

Constitution

Carey Baptist Grammar School Limited

ACN: 051 576 062

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1. Name

The name of the Company is Carey Baptist Grammar School Limited (the Company).

2. Principal Purposes and Powers

- (a) The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Charity.
- (b) The Principal Purpose for which the Company is established is advancing education, including by operating a co-educational Christian learning community comprising an Early Learning Centre and a School ranging from Preparatory level to Year 12.
- (c) In pursuing its Principal Purpose the Company will:
 - (i) bear witness to the Christian faith, having regard to its Baptist foundation; and
 - (ii) use its best endeavours to maintain at all times an equal number of boys and girls in each year level, subject to what is lawful and reasonably possible.
 - (iii) Solely to carry out the Principal Purpose, the Company may exercise all of the powers of an individual and a company under the Act.

3. Not-For-Profit

- (a) The income and property of the Company must be applied solely towards the Principal Purpose.
- (b) Government funding for school operations must be applied solely towards the conduct of the School.
- (c) The Company must not enter into a Prohibited Agreement or Arrangement with any other person or entity.
- (d) No part of the income or property of the Company may be paid or transferred directly or indirectly to Members or Directors by way of dividend, bonus or other profit distribution in their capacity as Members or Directors.
- (e) Clause 3(a) does not stop the Company from making a payment (provided it is not a Prohibited Agreement or Arrangement):
 - (i) of premiums for insurance indemnifying Directors to the extent allowed for by law and this Constitution; or
 - (ii) with the prior approval of the Board, to a Director or Member:
 - (A) for goods or services provided to the Company (other than as a Director) at fair and reasonable rates or rates more favourable to the Company; or
 - (B) as reimbursement for out-of-pocket expenses properly incurred in performing a duty as Director.

4. Membership

4.1 General

- (a) Subject to clauses 4.5 and 4.6, the Members are the:
 - (i) Directors; and
 - (ii) Life Members.
- (b) The rights of any Member are not transferable.
- (c) Members agree to comply with this Constitution and support the Principal Purpose of the Company.

4.2 Liability of Members

The liability of a Member is limited to the guaranteed amount, being \$20.

4.3 Admission as a Member

- (a) A person other than a Life Member is admitted as a Member of the Company when the person is appointed as a Director by the Board and the person's name is entered into the Register.
- (b) A Life Member is admitted as a Member of the Company when the person is admitted by

resolution of the Board.

4.4 Register of Members

- (a) The Secretary must maintain the Register of Members of the Company at the Company's registered office.
- (b) The Register must contain:
 - (i) the name, address and date of admission as a Member – for each current Member; and
 - (ii) the name, date of admission as a Member and date on which a person stopped being a Member – for each person who ceased to be a Member in the past seven years.
- (c) The rights of any Member will not be transferable.

4.5 Cessation of Membership

Membership of the Company (in the case of persons other than Life Members) will terminate upon a Member ceasing to be a Director.

4.6 Life Members and recognition

- (a) A Life Member admitted to Membership prior to 4 September 2008 is entitled to receive copies of Board papers and notices and to attend Board meetings but may not vote at Board meetings.
- (b) The Board may by resolution recognise additional persons who have rendered outstanding service to the School by conferring such honours as the Board deems appropriate, including Life Membership.
- (c) A Life Member admitted to Membership after 4 September 2008 is not entitled to receive copies of Board papers and notices, or attend or vote at Board meetings.
- (d) A person will cease to be a Life Member upon:
 - (i) death;
 - (ii) resignation; or
 - (iii) becoming subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness.

5. Meetings of Members

5.1 Convening General Meetings

- (a) A General Meeting may only be called:
 - (i) by a Directors' resolution; or
 - (ii) as provided or required under any applicable law or under any policy adopted by the Directors.
- (b) The Board must ensure that general meetings are held at a reasonable time and, if any Members are entitled to physically attend, at a reasonable location or locations.
- (c) The Members can pass a resolution without meeting in accordance with clause 5.9, unless the Act requires a meeting for that resolution.

5.2 Notice of General Meetings

- (a) A notice of meeting of the Company's Members must be given to every Member and must:
 - (i) state the place, the day and the time of the meeting;
 - (ii) if virtual meeting technology is to be used, provide sufficient information about the technology to allow the Members to participate;
 - (iii) state the general nature of the business to be transacted at the meeting;
 - (iv) state if a special resolution is to be proposed at the meeting, the wording of the resolution and a statement that it is proposed as a special resolution; and
 - (v) state such other information as is required by law.
- (b) At least 21 days' notice must be given of a General Meeting (other than a meeting to consider a resolution to remove a Director or auditor) unless:

- (i) in the case of an Annual General Meeting, all the Members entitled to attend and vote agree beforehand; and
- (ii) in the case of any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) Notice of every meeting of the Company's Members shall be given in the manner authorised by clause 9.6 to:
 - (i) every Member; and
 - (ii) the auditor for the time being of the Company.
- (d) No person other than those listed under clause 5.2(c) is entitled to receive notices of meetings of the Company's Members.

5.3 Chairperson of General Meetings

- (a) The Chair of the Board shall preside as chairperson at every General Meeting.
- (b) If the Chair is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting, then:
 - (i) If there is a Deputy Chair, the Deputy Chair will be the chairperson; and
 - (ii) If the Deputy Chair is not present or is not willing and able to be the chairperson, the Members present shall elect one of their number to be chairperson of the meeting (or part of it).

5.4 Quorum for General Meetings

- (a) No business shall be transacted at any General Meeting of the Company's Members unless a quorum of Members is present.
- (b) At a meeting of Members, the number of Members whose presence is necessary to constitute a quorum is such a number as is equal to at least half of the registered Members, provided that a quorum shall be no less than three Members.
- (c) For the purpose of determining whether a quorum is present, a person attending as a proxy shall be deemed to be a Member.

5.5 Use of technology in General Meetings

- (a) The Company may hold a General Meeting at any two or more locations using any virtual meeting technology that gives the Members as a whole a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
- (b) General Meetings may be held using any virtual meeting technology that is agreed to by the Board.
- (c) The Board's agreement may be a standing one.
- (d) A Member who attends by virtual meeting technology is deemed to be present in person at the General Meeting.
- (e) A person participating through the use of virtual meeting technology:
 - (i) must be given the opportunity to participate in a vote in real time; and
 - (ii) may, in the sole discretion of the Board, be given the opportunity to record a vote in advance of the meeting, in which case the voter may elect to vote in real time or in advance.
- (f) A document that is required or permitted to be tabled at a meeting using virtual meeting technology is taken to have been tabled if it is:
 - (i) given to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
 - (ii) made accessible to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) during the meeting.

5.6 Adjournment of General Meetings

- (a) If a quorum is not present within 15 minutes from the time appointed for the meeting:
 - (i) where the General Meeting was convened upon the request of Members

- the meeting shall be dissolved; or
- (ii) in any other case:
 - (A) the General Meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
 - (B) if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, then the meeting shall be dissolved.
- (b) The chairperson shall adjourn a General Meeting of the Company's Members from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting of the Company's Members is adjourned under clause 5.6(b) for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided under clause 5.6(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned General Meeting.

5.7 Voting at General Meetings

- (a) At any General Meeting of the Company's Members:
 - (i) a resolution put to the vote of the meeting shall be decided on a show of hands or voices unless a poll is demanded (before a vote is taken or immediately after the declaration of the result of the show of hands) by at least two thirds of the Members present in person or by proxy;
 - (ii) unless a poll is so demanded, a declaration by the chairperson that a resolution has on a 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 Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution;
 - (iii) a poll can be demanded at any time prior to a vote, or immediately after the declaration of a result of a vote conducted by means other than a poll;
 - (iv) a Member may vote in person, by technology or by proxy; and
 - (v) the demand for a poll may be withdrawn.
- (b) If a poll is duly demanded, it shall be taken in such a manner as the chairperson directs and, unless the meeting is adjourned, the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- (c) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately.
- (d) Questions arising for determination (other than a Special Resolution) will be decided by a majority of votes cast (unless otherwise provided in this Constitution).
- (e) In a case of an equality of votes, the chairperson of the meeting shall not have a casting vote in addition to any vote the chairperson may have in the capacity as a Member. Subject to any rights or restrictions for the time being attached to any Member:
 - (i) at meetings of the Company's Members each Member entitled to vote may vote in person or by proxy; and
 - (ii) on a show of hands or voices every person present who is a Member or a proxy of a Member has one vote, and on a poll every person present in person or by proxy has one vote.

5.8 Proxies

- (a) A Member of the Company who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint another Member as the Member's proxy to attend and vote for the Member at the meeting.
- (b) An instrument appointing a proxy:
 - (i) must be in writing under the hand of the appointor;

- (ii) may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument; and
- (iii) must be deemed to confer authority to demand or join in demanding a poll.
- (c) A proxy cannot speak and vote for a Member while the Member is present at a meeting.
- (d) An instrument appointing a proxy is valid if it is in writing and signed by the appointing Member in a form substantially similar to that in Schedule 1 provided the proxy form is received by the Secretary not less than 48 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 24 hours before the time appointed for the taking of the poll.
- (e) A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the donor, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the appointing Member ceases to be a Member providing the chairperson was not aware of the death, unsoundness of mind, revocation or cessation of Membership before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

5.9 Circulating Member Resolutions

- (a) This clause does not apply to a Special Resolution, a resolution to remove a Director or a resolution to appoint or remove an auditor.
- (b) A resolution may be passed without a meeting if:
 - (i) notice is given to all Members entitled to vote; and
 - (ii) at least 75% of Members entitled to vote approve the resolution in writing.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution and may be distributed by any means, including electronic communication;
 - (ii) approval in writing includes approval by email and any other means of electronic communication; and
 - (iii) the resolution will fail if it does not receive the required approval within seven days after the notice is given.
- (d) The resolution is passed when approval is given to the Secretary by the last person necessary to constitute 75% of Members in favour of the resolution.

6. Directors

6.1 Appointment and removal of Directors

- (a) Directors are appointed by the Board, except in the case of the BUV chair or their nominee.
- (b) The Board may have a Nominating Committee to assist in the identification of suitable nominees to the Board within the terms of this constitution and any Board composition criteria set by the Board from time to time. The Nominating Committee may consult with the Stakeholders on matters relevant to those Stakeholders, and the Nominating Committee shall make recommendations to the Board for Board appointments.
- (c) The Board must have at least nine Directors.
- (d) The Board shall consist of:
 - (i) the BUV chair or their nominee;
 - (ii) up to two nominees of the BUV;
 - (iii) at least two past students of the School;
 - (iv) at least two parents of current or past students of the School; and
 - (v) up to five nominees of the Board, whose appointments must be ratified by the BUV.
- (e) The Board positions appointed pursuant to clause 6.1(d)(i), 6.1(d)(ii) and 6.1(d)(v) must always form a majority on the Board.
- (f) If the BUV fails to approve or disapprove of a proposed Board appointment pursuant to clause

6.1(d)(v) within two months after receiving a written proposal of the appointment, the BUV will be deemed to have approved the appointment.

- (g) In recommending persons for appointment as Directors, the Nominating Committee must take into account the desirability of diversity in leadership on the Board but subject always to a requirement that a Director of the Board must have suitable qualifications, skills and experience to discharge the function of a Director as determined by the Board from time to time.
- (h) the Principal, Deputy Principals, Business Director and a Staff Representative may attend Board meetings with the leave of the Board without the right to vote.
- (i) The Staff Representative referred to in the preceding paragraph shall be appointed according to eligibility criteria and a process recommended by the Principal and approved by the Board.
- (j) In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.
- (k) The office of a Director becomes vacant:
 - (i) in the circumstances outlined in the Act;
 - (ii) if the Director becomes of unsound mind or a director is, or their estate is, liable to be dealt with in any way under the law relating to mental health;
 - (iii) if the Director is removed from office by resolution of the Members;
 - (iv) if the Director ceases to meet the eligibility criteria set out at clause 6.2(a)(i) - 6.2(a)(v);
 - (v) except to the extent of a leave of absence granted by the Board, if the Director fails to attend at least three consecutive meetings of the Directors or at least four meetings over a period of 365 days;
 - (vi) if the Director resigns by written notice to the Company; or
 - (vii) if the term of office expires under clause 6.4.

6.2 Eligibility

- (a) Any natural person committed to the Principal Purpose is eligible to be appointed or elected as a Director provided the person:
 - (i) is not an employee of the School;
 - (ii) is a "fit and proper person" within the meaning of Schedule 4 of the ETRR 2017;
 - (iii) has consented in writing to be a Director and Member;
 - (iv) has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time; and
 - (v) is not ineligible to be a Director under:
 - (A) the Act; or
 - (B) the ACNC Legislation.
- (b) Rule 6.2(a)(v)(B) will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.

6.3 Defects in appointment of Directors

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment or reappointment of a person to be a Director, or to act as a Director, or that person so appointed was disqualified, as valid as if the person had been duly appointed or reappointed and was qualified to be a Director.

6.4 Term of Office

Subject to earlier cessation under clause 6.1(k)(i) to (vi):

- (a) the term of office of a Director (other than the BUV chair or their nominee):
 - (i) commences on the date of appointment; and

- (ii) expires at the conclusion of three years following their appointment
- (b) the term of office of the Director who is the BUV chair:
 - (i) commences on the date of their appointment to the role of BUV chair; and
 - (ii) expires when they cease to hold the role of BUV chair.
- (c) the term of office of the Director who is the BUV chair's nominee:
 - (i) commences on the date of their nomination by the BUV chair; and
 - (ii) expires when:
 - (A) the BUV chair that nominated them ceases to hold the role of BUV chair; or
 - (B) the BUV chair notifies the Company in writing that the nomination is withdrawn.
 - (iii) Directors may be reappointed for a further term of office.
- (d) A Director (other than the BUV chair or their nominee) who has served continuously for nine years or more may only be re-appointed by resolution passed by a 75% majority of all Directors.

6.5 Powers and duties of Directors

- (a) Subject to the Act and to any other provision of this constitution, the business of the Company and furthering the Principal Purpose shall be managed by the Directors.
- (b) Directors must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.
- (c) Subject to clause 11 the Board appoints the Principal and may, upon such terms and conditions and with such restrictions and as they think fit, confer by resolution upon the Principal any of the powers exercisable by them. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors. The Directors may at any time withdraw or vary any of the powers so conferred on the Principal.
- (d) Without limiting the generality of the preceding paragraph, the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or give any other security for a debt, liability or obligation of the Company or of any other person.
- (e) The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (f) Any such power of attorney under clause 6.5(e) may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.
- (g) All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed, executed, as the case may be in such manner as the Directors determine.
- (h) The Board oversees a risk management framework that aligns to the Principal Purpose. The Board periodically reviews the risk management framework.

6.6 Meetings of Directors

The Board of Directors may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

6.7 Convening meetings of Directors

- (a) The Board of Directors may at any time, and a Secretary shall on the requisition of two Directors, convene a meeting of the Directors.
- (b) A notice of a Board meeting:
 - (i) must specify the place, day and time of the meeting;

- (ii) if virtual meeting technology is to be used, must provide sufficient information about the technology to allow the Directors to participate; and
- (iii) does not need to specify the nature of the business to be transacted at the meeting.

6.8 Quorum for Directors' meetings

- (a) At a meeting of the Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is at least half of the total number of Directors, provided that a quorum shall be no less than three.
- (b) A Director on a leave of absence approved by the Board should not be included when calculating the total number of Directors for the purposes of this clause.

6.9 Chairperson

- (a) The Chair will preside as chairperson at Board meetings.
- (b) If the Chair is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting then:
 - (i) if there is a Deputy Chair, the Deputy Chair will be the chairperson; and
 - (ii) if the Deputy Chair is not present or is not willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

6.10 Voting at Directors' meetings

- (a) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and entitled to vote. Any such decision shall for all purposes be deemed a decision of the Directors.
- (b) In a case of an equality of votes, the chairperson of the meeting shall not have a casting vote in addition to any vote the chairperson may have in the capacity as a Director.

6.11 Delegation of powers

- (a) The Directors are responsible for managing the business of the Company and furthering the Principal Purpose.
- (b) The Directors may exercise all the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Members.
- (c) The Board cannot remove a Director or auditor.
- (d) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit and may revoke a delegation.
- (e) The Board shall be responsible for approving a charter for each committee and any amendments to any such charters.
- (f) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- (g) The members of such a committee may elect one of their number as chairperson of their meetings.
- (h) Where such a meeting is held and:
 - (i) a chairperson has not been elected as provided by the preceding paragraph; or
 - (ii) the person so elected is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting;
 the members present shall elect one of their number to be chairperson of the meeting or part of it.
- (i) The meetings and proceedings of committees are:
 - (i) subject to any terms of reference and/or delegation; and
 - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.
- (j) Questions arising at a meeting of a committee shall be determined by a majority of votes of

the members present and voting.

- (k) In the case of an equality of votes, the chairperson shall not have a casting vote in addition to any vote the chairperson may have in the capacity as a committee member.

6.12 Electronic meetings of Directors

Meetings of Members or Directors may take place at more than one venue using any technology that gives participants a reasonable opportunity to participate.

6.13 Circulating resolutions

- (a) A resolution may be passed without a meeting if:
 - (i) notice is given to all Directors entitled to vote; and
 - (ii) at least 75% of Directors entitled to vote approve the resolution in writing.
- (b) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution and may be distributed by any means, including electronic communication;
 - (ii) approval in writing includes approval by email and any other means of electronic communication; and
 - (iii) the resolution will fail if it does not received the required approval within seven days after the notice is given.
- (c) The resolution is passed when approval is given to the Secretary by the last person necessary to constitute 75% of Directors in favour of the resolution

6.14 Policies and procedures

- (a) The Board may make policies and procedures for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter policies and procedures as it sees fit.
- (c) The Board has power to make policies and procedures concerning Membership application and qualification for Membership of the Company and any other matter which the Board believes suitable for including in such policies and procedures.

6.15 Directors' conflicts of interest

- (a) A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Directors.
- (b) Unless the Directors otherwise decide and where permitted by law, a Director who has a material personal interest or any conflict of interest in respect of a matter that is being considered at a Directors' meeting must not:
 - (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter,
 unless permitted by clause 6.15(c).
- (c) Provided the Board approves and it is permitted by law, a Director may be present or vote if:
 - (i) the interest arises because the Director is a Member and the other Members have the same interest;
 - (ii) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;
 - (iii) the interest relates to any payment by the Company under clause 9.7 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity;
 - (iv) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter;
 - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and

- (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present; or
- (vi) the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 9.7.
- (d) A Director is not disqualified from contracting or entering into an arrangement with the Company as vendor, purchaser or in another capacity, merely because the Director holds office as a director or because of the fiduciary obligations arising from that office.
- (e) A contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested is not invalid or voidable merely because the Director holds office as a director or because of the fiduciary obligations arising from that office.
- (f) A Director who is interested in an arrangement involving the Company is not liable to account to the Company for any profit realised under the arrangement merely because the Director holds office as a director or because of the fiduciary obligations arising from that office, provided that the Director complies with applicable disclosure requirements under this constitution, any policy or rules adopted by the Directors, and under the Act and ACNC Legislation regarding that interest.

6.16 Permissible Conduct

Provided a Director complies with clause 6.10, and the following does not constitute a Prohibited Arrangement or Agreement, a Director may:

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

7. Dispute Resolution

- (a) The Board will determine the procedure to be followed to determine any dispute arising between:
 - (i) a Member and another Member;
 - (ii) a Member and the Board; and
 - (iii) a Member and the Company.
- (b) The Board will be subject to the following:
 - (i) a Member may appoint any person to act on behalf of the Member in the dispute resolution procedure;
 - (ii) each party to the dispute must be given an opportunity to be heard on the matter which is the subject of the dispute; and
 - (iii) the outcome of the dispute must not be determined by a biased decision-maker.

8. Office Bearers

8.1 Appointment of Office Bearers

- (a) From time to time as required, the Board must appoint a Chair, a Deputy Chair and any other Office Bearers it deems fit from among the Board.
- (b) Office Bearers of the Company hold office until the end of the first year following their appointment.
- (c) An Office Bearer may be elected for more than one successive term.
- (d) The Board may remove or suspend a person from holding any Office Bearer position by

resolution passed at a Board meeting provided:

- (i) the resolution is passed by not less than two-thirds of the Directors present; and
- (ii) at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person who is the subject of the resolution.

8.2 Secretary

- (a) The Directors must appoint at least one Secretary, who may also be a Director.
- (b) The Secretary is to be appointed on such terms and conditions as the Board deems fit.
- (c) A person may not be appointed as Secretary unless the person:
 - (i) consents in writing to being appointed as Secretary;
 - (ii) is at least 18 years of age; and
 - (iii) is resident in Australia.
- (d) The Board may suspend or remove a Secretary.

9. Administration

9.1 Minutes

- (a) The Directors will cause minutes of:
 - (i) all proceedings and resolutions of meetings of the Company's Members;
 - (ii) all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
 - (iii) resolutions passed by Members without a meeting;
 - (iv) resolutions passed by Directors without a meeting;
 to be duly entered into the books kept for that purpose as soon as practicable (being no later than one month after the meeting or passing of the resolution) in accordance with the law.
- (b) The Company must ensure that minutes of a Board meeting are signed in accordance with the Act within a reasonable time by the chairperson of the meeting or of the next meeting.
- (c) A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.
- (d) Books containing the minutes of meetings of the Company's Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.

9.2 Accounts

- (a) The Directors will cause to be kept proper financial records in which will be kept true and complete accounts of the affairs and transactions of the Company in accordance with all legal and regulatory requirements. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.
- (b) The Financial Year will begin on the first day of January and end on the 31st day of December.
- (c) The accounts will be held at the registered office or any other place as the Directors think fit.
- (d) The accounts will always be open to inspection by the Directors.
- (e) The Directors will arrange for the financial report, the Directors' report and the Auditors' report as required by law to be prepared.
- (f) The Company must retain its financial records for at least seven years.
- (g) A copy of the financial report must be provided to the BUV.

9.3 Audit

- (a) If required by law, a registered company auditor must be appointed.
- (b) Any auditor is entitled to attend any General meeting and to be heard by the Members on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company may give any auditor all communications relating to the General meeting that the Members of the Company are entitled to receive.

- (d) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act or as otherwise required by law.

9.4 Execution of documents

- (a) The Company does not have a Seal.
- (b) The Company may execute documents by the signature of:
 - (i) two Directors;
 - (ii) one Director and the Secretary; or
 - (iii) such other persons appointed by the Board for that purpose.
- (c) A document may be signed by electronic means in accordance with the Act unless the auditors or bankers of the Company have reported to the Board in writing that the document may not be signed electronically.

9.5 Alteration of constitution

- (a) The Company may only alter this Constitution by special resolution passed at a general meeting of the Members.
- (b) The Company shall consult with the BUV within a reasonable time prior to alteration of this Constitution concerning any proposed alterations.
- (c) The Members must not pass a special resolution that amends this Constitution if passing it causes the company to no longer be a Charity.
- (d) Any alteration to clauses 10.3(c) (approval of BUV re distribution of assets on winding up), 6.1(d) (composition of the Board), 6.1(f) (failure to approve Directors), 6.4 (term limits for BUV chair (or their nominee) on Board), 9.5(b) (consultation re proposed changes to constitution), 11 (role of BUV) and this clause, must have the prior approval of BUV.

9.6 Notices

- (a) A notice may be given by the Company to any Member (subject to any election or request made by the Member under the Act in relation to receipt of documents) or Director either:
 - (i) by serving it on them personally;
 - (ii) by sending it by post to them at their address as shown in the Register of Members or the address supplied by them to the Company for the giving of notices to them; or
 - (iii) by sending it by email transmission to an email address supplied by the Member to the Company for the giving of notices to the Member.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effective by properly addressing prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice to a Member, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Where a notice is sent by email, service of the notice shall be deemed to be effected at the time of sending unless the person transmitting the email is notified at any time that the email was undelivered or undeliverable.
- (d) The non-receipt of notice or a failure to give notice, does not invalidate anything done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) the individual waives notice before or after the meeting (including by attending the meeting); or
 - (iii) the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.
- (e) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

9.7 Officers: indemnities and insurance

- (a) To the extent permitted by the Act:
 - (i) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company to the full extent permitted by law

against any liability for costs and expenses incurred by that person in defending any proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the court grants relief to the person under the Law; and

- (ii) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company to the full extent permitted by law against any liability incurred by that person, as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.
- (b) The Company may pay, or agree to pay, to the extent permitted by law, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:
 - (i) incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of sections 182 and 183 of the Act or the common law equivalent of those provisions; or
 - (ii) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.
- (c) This indemnity:
 - (i) is a continuing obligation and is enforceable even if the person has ceased to be an Officer of the company;
 - (ii) is not subject to any requirement to first incur an expense or make a payment; and
 - (iii) operates only to the extent that the relevant loss or liability is not covered by insurance.
- (d) Nothing in this clause 9.7 limits the Company's ability to indemnify or pay any insurance for any person not expressly covered by this clause.
- (e) In this clause 9.7:
 - (i) the term "**proceedings**" means any proceedings whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as such an Officer or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary or subsidiary of the Company); and
 - (ii) the term "**Officer**" has the meaning given to that term in section 9 of the Act.

10. Closure of the School or Winding Up, Deregistration or Dissolution of the Company

10.1 Special resolution to wind up Company

Subject to clause 10.3, the Company may be dissolved by a special resolution of Members at a meeting of the Company Members.

10.2 Contribution of a Member on winding up

If required, each Member must contribute an amount (not more than the guaranteed amount of \$20) to the assets of the Company if it is wound up while they are a Member, or within one year of the Member ceasing to be a Member, for the:

- (a) payment of the debts and liabilities of the Company incurred before they ceased to be a Member; and/or
- (b) costs, charges and expenses of winding up.

10.3 Distribution of assets on closure of the School or the winding up, deregistration or dissolution of the Company

- (a) If on the closure of the School there is a surplus of School assets remaining after satisfying all the School's liabilities and expenses, the surplus must:
 - (i) not be paid or distributed to a Member in their capacity as a Member; and
 - (ii) be used by the Company to provide education services to children of compulsory school-age or for other not-for-profit purposes; or
 - (iii) be given or transferred to a Charity or Charities which:
 - (A) provides Christian educational services to school-age children; or
 - (B) has a similar purpose to the Principal Purpose; and
 - (C) prohibits the distribution of profit or gain to its Members in their capacity as Members.
- (b) On the winding up, deregistration or dissolution of the Company, any assets remaining after complying with clause 10.3(a) and the governing rules of the Public Funds:
 - (i) must not be paid or distributed to the Members in their capacity as Members; and
 - (ii) must be given or transferred to a Charity or Charities which:
 - (A) provides Christian educational services to school-age children; or
 - (B) has a similar purpose to the Principal Purpose; and
 - (C) prohibits the distribution of profit or gain to its Members in their capacity as Members.
- (c) The identity of the recipient Charity or Charities under clauses 10.3(a)(iii) and 10.3(b)(ii) will be decided by resolution of the Board on or before any closure, winding up, deregistration or dissolution and is subject to approval by the BUV. If the Board fail to decide, the identity of any recipient Charity or Charities may be determined by the BUV.

11. Role of BUV

- (a) The Company is an Agency of the BUV pursuant to the BUV constitution.
- (b) The Company agrees to act in the spirit of fellowship and co-operation with the BUV.
- (c) The BUV will be invited to appoint a representative to participate in any selection panel for the appointment of the Principal and Senior Chaplain.
- (d) No appointment of a Principal or Senior Chaplain will be made without the approval of the BUV.
- (e) In nominating persons to the Board pursuant to clause 6.1(d)(ii), the BUV may determine the qualifications of nominees including, where possible, membership of a Christian church, subject always to the requirement that a Director of the Board must have suitable qualifications, skills and experience to discharge the function of a Director as determined by the Board from time to time.
- (f) The Company may enter into a covenant with the BUV from time to time setting out the cooperative relationship between them.

12. Establishment of Public Funds

The Company has established and maintains the 'Carey Grammar Scholarship Fund', 'Carey Baptist Grammar School Building Fund' and 'Carey Baptist Grammar School Library'. The Board must ensure that these funds are managed in accordance with their respective governing documents.

13. Interpretation

13.1 Definitions and interpretation

In this Constitution:

"ACNC" means the Australian Charities and Not-for-profits Commission.

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

“**Act**” means the *Corporations Act 2001* (Cth) or any statutory modification or re-enactment thereof for the time being in force.

“**Board**” means the board of Directors for the time being of the Company.

“**BUV**” means the Baptist Union of Victoria.

“**chairperson**” means the person chairing a meeting.

“**Chair**” means the person appointed to the position of Chair under this Constitution. “**Charity**” means a charity registered under the ACNC Legislation.

“**Company**” means this Company, Carey Baptist Grammar School Limited.

“**Deductible Gift Recipient**” means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

“**Directors**” means the directors for the time being of the Company.

“**Early Learning Centre**” means:

- (a) a not-for-profit approved education and care service (within the meaning of the *Education and Care Services National Law Act 2010* (Vic));
- (b) which provides education and care to children, including a three or four year old kindergarten program; and
- (c) that operates as a feeder for enrolments to Carey.

“**ETRR 2017**” means the Education and Training Reform Regulations 2017 (Vic).

“**General Meeting**” means a meeting of Members.

“**ITAA 97**” means the *Income Tax Assessment Act 1997* (Cth).

“**Life Member**” means a person recorded in the Register as a Life Member.

“**Member**” means a Director or a Life Member of the Company.

“**person**” includes a natural person and a corporation within the meaning of s 57A of the Act.

“**Principal Purpose**” means the purpose set out in clause 2.

“**Prohibited Agreement or Arrangement**” has the meaning given to that term under the ETRR 2017.

“**Public Fund**” means a fund referred to in clause 12.

“**Register**” means the register of Members under the Act.

“**School**” means the Prep to Year 12 operations of Carey Baptist Grammar School.

“**Secretary**” means the secretary for the time being of the Company and if there are joint secretaries, any one or more of such joint secretaries.

“**Staff Representative**” means the person appointed to the position of Staff Representative pursuant to clause 6.1(i).

“**Stakeholders**” means the BUV, Old Carey Grammarians Association or other alumni association the Board deems appropriate, such parent body or bodies as the Board deems appropriate, the Board and the BUV chair.

13.2 Interpretation

- (a) Except so far as the contrary intention appears in this constitution, an expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

13.3 Exclusion of replaceable rules

The replaceable rules contained in the Act do not apply to the Company.

14. Transitional Provisions

The following clauses apply notwithstanding anything to the contrary in this Constitution.

14.1 Members

The Members immediately following the adoption of this Constitution will be those Members listed on the Register at the time of adoption.

14.2 Directors

- (a) The Directors immediately following the adoption of this Constitution will be those in office at the time of adoption.
- (b) Directors appointed prior to the adoption of this Constitution may complete their term of office under the previous Constitution.