



NEWCASTLE
GRAMMAR
SCHOOL

Constitution of Newcastle Grammar School Limited

August 2025

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Constitution of Newcastle Grammar School Limited

1. Name

The name of the Company is Newcastle Grammar School Limited (ACN 054 234 141).

2. Object

The Object for which the Company is established is to advance education by operating the School for children and young people, irrespective of their social or cultural background, religion, race, sex or gender identity, with Christian values in the Anglican tradition, and in furtherance of this:

- a. to foster and promote the intellectual, physical, social, spiritual and moral development and welfare of the School's students;
- b. to act as trustee of any trust which furthers this Object; and
- c. to do all such other things as are incidental or conducive to achieving this Object.

3. Powers

The Company has the legal capacity and powers of an individual.

4. Use of Income, Property and Powers only for Object

- a. The Company may only use its income, property and powers for the promotion of its Object.
- b. The Company must not distribute any of its income or property directly or indirectly to the Members.
- c. However, paragraph (b) does not prevent:
 - i. the payment to a Member for goods or services the Member has provided on terms that would be reasonable in the circumstances if the Company and the Member were dealing at arm's length, or on terms that are less favourable to the Member than these terms;
 - ii. the payment in good faith of reasonable remuneration to any employee of the Company;
 - iii. the payment to a Director of out-of-pocket expenses incurred in carrying out the duties of a Director where the payments do not exceed an amount previously approved by the Board;
 - iv. in the event of the appointment of an Executive Director, the payment to that Executive Director of their remuneration as an employee of the Company in accordance with their employment agreement where the terms of their employment have been approved by a resolution of the Board; and
 - v. the giving of a financial benefit to a Member or a Related Party on terms that would be reasonable in the circumstances if the Company and the Member or the Related Party were dealing at arm's length, or on terms that are less favourable to the Member or Related Party than these terms.
- d. "Related Party" in this clause has the meaning given to it in the *Corporations Act* which, when this Constitution was adopted, included Directors of the Company, the spouses of Directors, the parents and children of Directors and their spouses, and entities controlled by any of these people.

5. Winding Up

- a. If, on the Company's winding up, there is any property left after paying all debts and other liabilities, that property must not be distributed among the Members but must be given to some other similar institution or institutions decided by the

Members at or before the time of winding up, provided such other institution or institutions:

- i. have charitable objects similar to the Company's Object; and
 - ii. prohibit the distribution of income and property among its or their members to an extent at least as great as is imposed on the Company under Clause 4; and
 - iii. have been endorsed by the Australian Commissioner of Taxation as an Income Tax Exempt Charities.
- b. Such institution or institutions are to be determined by the Members of the Company at or before the time of dissolution and, in default, by a judge of the Supreme Court of New South Wales or such other Court as may have or acquire jurisdiction in the matter.
- c. If effect cannot be given to this provision, then such property must be given to some charitable object which prohibits the payment of any income or property to its members.

6. Revocation of Endorsement

- a. Where the Company has established a tax-deductible gift fund and has been endorsed under Subdivision 30-BA of the *Income Tax Assessment Act 1997* as a deductible gift recipient in relation to that or any other fund, then where:
- i. the Company is wound up;
 - ii. the gift fund is wound up; or
 - iii. the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* is revoked,
- any surplus assets in the gift fund or, where the Company is wound up, funds remaining after the payment of liabilities attributable to the gift fund must be transferred to a fund, authority or institution which is charitable at law and to which income tax deductible gifts can be made.
- b. Where the Company operates more than one gift fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* is revoked only in relation to one of those gift funds, it may transfer the funds to any other gift fund for which it is endorsed as a deductible gift recipient.

7. Members

- a. The number of Members of the Company must be at least 10 and not exceed 35 but the Board may approve an increase or decrease of Members.
- b. A Member of the Company is a natural person not less than 18 years of age who:
- i. is a Member of the Company at the time of the adoption of this Constitution; or
 - ii. has applied for Membership in writing in a form approved by the Board from time to time and who has been elected in accordance with this Constitution and whose name is recorded in the Register.
- c. The Board may elect as a Member of the Company any person who:
- i. consents in writing to being a Member;
 - ii. signs a commitment to the Company's Object and is in a position to help the Company achieve that Object;
 - iii. is not an undischarged bankrupt;
 - iv. is not, nor has ever been a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or in any jurisdiction; and

- v. has never been convicted of an indictable offence.
- d. Members must act in good faith in the best interests of the Company and to further the charitable Object of the Company, including but not limited to:
 - i. comply with applicable legislation and common law;
 - ii. not to misuse their position as a Member;
 - iii. not to misuse information they gain in their role as a Member; and
 - iv. to disclose any perceived or actual material conflicts of interest while a Member of the Company.
- e. The Company must establish and maintain a Register of Members.
- f. As soon as practicable after the Board elects a person as a Member, the Secretary must send to the person written notice of election and details of the applicant must be entered in the Register.
- g. The Board is not required to give a reason for rejecting an application for membership.

8. Categories of Membership

- a. All Members are ordinary Members.
- b. The Board may create additional categories of Members.

9. Cessation of Membership

- a. A Member may resign by giving notice to the Secretary either with immediate effect or with effect from a future date not being later than six months after the date of the notice.
- b. A Member ceases to be a Member if the Member:
 - i. becomes bankrupt or, as the debtor, becomes a party to a personal insolvency agreement;
 - ii. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - iii. dies;
 - iv. is expelled pursuant to clause 11;
 - v. becomes a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or in any equivalent jurisdiction;
 - vi. is convicted of an indictable offence;
 - vii. has not responded within three months to a written request from the Secretary that the Member confirms in writing that the Member wants to remain a Member; or
 - viii. has not attended a General Meeting for the previous three years and the Secretary has not been able to contact the Member after making reasonable attempts.

10. Liability

The liability of the Members is limited. Every Member must contribute \$2.00 to the Company's property if the Company is wound up while the person is a Member or within one year of ceasing to be a Member for:

- a. payment of the Company's debts and liabilities incurred before the person ceased to be Member; and
- b. costs of the Company's winding up.

11. Disciplining Members

- a. The Board may resolve to warn, suspend or expel a Member from the Company if the Member:
 - i. wilfully refuses or neglects to comply with the provisions of this Constitution;

- ii. in the Board's opinion ceases:
 - a) to have an active interest in the Company;
 - b) to be committed to the Company's Objects;
 - iii. is found by the Board to have made statements or acted in such a way as to discredit or bring into disrepute the Company or any Member.
- b. A resolution to expel must be passed by 75% of the Directors present and voting at a Board meeting.
- c. At least 14 days before the Board meeting at which a resolution under paragraph (a) will be considered, the Secretary must notify the Member in writing:
 - i. that the Board is considering a resolution to warn, suspend or expel the Member;
 - ii. that this resolution will be considered at a Board meeting and the date of that meeting;
 - iii. what the Member is said to have done or not done;
 - iv. the nature of the resolution that has been proposed; and
 - v. that the Member may provide an explanation to the Board, and details of how to do so.
- d. Before the Board passes any resolution under paragraph (a), the Board must give the Member an opportunity of attending the meeting and of giving at it orally or in writing any explanation or defence which the Member may desire to offer.
- e. After considering any explanation under paragraph (d), the Board may:
 - i. take no further action;
 - ii. warn the Member;
 - iii. suspend the Member's rights as a Member for a period of no more than 12 months;
 - iv. expel the Member;
 - v. refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
 - vi. require the matter to be determined at a general meeting.
- f. The Board cannot fine a Member.
- g. The Secretary must give written notice to the Member of the decision under paragraph (e) as soon as possible.
- h. Disciplinary procedures must be completed as soon as reasonably practical.
- i. A Member must not start a dispute resolution procedure under clause 12 in relation to a matter which is the subject of a disciplinary procedure under this clause until the disciplinary procedure is completed.
- j. 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.

12. Dispute Resolution

- a. The dispute resolution procedure in this clause applies to disputes under this Constitution between a Member or Director and one or more Members, one or more Directors, or the Company.
- b. Those involved in the dispute must try to resolve it between themselves within 14 days of the parties becoming aware of it.
- c. If those involved in the dispute do not resolve it under paragraph (b), they must within 14 days:
 - i. tell the Board about the dispute in writing;

- ii. agree or request that a mediator be appointed; and
 - iii. attempt in good faith to settle the dispute by mediation.
- d. The mediator must:
 - i. be chosen by agreement of those involved; or
 - ii. where those involved do not agree:
 - a. for disputes between Members, a person chosen by the Board; or
 - b. for other disputes, a person chosen by the President of the Law Society of New South Wales.
- e. A mediator chosen by the Board under clause 12(d)(ii)(A):
 - i. must not have a personal interest in the dispute; and
 - ii. must not be biased towards or against anyone involved in the dispute.
- f. When conducting the mediation, the mediator must:
 - i. allow those involved a reasonable chance to be heard;
 - ii. allow those involved a reasonable chance to review any written statements;
 - iii. ensure that those involved are afforded procedural fairness; and
 - iv. not make a decision on the dispute.
- g. The costs of a mediation must be borne equally between the parties to the mediation.

13. General Meetings

- a. A general meeting is a meeting of the Members.
- b. The Board may, at any time, call and hold a general meeting.
- c. The Board must call and hold in every calendar year a general meeting, to be called the Annual General Meeting, which is to be held at such time as may be determined by the Board. Only the Board can convene the Annual General Meeting.
- d. If at least five Members make a written request to the Company for a general meeting to be held, the Board must:
 - i. within one calendar month of the Members' request, give all Members notice of a general meeting, and
 - ii. hold the general meeting within two calendar months of the notice of the General Meeting.
- e. The Members who make the request for a general meeting must:
 - i. state in the request any resolution to be proposed at the general meeting together with appropriate and reasonable information relating to the reason for the resolution;
 - ii. sign the request, and
 - iii. give the request to the Company.
- f. 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.
- g. The Board may determine whether a general meeting will be held:
 - i. at one or more physical venues; or
 - ii. at one or more physical venues and using virtual meeting technology (a hybrid meeting); or
 - iii. using virtual meeting technology only.
- h. Where a general meeting is held using virtual meeting technology (whether or not it is held at one or more physical venues), that virtual meeting technology must be reasonable and allow those who are entitled to attend to exercise orally and in writing any rights of those people to ask questions and make comments.

14. General meetings called by Members

- a. If the Board does not call the general meeting as requested by the Members in accordance with clause 13(d), 100% of the Members who made the request may all agree to jointly call and arrange to hold a general meeting.
- b. To call and hold a general meeting under paragraph 14(a), the Members must:
 - i. as far as possible, follow the procedures for general meetings set out in this Constitution;
 - ii. call the meeting by written notice to Members using the current list of Members as per the Company's Register, and the Company shall provide such list upon a written request by the Members which also allows for a reasonable time period for the production of the list, and
 - iii. hold the general meeting within four months after the original written request was given to the Company as per clause 13.
- c. The Company must pay the Members who request the general meeting any reasonable out of pocket expenses they directly incur because the Directors did not call and hold the meeting as per clause 13. Members shall provide acceptable documentation such as receipts to the Company, and at the reasonable request of the Company proving the expenses were incurred and directly relate to the Meeting.

15. Notice of General Meetings

- a. At least 21 days' written notice of all general meetings must be given to Members and the Company's Auditor.
- b. A notice of a general meeting must:
 - i. set out the place, date and time for the meeting (and, if the meeting is to be held virtually or in two or more places, the technology that will be used to facilitate this);
 - ii. state the general nature of any business to be dealt with at the meeting;
 - iii. if applicable, state that a special resolution is to be proposed and set out the words of the proposed resolution; and
 - iv. state that Members have a right to appoint a proxy who must be a Member of the Company.
- c. The Board may postpone or cancel any general meeting whenever it thinks fit, other than a meeting convened under clause 13(d) or 14(a) subject the provisions allowing for online or virtual meetings or a change of date.
- d. The Board must give notice of the postponement or cancellation to all who were entitled to notice of the general meeting.
- e. The failure or accidental omission to send a notice of a general meeting or the adjournment or postponement or cancellation of a general meeting to any person entitled to such notice or the non-receipt of a notice by any such person does not invalidate the proceedings at or any resolution passed at the general meeting.

16. Annual General Meetings

- a. The business of the Annual General Meeting convened by the Board is to:
 - i. receive and consider the Directors' reports and, if applicable, of the Company's Auditor;
 - ii. elect the Directors to be elected pursuant to this Constitution;
 - iii. when relevant, appoint and fix the remuneration of the Company's Auditor; and

- iv. transact any other business which under this Constitution as determined by the Board may be transacted at a general meeting.
- b. Before or at the Annual General Meeting, the Board must give information to the Members about the Company's activities and finances during the period since the last Annual General Meeting.
- c. The Chair of the Annual General Meeting must give Members a reasonable opportunity to ask questions or make comments about the management of the Company.

17. Quorum at General Meetings

- a. No business may be conducted at a general meeting (including an Annual General Meeting) unless a quorum of Members is present, in person or by proxy, when the meeting proceeds to business.
- b. A quorum of Members is not fewer than seven Members entitled to vote.
- c. A general meeting without a quorum present within 30 minutes after the time specified for the meeting in the notice of meeting is:
 - i. if the meeting was convened on the requisition of Members under clause 13(d) or 14(a), automatically dissolved; or
 - ii. otherwise adjourned to the date, time and place the Directors specify.
 If the Directors do not specify one or more of those things, the meeting is adjourned to:
 - iii. if the date is not specified, the same day in the next week;
 - iv. if the time is not specified, the same time; and
 - v. if the place is not specified, the same place.
- d. If a quorum is not present at the adjourned meeting within 30 minutes after the time specified for the meeting, the meeting is dissolved.
- e. In determining whether a quorum is present, a person may only be counted once (even if that person is a proxy for one or more Members).

18. Auditor's right to attend meetings

- a. The Company's Auditor may attend any general meeting and be heard by the Members on any part of the business of the meeting that concerns the Auditor in the capacity of auditor.
- b. The Company must give the Auditor any communications relating to the general meeting that a Member is entitled to receive.

19. Chair of General Meetings

The Chair of the Board, or in the Chair's absence, the Deputy Chair of the Board, presides as chair at every general meeting. If neither of such Directors is present or willing to be chair within 20 minutes after the time appointed for the start of the meeting, the Directors present must choose one of their number as chair of the meeting.

20. Adjournment of General Meetings

- a. The chair of a meeting at which a quorum is present:
 - i. may adjourn a meeting with the meeting's majority consent; and
 - ii. must adjourn a meeting if the majority of the meeting directs the chair to do so.
- b. An adjourned meeting may take place at a different venue to the initial meeting.
- c. The only business that can be conducted at an adjourned meeting is the unfinished business of the initial meeting as set out in the notice.

- d. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- e. Notice of an adjourned meeting must only be given if a general meeting has been adjourned for one month or more. If notice is required, it must be at least 14 days' notice.
- f. No poll may be demanded on the question of adjournment of a meeting except by the chair.

21. Right to Vote at General Meeting

Every member has one vote.

22. Chair's Casting Vote at General Meetings

In the case of an equality of votes, the chair of the general meeting does not have a casting vote.

23. Proxy

- a. A Member may by notice to the Secretary appoint another Member as the Member's proxy to attend and vote at general meetings instead of the Member. Any proxy has the same right as the Member to speak at the meeting. Appointment of such proxy must be notified in writing to the Secretary at least 7 days prior to the meeting.
- b. The notice must be in a form approved by the Board.
- c. The notice must be signed by the appointor.
- d. The notice may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy must not vote in any other way. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- e. The Company will provide the appointor with at least 48 hours before the meeting if it determines that the proxy notice is not valid.
- f. If a Company meeting has been adjourned, a notice and any authority received by the company at least 72 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- g. A proxy instrument received at an electronic address specified in the notice of meeting for the receipt of proxy instruments will be taken to have been signed if the appointment of the proxy:
 - i. includes or is accompanied by a personal identification code allocated by the Company to the Member making the appointment; or
 - ii. has been authorised by the Member in another manner approved by the Directors and specified in or with the notice of meeting.
- h. A vote cast by a proxy is valid if the notice has been received by the Company even if before the meeting occurs the appointor:
 - i. died;
 - ii. became mentally incapacitated; or
 - iii. revoked the proxy,
 unless written notice of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

24. Members' Resolutions and Members' Statements

- a. At least five Members may give:
 - i. written notice to the Company of a resolution they propose to move at a general meeting (Members' Resolution), and/or

- ii. a written request to the Company that the Company give all of its Members a statement from the members about a proposed resolution or any other matter that may properly be considered at a general meeting (Members' Statement).
- b. A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the Members' Resolution.
- c. A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.
- d. Separate copies of a document setting out the notice of the Members' Resolution or Members' Statement may be signed by Members if the wording is the same in each copy.
- e. If the Company has been given notice of a Members' Resolution under sub-paragraph (a)(i), the Members' Resolution must be considered at the next general meeting.
- f. This clause does not limit any other right that a Member has to propose a resolution at a general meeting, subject to the requirements of this Constitution.

25. Company must give notice of proposed Members' Resolution or distribute Members' Statement

- a. If the Company has been given a notice of a Members' Resolution or request to distribute a Members' Statement under clause 24(a):
 - i. in time to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice for a scheduled general meeting, it must do so at the Company's cost, or
 - ii. too late to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice for a scheduled general meeting, then the Company may elect to send to the Members or notify the Members who proposed the Members' Resolution or made the request to distribute the Members' Statement for such Members to pay the expenses reasonably incurred by the Company 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 Company must pay these expenses.
- b. The Company does not need to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members if:
 - i. it is more than 1,000 words long;
 - ii. the Directors consider it may be defamatory;
 - iii. sub-paragraph (a)(ii) applies, and the Members who proposed the resolution or made the request have not paid the Company 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
 - iv. in the case of a proposed Members' Resolution, the Board acting reasonably decides that 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.

26. Circular Resolutions

- a. Circular Resolutions will not be used for passing resolutions of Members, unless an Annual General Meeting or general meeting has first been held and the specific matter that is the subject of the Circular Resolution has been discussed and

- agreed by the Members present and approved by a special majority (more than 75% of Members present at the meeting). Such Circular Resolution is passed (i) if all Members who attended the meeting unanimously pass the Circular Resolution, and (ii) on the day which the Circular Resolution is approved by all such Members.
- b. Subject to paragraph (d), the Board may put a resolution to the Directors to pass a resolution of the Board without a Board meeting being held (a Circular Resolution).
 - c. The Board Secretary must notify the Board as soon as possible that a Circular Resolution has or will be put to Directors and provide the wording of the Circular Resolution.
 - d. Circular Resolutions cannot be used:
 - i. for a resolution to remove an Auditor, appoint a Director or remove a Director;
 - ii. for passing a special resolution, or
 - iii. where the *Corporations Act* or this Constitution requires a meeting to be held.
 - e. A Circular Resolution is passed in accordance with the *Corporations Act*:
 - i. if all Directors entitled to vote unanimously pass the Circular Resolution; and
 - ii. on the day on which the Circular Resolution is approved by all the Directors.
 - f. Directors and Members may sign:
 - i. a single document setting out the Circular Resolution and containing a statement that they agree to the resolution, or
 - ii. separate copies of that document, as long as the wording is the same in each copy; or
 - iii. provide an electronic approval (such as email or electronic signature) approving the Circular Resolution.
 - g. The Company may send a Circular Resolution by email to Directors and Members. Directors and Members may agree to the Circular Resolution by sending a reply email to that effect to the Company, including a statement that they approve the Circular Resolution in their reply.

27. Resolutions and Polls at General Meetings

- a. An ordinary resolution (not being a special resolution) is carried if a majority (greater than 50%) of the votes cast at a general meeting approve the resolution. Subject to the requirements of the *Corporations Act*, a special resolution is carried if a special majority (75%) of the votes cast at a general meeting approve the special resolution.
- b. A resolution put to the vote of a meeting is decided on a show of hands unless a poll for voting on the resolution is demanded by:
 - i. the chair of the meeting; or
 - ii. any five Members who have the right to vote at the meeting and who are present in person or by proxy.
- c. A poll for a resolution may be demanded:
 - i. before a vote by a show of hands for the resolution takes place;
 - ii. after a vote on a show of hands for the resolution takes place but before the declaration of the result of the show of hands; or
 - iii. immediately after the declaration of the result of voting for the resolution by a show of hands.
- d. Unless a poll is demanded:
 - i. a declaration by the chair of the meeting that a resolution has been carried or lost; and

- ii. an entry to that effect in the minutes of the meeting, are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- e. The demand for a poll may be withdrawn.
- f. A poll must be taken at the time and in the manner that the chair of the meeting directs.
- g. After a poll has been demanded at a meeting for a resolution, the meeting may continue for the transaction of the remaining business of the meeting (other than the resolution on which the poll was demanded).
- h. A decision of a general meeting on a resolution may not be invalidated on the ground that a person voting at the meeting was not entitled to do so.
- i. A challenge to a right to vote at a general meeting may only be made at the meeting. The chair must determine such challenge and such determination is final.

28. Management of the Company

- a. The Company's business is managed by or under the direction of the Board which may exercise all the Company's powers which are not required by this Constitution or any law to be exercised by the Company in general meeting.
- b. The Board must decide on the responsible financial management of the Company including but not limited to:
 - i. any suitable written delegations of power to a committee of the Board or to the Executive, and
 - ii. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- c. The Board cannot remove a Director or Auditor unless in accordance with this Constitution.
- d. A resolution at a general meeting is required to remove Directors and Auditors.
- e. The Company may sign a document if the document is signed by:
 - i. two Directors of the Company, or
 - ii. a Director and the Secretary; or
 - iii. in accordance with a delegation of power granted by the Board.

29. Composition of the Board

- a. The Board consists of at least three but not more than nine Directors elected by the Board and approved by Members at a general meeting and in accordance with this Constitution.
- b. The Directors in office on the date this Constitution is adopted by the Company continue in office subject to this Constitution.
- c. A Director must retire from office at the conclusion of the third annual general meeting after the Director was last elected and confirmed.
- d. Subject to paragraph (e), a retiring Director is eligible for re-election to the Board.
- e. Subject to paragraph (f), any person who has been a Director for nine consecutive years is not eligible to be a Director for a period of two years after those nine years' service.
- f. The Directors may, by a two-thirds majority, resolve that a person is eligible to be a Director and to be re-elected as a Director if that person would otherwise not be eligible solely by operation of paragraph (e).
- g. A person is not eligible for election or appointment as a Director:

- i. unless the person is a Member and has signed a commitment to the Company's Object; and
 - ii. if the person has been prohibited from being a director or a responsible entity by virtue of the *Corporations Act* or the *Australian Charities and Not-For-Profits Commission Act*;
 - iii. unless the person has a current Working With Children Check clearance;
 - iv. unless the person satisfies the "fit and proper" person requirements of the *Australian Education Regulation 2013* (Cth) and of the *Education Act 1990* (NSW).
- h. A person is not eligible for election and approval as a Director at any General Meeting unless the person or some other Member has at least 28 days before the meeting left at the office a notice (endorsed with the person's consent) proposing the person for election as a Director (if a person is recommended by the Board for election, such notice is not required).
- i. At each annual general meeting, the Members are to elect and confirm Directors to fill the vacancies on the Board. Election of each of the Directors may occur by:
 - i. *separate resolution*: a separate resolution for each Director; or
 - ii. *joint resolution*: the Members present at the meeting first pass a resolution that the election of the Directors may be voted on together, and no votes are cast against that resolution. If a vote is cast against the joint resolution, the election of Directors will be performed by a separate resolution for each Director.
- j. The Board may at any time appoint any Member as an additional Director provided that the maximum number of Directors fixed by paragraph (a) is not exceeded.

30. Casual Vacancies on the Board

- a. Any casual vacancy on the Board may be filled by the Directors appointing a person from among the Members. A Director appointed in this way holds office until the next annual general meeting. The new Director must retire at that meeting but is eligible for re-election.
- b. The Board may act even if there are vacancies on the Board.
- c. If at any time the number of Directors in office is fewer than three, the Board may meet and act only:
 - i. to appoint a Director;
 - ii. to elect a person as a Member of the Company; or
 - iii. to convene a general meeting.

31. Defect in Election or Appointment

If it is discovered that:

- a. there was a defect in the election or appointment of a person as a Director; or
- b. a person elected or appointed as a Director is disqualified or removed as a Director by the Board,

all acts of the Board before the discovery was made are as valid as if the person had been duly elected or appointed and was not disqualified or removed.

32. Directors' duties

The Directors must comply with their duties as directors under legislation and the common law (found in cases decided by judges in court) and with the duties described in Governance Standard 5 of the Regulations made under the *Australian Charities and Not-For-Profits Commission 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 that individual was a director of the Company;
- b. to act in good faith in the best interests of the Company and to further the charitable Object of the Company;
- 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;
- f. to ensure that the financial affairs of the Company are managed responsibly; and
- g. not to allow the Company to operate while it is insolvent.

33. Prohibition of fees to Directors

Except as provided in clause 4(c), the Company must not pay fees to Directors.

34. Confidentiality

Every Director, Member and other agent or officer of the Company must keep confidential all aspects of all transactions of the Company, except:

- a. to the extent necessary to enable the person to perform the person's duties to the Company;
- b. as required by law;
- c. when requested to disclose information by the Board to the Company's Auditor or a general meeting of the Company;
- d. the information is already in the public domain; or
- e. as otherwise permitted by the Board.

35. Minutes

- a. The Company must cause minutes to be made of:
 - i. the names of the Directors, Members and other attendees present at all general meetings, Board meetings and meetings of Board committees;
 - ii. all proceedings of general meetings, Board meetings and meetings of Board committees;
 - iii. all appointments of officers;
 - iv. all orders made by the Board and Board committees; and
 - v. all disclosures of interests made pursuant to clause 32.
- b. The chair of the meeting or the chair of the next meeting of the relevant body must sign the Minutes and once signed, they are as between the members of that body conclusive evidence of the matters stated in them.

36. Committees

The Board may delegate any of its powers to committees consisting of such persons as it thinks fit (provided that at least one of those persons is a Director) and may revoke such delegation. Any committee so formed must conform to any rules imposed upon it by the Board.

37. Secretary

- a. The Board must appoint a Secretary for such term, at such remuneration (if any) and upon such conditions as it thinks fit.
- b. The Secretary may be removed by the Board.
- c. The Secretary may be, but need not be, a Member.

38. Indemnity

To the maximum extent permitted by law, the Company indemnifies any current or former officer of the Company out of the assets of the Company against:

- a. any liability directly incurred by the person in that capacity (except a liability for legal costs);
- b. reasonable legal costs directly incurred in defending or resisting or otherwise in connection with proceedings, whether civil or criminal or of an administrative or investigatory nature against the person or in which the person becomes involved because of that capacity (Legal Proceedings); and
- c. reasonable legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company.

39. Insurance

To the maximum extent permitted by law, the Company may enter into, and pay a premium for, a contract insuring a person who is or has been an officer of the Company against a liability incurred by the person as an officer of the Company, including a liability for legal costs, except in circumstances prohibited by the Corporations Act.

40. Directors' access to documents

- a. A Director may access the Company's financial records at all reasonable times provided reasonable request is provided to the Company.
- b. The Company must give a Director access to the following documents upon reasonable request, published to the Directors or to the members of a Board Committee, or tabled at a meeting of the Directors or a Board Committee, where the publication or tabling occurred when the Director was a director, unless the retention period under the *Corporations Act* has expired:
 - i. Board papers and papers for any Board Committee;
 - ii. submissions to, and presentations at, Board or Committee meetings;
 - iii. other documents tabled at Board or Committee meetings; and
 - iv. minutes of Board and Committee meetings.
- c. The Company must give a former Director access to the documents referred to in paragraphs (a) and (b) but only for the period of seven years after the Director ceases to be a Director and for the purposes of Legal Proceedings in which it is alleged that the Director has done or omitted to do some act, matter or thing in the Director's capacity as a Director or otherwise in connection with the Director holding office as a director of the Company and:
 - i. to which the Director is a party;
 - ii. that the Director proposes in good faith to bring; or
 - iii. that the Director has reason to believe will be brought against the Director; or for a longer period if a document is relevant to such Legal Proceedings and they have not concluded in the seven-year period.

41. Contract

The Company may enter into an agreement with an officer of the Company with respect to the matters referred to in clauses 38, 39 and 40.

42. Company's financial year

The Company's financial year is from 1 January to 31 December, unless the Board resolve to change the financial year.

43. Financial Report

- a. The Board must cause the Company to prepare a financial report of the Company's business in accordance with the *Corporations Act*, the *Australian*

Charities and Not-For-Profits Commission Act and the Australian Charities and Not-For-Profits Commission Regulation.

- b. The Board must cause the financial report to be:
 - i. audited; and
 - ii. presented to the annual general meeting of the Company;
- c. The Board must send a copy of the financial report to all persons entitled to it.
- d. The financial report when audited (and, if required, approved by a general meeting) is conclusive except as regards any material error discovered in the report within six months after its approval. Whenever any material error is discovered within that period, the financial report must immediately be corrected and then it is conclusive.

44. Form of notice

Notices must be in writing.

45. Means of Giving Notice

- a. The Company may serve a notice on a Member by:
 - i. serving it personally on the Member;
 - ii. leaving it at the Registered Address;
 - iii. sending it by post in a prepaid envelope addressed to the Member at the Registered Address; or
 - iv. sending it by electronic mail to the Registered Address.
- b. Any notice sent by post is taken to have been served on the fifth business day following that on which the envelope containing the notice is posted. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and put into a post box at the post office or elsewhere. A certificate in writing signed by a Company officer that the envelope containing the notice was so addressed and posted is conclusive.
- c. Any notice sent by electronic mail is taken to have been served when the transmission is sent.
- d. Any notice served in accordance with this clause is taken to have been properly served even if the Member is then dead or bankrupt and whether or not the Company has notice of the death or bankruptcy.
- e. The signature to any notice given by the Company may be written or printed and a facsimile of the signature is acceptable.
- f. Where a period of notice is required to be given, the day on which the notice is served and the day of doing the act or other thing is not included in the number of days or other period.

46. Definitions

In this Constitution, the following words and expressions have the meanings indicated unless the context requires otherwise.

"Auditor" means the person or firm appointed as auditor for the Company.

"Board" means the Company's Board of Directors assembled at a meeting of Directors in accordance with this Constitution.

"Company" means Newcastle Grammar School Limited.

"Constitution" means the Constitution of the Company as amended from time to time.

"Member" means a person shown as a Member on the Register.

"Notice" includes all written communications to Members.

"Office" means the Company's registered office.

"Register" means the Company's register of Members.

"Registered Address" means the last known address (whether a street address, a post office box address or an email address) of a Member as noted in the Register.

"Secretary" means any person appointed by the Board to perform the duties of a secretary of the Company and includes an Honorary Secretary.

"School" means Newcastle Grammar School.

47. Interpretation

- a. Words importing the singular number include the plural and the converse applies.
- b. Words importing persons include corporations, companies, associations and institutions.
- c. A reference to the *Corporations Act* is a reference to the *Corporations Act* as modified or amended from time to time.
- d. A reference to the *Australian Charities and Not-For-Profits Commission Act* is a reference to the *Australian Charities and Not-For-Profits Commission Act* as modified or amended from time to time.
- e. Unless a contrary intention appears in this Constitution:
 - i. an expression in this Constitution has the same meaning as in that part of the *Corporations Act* which deals with the same matter as this Constitution; and
 - ii. an expression which is given a general meaning by the *Corporations Act* has the same meaning in this Constitution.
- f. The replaceable rules set out in the *Corporations Act* do not apply.
- g. While the Company is a registered charity, the *Australian Charities and Not-For-Profits Commission Act* and the *Corporations Act* override any clauses in this Constitution which are inconsistent with those Acts.
- h. If the Company 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.
- i. Unless the context otherwise requires, headings are for ease of reference only and do not affect the construction of this Constitution.