.

65 Notice to members

65.1 Written notice or any communication under this constitution may be given to a member:

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(a) in person;

(b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;

(c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);

(d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or

(e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

65.2 If the Foundation does not have an address for the member, the Foundation is not required to give notice in person.

66 When notice is taken to be given

66.1 A notice:

(a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;

(b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;

(c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and

(d) given under clause 65.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

67 Financial year

67.1 The Foundation's financial year is from 1 January to 31 December, unless the Foundation Board pass a resolution to change the financial year.

68 Indemnity

68.1 The Foundation indemnifies each officer of the Foundation out of the assets of the Foundation, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Foundation.

68.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

68.3 In this clause, 'to the relevant extent' means:

(a) to the extent that the Foundation is not precluded by law (including the Corporations Act) from doing so; and

(b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

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68.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Foundation.

69 Insurance

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

70 Directors' access to documents

70.1 A director has a right of access to the financial records of the Foundation at all reasonable times.

70.2 If the Foundation Board agree, the Foundation must give a director or former director access to:

(a) certain documents, including documents provided for or available to the directors; and

(b) any other documents referred to in those documents.

71 Winding Up

71.1 If the Foundation is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), and surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

(a) gifts of money or property for the principal purpose of the organisation

(b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation

(c) money received by the organisation because of such gifts and contributions

71.2 If the Foundation is wound up, any surplus assets must not be distributed to a member or a former member of the Foundation, unless that member or former member is a charity described in clause 71.1.

71.3 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Foundation may apply to the Supreme Court of Queensland to make this decision.

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SCHEDULE 1 Proxy Form

I/We, *Full name*: _____ of

Address: _____, being

a Member of the Toowoomba Anglican School Foundation Limited ACN 010 856 621 who is entitled to vote appoints:

Please indicate appointment:

☐ The Chairperson of the meeting.

OR

☐ *Full name of Proxy:* _____

Address of Proxy: _____

AND failing that appointment or the absence of that person indicated above, the elected Chairperson of the meeting is appointed as my/our proxy to act generally at the meeting and exercise all of my/our rights including voting rights in accordance with the instructions below or in the case where I give no instructions to the proxy or on business that is not referred to in my voting instructions below, then in the discretion of the appointed proxy and as they see fit and appropriate at the *[choose one:]* annual general meeting / general meeting of the Foundation to be held on _____/_____/_____ and at any adjournment of that meeting.

Business / Resolutions	**For**	**Against**	**Abstain**
1. _____	☐	☐	☐
2. _____	☐	☐	☐
3. _____	☐	☐	☐

Proportion & Number of Voting Rights

The appointed Proxy is entitled to the exercise my/our voting rights as follows:

A. *insert % of voting rights:* _____% of my voting rights for this Proxy Form.

OR

B. *insert number of shares:* _____ shares for this Proxy Form.

Signature of Member:

Member 1	Member 2	Member 3
Sign here:	*Sign here:*	*Sign here:*
Sole Director / Attorney / Authorised Person	Director / Foundation Secretary	Director

Important Reminders:

- This Proxy Form must be signed by the Member.
  - If a Foundation, then execution must be in accordance with section 127 of the *Corporations Act 2001* (Cth) and that Member's constitution document. If a joint shareholding, then either Member may sign. If an attorney or authorised person, then the power of attorney or written authority must have been previously provided to the Foundation and a certified copy must be attached to this Proxy Form.
- The Member must not appoint more than two (2) proxies to attend and act for and on behalf of the Member at a meeting.
- If a Member appoints two proxies, then a separate Proxy Form should be used to appoint each of the two proxies and the Member should specify the proportion or number of the Member's votes each proxy may exercise on their behalf.
- This Proxy Form is only effective if it has been validly completed, signed, includes any certified copies of a power of attorney and has been received by the Foundation at its registered office or fax number at least 48 hours before the appointed time of the meeting.

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