

# **CONSTITUTION OF MARY MACKILLOP TODAY**

Australian Company Number (ACN) **808 531 480**

Australian Business Number (ABN) **88 808 531 480**

A company limited by guarantee

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## **1. Defined terms and interpretation**

### **1.1 Defined Terms**

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) sets out the rules of interpretation which apply to this constitution; and
- (c) clarifies the effect of the *Corporations Act* on this constitution

### **1.2 Interpretation**

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution

## **2. Nature of company and liability**

### **2.1 Nature of company**

The company is a public company limited by guarantee.

### **2.2 Liability of each member is limited**

The liability of each member is limited. Each member guarantees to contribute up to a maximum of ten dollars to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

## **3. Preamble**

Saint Mary MacKillop read the signs of her times in the light of the Christian Gospel. Empowered by her absolute confidence in God's divine love and providence, Mary chose to live out God's mission by responding to the needs of her time wherever those needs were exposed. Today the Sisters of St Joseph, the Congregation she founded, are committed to the long-term sustainability of this mission and Mary MacKillop's and Julian Tenison Woods' legacy.

Mary MacKillop Today shall conduct itself in accordance with the spirit and traditions of the Congregation of the Sisters of St Joseph of the Sacred Heart which include commitment to:

- Working in partnership with others to further the mission of the Congregation;
- Searching for justice and reaching out in compassion to bring the gospel of Jesus

Christ to those in need;

- Working with others especially the poor in Australia and overseas within the limits of human weakness and frailty but trusting in and dependent upon God;
- Respect for the uniqueness of each person and to awaken in all people a sense of their worth and dignity;
- Respect and care for the total needs of the human person.

#### **4. Objects and activities of the company**

##### **4.1 Purpose**

The principal purpose for which the company is established is to advance social and public welfare by bringing dignity and justice to marginalised, dislocated, vulnerable, poor and destitute people and communities by:

- relieving suffering, destitution, helplessness and poverty;
- relieving distress caused by poverty, disability, mental and physical illness, misfortune or lack of basic resources;
- working in partnership with Aboriginal and Torres Strait Islander communities;
- building capacities in communities and people that result in self-determination, freedom and human dignity; and
- promoting long term development.

This includes through the operation of an overseas development fund.

##### **4.2 Activities**

Without limiting or derogating from the inherent powers of the company in any way, and in the furtherance of the company's purpose, the activities of the company include:

- (a) developing, implementing, administering, managing, coordinating and evaluating programs, projects, initiatives and/or innovations that positively change lives and communities, including within developing countries;
- (b) building capacity through participation, education and training, including within developing countries;
- (c) developing skills that foster income generation, financial literacy, budgeting, and Microfinance including within developing countries;

- (d) assisting and empowering groups within communities to meet the needs of their vulnerable, including within developing countries;
- (e) educating the Australian community with the aim of increasing its commitment to the company's purpose;
- (f) advocating for and supporting programs that encourage self-determination, including within developing countries;
- (g) securing funding and project partnerships with like-minded entities; and
- (h) undertaking any other activity incidental to or necessary for the furtherance of the purpose of the company.

## **5. Legal capacity and powers of the company**

Subject to certain powers that the Congregational Leadership Team has reserved to itself (as set out in this constitution), the company has all of the powers of a natural person and of a body corporate, including those set out in the *Corporations Act*.

## **6. Membership**

### **6.1 Members of the company**

- (a) Application for membership is made to the Congregational Leadership Team by the signing of an application in the form of Schedule 2.
- (b) The only persons eligible for membership of the company shall be the Congregational Leader or other members of the Congregational Leadership Team or any other member of the Congregation or other persons whom the Congregational Leader has appointed in writing for that purpose, notice of such appointment to be forwarded to the secretary of the company.
- (c) Upon receipt by the secretary of a signed application, together with the appointment referred to in rule 6.1(b) signed by the Congregational Leader, an eligible applicant shall be entered in the register as a member of the company in accordance with rule 6.4. The secretary must ensure that the applicant is given notice of admission as a member of the company.

### **6.2 Members rights**

Each member has the right to:

- (a) receive notices of and to attend and be heard at any general meeting of the company;
- (b) vote at any general meeting of the company; and
- (c) vote on written resolutions.

### **6.3 Membership not transferable**

No membership interest, benefit or right of any member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect same.

### **6.4 Register of Members**

- (a) A register of members must be kept in accordance with the *Corporations Act*.
- (b) Without limiting the requirement under rule 6.4(a), the following must be entered in the register in respect of each member:
  - (i) the name and address of the member;
  - (ii) the date of admission to and cessation of membership;
  - (iii) record of member's Police Check and Working with Children check; and
  - (iv) any other information required by the directors from time to time.

## **7. Removal and cessation of membership**

### **7.1 Resignation**

- (a) A member may resign from membership of the company by leaving written notice to that effect at the company's registered office addressed to the secretary, any member who ceases to be a member of the Congregation will be deemed to have resigned as a member of the company unless that person wishes to remain a member of the company reapplies and is re-appointed by the Congregational Leader.
- (b) Unless the notice provides otherwise, the resignation of a member is deemed to take effect from the date such notice is left at the registered office.

### **7.2 Expulsion of member**

- (a) Subject to rules 7.2(b) and 7.2(c), the members may resolve to expel a member from membership of the company if:



- (i) that member has wilfully refused or neglected to comply with the provisions of this constitution; or
  - (ii) if the conduct of that member, in the opinion of the members, is unbecoming of the member or prejudicial to the interests or reputation of the Company.
- (b) Before considering any resolution under rule 7.2(a), the company must give that member at least 14 days written notice of the date on which the resolution is to be considered by the members. The written notice must inform the member:
  - (i) that the members are to consider expelling the member from membership of the company;
  - (ii) of the reasons why the member is to be expelled; and
  - (iii) of the right to give the members, either orally or in writing, any explanation or defence of the decision to expel that member.
- (c) A member subject to a resolution under rule 7.2(a), is not entitled to vote on that resolution.
- (d) Where a resolution is passed under rule 7.2(a), the company must give that member notice in writing of the expulsion within 10 Business Days of the resolution.
- (e) A resolution passed under rule 7.2(a) takes effect on the date of the resolution unless the resolution states otherwise.
- (f) The members may reinstate an expelled member on any terms and at any time as they resolve by special resolution.

### **7.3 Cessation event**

- (a) A member will cease to be a member of the company if:
  - (i) the member dies, or, in the case of a member that is a body corporate, is wound up;
  - (ii) the member becomes bankrupt, or, in the case of a member that is a body corporate, becomes insolvent;
  - (iii) the member becomes *of* unsound mind;
  - (iv) if convicted of a criminal offence;

- (v) is charged with an offence which, if found to be proven, could carry a custodial sentence of 12 months or more;
- (vi) the member ceases to satisfy any eligibility criteria associated with membership and fails to remedy the situation in accordance with the terms and timeline notified to the member by the members.

#### **7.4 Congregational Leader Determination**

Notwithstanding any other provision of this constitution membership of the company shall cease if the Congregational Leader, after consultation and with the consent of the Congregational Leadership Team so determines and advises the secretary of this determination.

### **8. No profits for members**

#### **8.1 Transfer of income or property**

Subject to the operation of rule 8.2, the assets and income of the company must be applied solely in furtherance of the objects of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.

#### **8.2 Payments, services and information**

The Company may, with the approval of the directors, make payment in good faith to a member of the Company:

- ... (a) By way of reasonable and proper remuneration for any goods supplied or services rendered to the Company ;
- ... (b) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the Company's bankers on overdrawn accounts;
- ... (c) by way of reasonable and proper rent for premises let by that member to the Company; and
- ... (d) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the Company.

### **9. Fees**

Unless otherwise determined by the directors and subject to the *Corporations Act*, no membership joining fee or annual membership fee is payable.

## **10. General meetings**

### **10.1 Convening of general meetings**

- (a) Subject to rule 11.5(b), a general meeting of members may be convened by:
  - (i) a resolution of the directors;
  - (ii) the members or the court in accordance with the *Corporations Act*; or
  - (iii) Chair of Members.
- (b) The company must hold an annual general meeting if required by, and in accordance with, the *Corporations Act*.
- (c) A meeting of members may be held in 2 or more places linked together by any technology so long as it:
  - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the Chair of Members to be aware of proceedings in each place; and
  - (iii) enables the members in each place to vote on a show of hands and on a poll.

### **10.2 Notice of general meetings**

- (a) Subject to the provisions of the *Corporations Act* relating to special resolutions and consent to short notice, at least 21 days' notice of a general meeting must be given to each person who is at the date of the notice:
  - (i) a member of the company eligible to receive notices of meetings;
  - (ii) a director of the company; or
  - (iii) an auditor of the company.
- (b) A notice of a general meeting must specify the date, time and place of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this) and state the general nature of the business to be transacted at the meeting and any other matters required under the *Corporations Act*.

- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present, whether the person is a member or not.

### **10.3 Quorum at general meetings**

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is:
  - (i) one half of the current number of members; or
  - (ii) in case of an uneven number, the majority of members present .
- (c) If a quorum is not present within 15 minutes after the time appointed for a general meeting:
  - (i) the meeting stands adjourned to the same day in the next week at the same time and place;
  - (ii) if, at the adjourned meeting, a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting must be dissolved.

### **10.4 Chair of general meetings**

- (a) The Congregational Leader shall appoint the Chair of Members from among the members who are willing to accept that role.
- (a) The Chair of Members shall be the chair at every general meeting of the company or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting, then the members present shall elect one of their number to be the chair of that general meeting.

### **10.5 Conduct of general meetings**

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
  - (i) proper and orderly debate or discussion; and
  - (ii) the proper and orderly casting or recording of votes at the general meeting.

- (b) The chair of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

## 10.6 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (which for the avoidance of doubt includes being present by technological means) and that decision is for all purposes a decision of the members.
- (b) Subject to the *Corporations Act*, in the case of an equality of votes upon any proposed resolution at a meeting of members::
  - (i) the chair of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded.
- (d) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried 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.
- (e) If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (f) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (g) The demand for a poll may be withdrawn.

## 10.7 Voting rights

- (a) Each member has the right to exercise one vote on a show of hands and on a poll.
- (b) A member is not entitled to vote on any resolution where that vote is prohibited by the *Corporations Act* or an order of a court of competent jurisdiction. The company must disregard any vote on a resolution purported to be cast by a member where that person is not entitled to vote on that resolution.

## 10.8 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members must vote in person :

## 10.9 Resolutions without meetings

- (a) The company may pass a resolution without a general meeting being held, if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For the purposes of rule 10.9(a):
  - (i) the document may be sent to members in any manner described in rule 17;
  - (ii) the resolution is passed when the last member signs;
  - (iii) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy; and
  - (iv) a signature of a member transmitted to the company by facsimile or other technological means (such as by email) is sufficient evidence of signature so long as the original is produced within 30 days of signing.
- (c) Members may not resolve to remove an auditor under rule 10.9(a) and instead must do so at a general meeting of members.
- (d) Where a document is signed in accordance with rule 10.9(a) the document is to be taken as a minute of the passing of the resolution.

## 11. Directors

## 11.1 Appointment and removal of directors

- (a) The minimum number of directors is **6**. The maximum number of directors is **9**.
- (b) Subject to rules 11.1(a) and 11.1(e), the, Congregational Leadership Team, shall, from persons who have applied to it for the role and who must satisfy a Police Check and hold a Working With Children Check,
  - (i) appoint any natural person to be a director; and
  - (ii) at the time the appointment takes place, determine the term of office of any director appointed under this rule 11.1 (b).
- (c) Subject to rules 11.1(a), 11.1(e) and 11.5(b), the directors may:
  - (i) with the approval of the Congregational Leadership Team, appoint any natural person to be a director, to fill a casual vacancy; and
  - (ii) at the time the appointment takes place, the term of office of any director appointed under this rule 11.1 (c) shall align with the term of office of the director whose casual vacancy is being filled.
- (d) Subject to rule 11.1 (e), each director is to remain as a director until the term of her or his office expires or until he or she resigns, is expelled or is otherwise removed as a director of the company in accordance with the *Corporations Act* and this constitution. For the avoidance of doubt, a previous director of the company is, subject to the *Corporations Act* and this constitution, eligible for reappointment or re-election.
- (e) One third of the directors or the nearest number to one third shall retire annually. A retiring director shall be eligible for reappointment at the annual general meeting unless after retirement that director should be commencing a tenth consecutive year (calculated as from the date of his or her appointment). For the purpose of determining those directors who will retire during the first three years following the annual general meeting of the company in 2017, the members shall upon the appointment of directors determine which of the directors being appointed and/or reappointed shall have terms of appointment of one, two or three years. At the expiration of the one, two or three year term, each director subsequently appointed or reappointed shall have a three year term provided however no person is permitted to hold the office of director of the company for any more than nine continuous years. For the avoidance of doubt, a person having held office as a director for nine continuous years, is eligible for reappointment once a period of 12 months has expired since he or

she last held office as a director of the company or if the Congregational Leadership Team are of the opinion (as evidenced in writing to the Chair of the Board) that there are special reasons which make it in the interest of the company that a person who has been a director continuously for nine years may be reappointed.

The members may resolve to remove and replace one or more directors which, for the avoidance of doubt, includes the removal and replacement of all directors at the same time.

## **11.2 Vacation of office**

- (a) In addition to the circumstances prescribed by the *Corporations Act*, the office of any director becomes vacant if the director:
  - (i) dies;
  - (ii) becomes of unsound mind;
  - (iii) becomes bankrupt;
  - (iv) is convicted of a criminal offence; or
  - (v) is charged with an offence with, if found to be proven, could carry a custodial sentence of 12 months or more;
  - (vi) fails to attend more than three consecutive directors' meetings in any 12 month period without leave of absence approved by the directors.
- (b) Nothing in rule 11.2(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

## **11.3 Payments to directors**

- (a) Subject to rule 11.3(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees but will not otherwise receive any payment for acting as a director
- (b) The directors are not entitled to receive directors' fees for their service on the board of the company
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the



company to a director until that payment is approved by the directors or such other person or persons to which the directors may have delegated such authority.

#### **11.4 Interested directors**

Subject to rule 8:

- (a) A director may hold any other office, other than auditor, in the company or a related body corporate in conjunction with his or her directorship. A director may be appointed to that office on the terms as to remuneration, tenure of office and otherwise as the directors determine.
- (b) A director of the company may be a director or other officer of:
  - (i) a related body corporate;
  - (ii) a body corporate promoted by the company; or
  - (iii) a body corporate in which the company is interested, as shareholder or otherwise,

or be otherwise interested in any of those bodies corporate. A director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.
- (c) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation, being employed by the company or acting in any professional capacity, other than auditor, on behalf of the company.
- (d) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is voided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (e) No director contracting with the company or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.

- (f) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with section 195(2) of the *Corporations Act*, or another exception applies under the *Corporations Act*, which permits that director to do so.
- (g) Subject to rules 11.4(h) and (i), a director who is in any way interested in a contract or arrangement or proposed contract or arrangement (other than by having a material personal interest) may, despite that interest:
  - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
  - (ii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (iii) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things.
- (h) Rule 11.4(g) does not apply if, and to the extent that, it would be contrary to Chapter 2D.1, Division 2 of the *Corporations Act* or any other provision of the *Corporations Act*.
- (i) Subject to rule 11.5(b), the directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the *Corporations Act* to disclose interests to the company.

## **11.5 Powers and duties of directors**

- (a) The directors are responsible for managing the business of the company and may, subject to rule 11.5(b), exercise to the exclusion of the company in general meeting all the powers of the company which are not required by the *Corporations Act* or this constitution to be exercised by the company in general meeting.
- (b) The members may from time to time limit the power of directors by requiring the directors to seek the approval of members before making certain specified

decisions or taking certain specified actions. The scope and nature of the actions and decisions requiring member approval will be notified to the directors in writing from time to time (**Member Approval Notice**). The directors must not make any decision or take any action on a matter contemplated by a current Member Approval Notice without the prior written consent of the members. The subject matter of a Member Approval Notice and the decision on whether to approve a decision or action of the directors must both be determined by special resolution of the members.

The directors acknowledge that the Member Approval Notice from time to time will always contain the following decisions or actions:

- i) any action or decision not in conformity with rule 3 or 4 of this constitution;
- ii) any decisions concerning long-term strategic plans;
- iii) any merger, acquisition or divestment of activities of the Company
- iv) any proposal to purchase or sell land or buildings; or
- v) any decision, proposing to enter into a commercial financial borrowing arrangement requiring borrowings exceeding \$500,000.00 or requiring repayment arrangements over a period exceeding 3 years.

#### **11.6 Proceedings of directors**

- (a) The directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) Subject to the *Corporations Act*, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of directors and all the provisions in this constitution relating to meetings of directors apply, so far as they can *and* with such changes as are necessary, to meetings of directors held using a form of technology.

#### **11.7 Convening of meetings of directors**

- (a) The Chair of the Board or the Chair of the Members may, whenever he or she thinks fit, convene a directors' meeting.
- (b) The secretary must, on the requisition of the Chair of the Board or the Chair of Members, ensure that a directors' meeting is convened.

### 11.8 Notice of directors' meetings

- (a) Subject to this constitution, notice of a directors' meeting must be given to each person who is at the time of giving the notice a director of the company, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting:
  - (i) must specify the time and place of and, if relevant, the form of technology for, the meeting;
  - (ii) must state the nature of the business to be transacted at the meeting; and
  - (iii) may be given in person, by post or, subject to the *Corporations Act*, by a form of technology.
- (c) A director may waive notice of a directors' meeting by notifying the company to that effect in person, by post or by a form of technology.
- (d) The non-receipt of notice of a directors' meeting by, or a failure to give notice of a directors' meeting to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the director:
    - (A) has waived or waives notice of that meeting under rule 11.8(c); or
    - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
  - (iii) the director attended the meeting.
- (e) Attendance by a person at a directors' meeting waives any objection that person may have to a failure to give notice of the meeting.

### 11.9 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of one half of directors. If one half of directors is not a whole number, the number must be rounded up to the nearest whole number.

- (c) For the avoidance of doubt, a director is present at a meeting if participating by electronic means such as by telephone.
- (d) If at any time there are not enough current directors to constitute a quorum, the remaining director or directors may, subject to rule 11.5(b), act but only in an emergency, for the purpose of convening a general meeting of the company or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum.
- (e) If, within 15 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

#### **11.10 Chair and deputy Chair of the Board**

- (a) The Congregational Leadership Team must, from among directors willing to accept that role, appoint at least one director to the office of Chair of the Board and may, subject to rule 11.1 (e), determine the period for which that person is, or those persons are, to be Chair of the Board
- (b) The directors appoint one or more of the directors to the office of deputy to Chair of the Board and may, subject to rule 11.1 (e), determine the period for which that person is, or those persons are, to be deputy to Chair of the Board.
- (c) A person may only fill the office of Chair of the Board or deputy to Chair of the Board for so long as that person is a director of the company.
- (d) The Chair of the Board must preside as chair at each directors' meeting.
- (e) If there is no Chair of the Board or if the Chair of the Board is not present within 15 minutes after the time appointed for a directors' meeting or is unwilling to act, then the deputy to Chair of the Board, if one has been elected, must preside as chair at the meeting.
- (f) If there is no chair and no deputy chair or if both the chair and deputy chair are not present within fifteen minutes after the time appointed for a directors' meeting or are both unwilling to act, then the directors present at that meeting must elect a person from among their number to be chair of the meeting or part of the meeting.

### 11.11 Decisions without meetings

- (a) An act, matter or thing is taken to have been done or a resolution passed by the directors if a document containing a statement to that effect is assented to by all of the directors other than:
  - (i) a director on leave of absence approved by the directors;
  - (ii) a director who disqualifies himself or herself from considering the act, matter or thing in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
  - (iii) a director who the directors reasonably believe is not entitled to do the act, matter or thing or to vote on the resolution in question,
 and the directors who assent to the document would have constituted a quorum at a directors' meeting held to consider that act, matter, thing or resolution.
- (b) The act, matter or thing is taken to have been done or the resolution passed when the document is last assented to by a director.
- (c) Two or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document.
- (d) A director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, facsimile, electronic, telephone or other method of written, audio or audio visual communication.
- (e) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next directors' meeting attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 11.12, the document is to be taken as a minute of a directors' meeting.

### 11.12 Committees

- (a) Subject to rules 11.5(b) and 11.13(b), the directors may at any time resolve to:

- (i) establish one or more committees consisting of such persons as they determine;
  - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
  - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated;
  - (iv) establish a committee on an on-going basis, for a specific period of time or until a particular task or objective has been completed; and
  - (v) change the makeup of a committee at any time or dissolve it all together.
- (b) No committee may be authorised to make any decision or take any action that binds the company or the directors in any way unless at the time the committee was established, and its particular task or objective defined, the giving of such authorisation has been approved by a resolution passed by at least 75% of the directors eligible to vote on that resolution. For clarity, the approval of directors required under this paragraph (b) is an approval of general authorisation to the committee to carry out all tasks, actions and to make all decisions necessary to achieve the purpose for which the committee has been established.
- (c) A committee to which any powers have been delegated under this rule 11.13 must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation made under this rule 11.13.
- (e) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of each committee.

### **11.13 Delegation**

- (a) Subject to the *Corporations Act* and rules 11.5(b) and 11.13(b), the directors may resolve to delegate any of their powers excluding the following powers which they reserve to themselves:
- (i) the appointment of or removal of the chief executive officer

- (ii) the right to delegate and the approval of any relevant schedule of delegations which the company creates from time to time
  - (iii) appointment of the secretary
  - (iv) approval of the company's annual budget
  - (v) approval of the company's investment policy and strategy
  - (vi) the determination of the company's risk appetite and risk strategy.
- (b) No person may be authorised to make any decision or take any action that binds the company or the directors in any way unless at the time the director/s, member/s or employee/s were notified, and their particular task/s or objective/s defined, the giving of such authorisation has been approved by a resolution passed by at least 75% of the directors eligible to vote on that resolution. For clarity, the approval of directors required under this paragraph (b) is an approval of general authorisation to the director/s, member/s or employee/s to carry out all tasks, actions and to make all decisions necessary to achieve the purpose for which the director/s, member/s or employee/s were chosen.
- (c) The directors may delegate their powers for such time as they determine and may revoke or vary any power delegated under rule 11.13(a) at anytime.
- (d) A person to whom any powers have been delegated under this rule 11.13 must exercise the powers delegated in accordance with any directions of the directors.
- (e) The directors may continue to exercise all of their powers despite any delegation made under this rule 11.13.

#### **11.14 Validity of acts**

An act done by a person acting as a director or by a meeting of the directors or a committee attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the



case may be, when the act was done.

## 12. Secretaries

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 12(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:
  - (i) ensuring that the necessary registers required to be kept by the *Corporations Act* are established and properly maintained;
  - (ii) ensuring that all returns required to be lodged with the Australian Securities and Investments Commission, and Australian Charities and Not for profits Commission, Department of Foreign Affairs and Trade or any other regulator are prepared and filed within appropriate time limits;
  - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes;
  - (iv) supervising the preparation of the company's tax returns; and
  - (v) ensuring that any other administrative functions that are necessary for the running of the company are carried out.
- (f) An act done by a person acting as a secretary is not invalidated by reason only of:
  - (i) a defect in the person's appointment as a secretary; or
  - (ii) the person being disqualified to be a secretary,
 if that circumstance was not known by the person when the act was done.

## 13. Seals

### 13.1 Adoption of common seal

- (a) The directors may determine that the company have a common seal or for the company to no longer have a common seal.
- (b) Rules 13.2, 13.3, and 13.4 only apply if the company has a common seal.

### 13.2 Safe custody of Seal

The directors must provide for the safe custody of the Seal.

### 13.3 Use of Seal

- (a) The Seal must be used only by the authority of the directors or a committee of the directors authorised to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Until the directors otherwise determine, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

### 13.4 Duplicate seal

- (a) The company may have for use in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

## 14. Winding up and revocation of endorsement

### 14.1 Winding up

- (a) If upon the winding up or dissolution of the company (other than for the purposes of reconstruction or amalgamation) there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to an organisation or organisations in Australia that:

- (i) is endorsed as a deductible gift recipient for the purpose of Australian taxation law;
  - (ii) has objects or purposes similar to those of the company; and
  - (iii) by its constituent rules, prohibits the distribution of its income and property amongst its Members to an extent at least as great as is imposed upon the company.
- (b) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 14.1(a):
  - (i) is to be determined by the Trustees at or before the winding up or dissolution of the company;
  - (ii) if no determination has been made by the Trustees under rule 14.1(b)(i) or if the Trustees are no longer in existence, is to be determined by the Roman Catholic Archbishop of Sydney; or
  - (iii) if required, by a member of a Court of competent jurisdiction.
- (c) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority

#### **14.2 Revocation of endorsement**

If the endorsement of the company as a deductible gift recipient is revoked, the *following* assets remaining after the payment of the company's liabilities shall be transferred to a fund, authority or institution which is charitable at law to which income tax deductible gifts can be made:

- (a) deductible gifts of money or property received for the principal purpose of the company;
- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the principal purpose of the company; and
- (c) money received by the company because of such deductible gifts and contributions.

#### **15. Minutes and records**

### 15.1 Minutes

The directors must cause minutes of:

- (a) proceedings and resolutions of general meetings;
- (b) proceedings and resolutions of directors' meetings and meetings of committees of the directors; and
- (c) resolutions passed by directors without a meeting,

to be recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed.

### 15.2 Signing of Minutes

- (a) Minutes of a meeting must be signed by the Chair of the Meeting or the chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

### 15.3 Minutes as evidence

A minute that is recorded and signed in accordance with rules 15.1 and 15.2 is evidence of the proceeding, a resolution to which it relates, unless the contrary is proved.

### 15.4 Inspection of records

- (a) Subject to the *Corporations Act* and rule 15.4(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company.
- (c) The company must establish and administer all registers required to be kept by the company in accordance with the *Corporations Act* and each member must provide the company with such information as is required for the company to comply with this rule 15.4(c). If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.

- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep the financial records required by the *Corporations Act*.

## **16. Indemnity and insurance**

### **16.1 Persons to whom rules 16.2 and 16.4 apply**

Rules 16.2 and 16.4 apply:

- (a) to each person who is or has been a director or secretary of the company;
- (b) to such other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate.

### **16.2 Indemnity**

The company may indemnify, to the extent permitted by law, each person to whom this rule 16.2 applies for all losses or liabilities incurred by the person as an officer and, if the directors so determine, an auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

### **16.3 Extent of Indemnity**

The indemnity in rule 16.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 16.2 applies even though that person may have ceased to be an officer or auditor of the company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not paid by insurance.

### **16.4 Insurance**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 16.4 applies against any liability incurred by the person as an officer or auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

## **16.5 Savings**

Nothing in rule 16.2 or 16.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

## **17. Notices**

### **17.1 Notices by the company to members**

- (a) A notice may be given by the company to a member:
  - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or any other address, or by facsimile or electronic mail to a facsimile number or electronic address, as the member has supplied to the company for the giving of notices; or
  - (ii) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- (b) The fact that a person has supplied a facsimile number or other electronic address for the giving of notices does not require the company to give any notice to that person using that method.
- (c) A signature to any notice given by the company to a member under this rule 17 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- (d) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

### **17.2 Notices by the company to directors and auditors**

Subject to this constitution, a notice may be given by the company to any auditor or

director either by serving it personally at, or by sending it by post in a prepaid envelope to, the auditor's or director's usual residential or business address, or such other address, or by facsimile or electronic mail to such facsimile number or electronic address, as the auditor or director has supplied to the company for the giving of notices.

### **17.3 Notices by members or directors to the company**

- (a) Subject to this constitution, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by facsimile or electronic mail to the principal facsimile number or electronic address at the registered office of the company.
- (b) The directors may resolve generally, or on a case by case basis, that a notice that is to be received by the company is not to be accepted if given by electronic means (excluding by facsimile).
- (c) If a resolution of the directors is passed under rule 17.3(b), the company must give sufficient notice of the resolution to those required to give the particular notice to allow for the giving of notice by other means.

### **17.4 Notices to members outside Australia**

A notice to be sent to a member outside Australia and its external territories must be sent by airmail, by facsimile or by electronic mail, or in another way that ensures it will be received quickly.

### **17.5 Time of service**

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile, the notice is to be taken to be given on the Business Day after it is sent.

- (c) Where a notice is sent by electronic mail, service of the notice is taken to be effected if the sender receives a confirmation of delivery and is to have been effected on the Business Day after it is sent.
- (d) Where the company gives a notice under rule 17.1 (a)(ii) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

#### **17.6 Other communications and documents**

Rules 17.1 to 17.5 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

#### **17.7 Notices in writing**

A reference in this constitution to a notice in writing includes a notice given by facsimile or another form of written communication.

### **18. General**

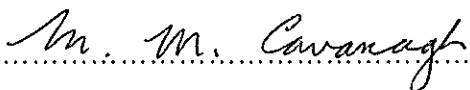
#### **18.1 Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

#### **18.2 Prohibition and enforceability**

Any provision of, or the application of any provision of, this constitution which is void, illegal, prohibited or unenforceable in any place:

- (e) is, in that place, ineffective only to the extent to which it is void, illegal, prohibited or unenforceable; and
- (f) does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

.....  


Sr Monica Cavanagh rsj

Congregational Leader



Chair of Members

Dated: 31 May 2018

## SCHEDULE 1 – DICTIONARY

### 1. Dictionary

In this constitution:

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

**Casual Vacancy** means vacating of office by a director for any reason under 11.2(a) or by resignation at any time during a period between two successive annual general meetings.

**Chair of the Board** is the chair appointed under rule 11.10(a).

**Chair of Members** is the chair appointed under rule 10.4.

**Congregation** means the women from time to time constituting the religious institute known as the Sisters of St Joseph of the Sacred Heart, having been founded in 1866 in Penola, South Australia by Mary MacKillop and Julian Tenison Woods.

**Congregational Leader** means the Congregational Leader for the time being of the Congregation or, in her absence, the Assistant Congregational Leader of the Congregation.

**Congregational Leadership Team** means the Congregational Leader and her councillors duly elected from time to time in accordance with the constitutions of the Congregation.

**Corporations Act** means *Corporations Act 2001 (Cth)*.

**Member Approval Notice** has the meaning given at rule 11.5(b).

**Microfinance (also called microcredit)** is a financial service often extended to unemployed or low income individuals most often associated with microloans (loans of limited amount) of no interest or low interest rates.

**Mission** means the principles set out in the preamble of rule 3.

**Police Check** means a report from federal or state police authorities relating to a particular person

**Seal** means any common seal or duplicate seal of the company.

**Surplus Assets** has the meaning given in rule 14.1(a).

**Trustees** means the Trustees of the Sisters of St Joseph from time to time, being established as a body corporate pursuant to the provisions of the *Roman Catholic Church Communities' Lands Act 1942* (NSW).

**Working with Children Check** means a report from Office of the Children's Guardian relating to a particular person.

## 2. Interpretation

### 2.1 General

- (a) A member is taken to be present at a general meeting if the member is present in person or by other technological means approved by the members for that meeting, such as by telephone;
- (b) A director is to be taken to be present at a directors' meeting if the director is present in person or by technological means approved by the directors for that meeting.
- (c) Where a provision of this constitution establishes an office of chair, the chair may be referred to as a chairperson, chairman or chairwoman, as the case requires.
- (d) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (e) In this constitution, headings and underlinings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing a gender include every other gender;
  - (iii) words *used to denote persons* generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (iv) a reference to a person includes that person's successors and legal personal representatives;

- (v) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **2.2 Application of the Corporations Act**

- (a) This constitution is to be interpreted subject to the *Corporations Act*.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the *Corporations Act*, has the same meaning as in that provision.
- (c) Subject to rule (b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the *Corporations Act* has the same meaning as in that section.

## **2.3 Exercise of powers**

- (a) The company may exercise in any manner permitted by the *Corporations Act* any power which under the *Corporations Act* a company limited by guarantee may exercise if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing *and* the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
  - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (ii) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
  - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
  - (i) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
  - (ii) the delegation may include the power to delegate; and
  - (iii) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

**2.4 Replacement rules do not apply**

The replaceable rules contained in the *Corporations Act* from time to time do not apply to the company.

**SCHEDULE 2 –****APPLICATION FOR MEMBERSHIP**

## Rule 6.1

Application for membership of the company

Mary MacKillop Today (Incorporated under *Corporations Act 2001*)

To the Congregational Leadership Team

I, .....

[Full Name Of Applicant]

Of .....

[Address]

Occupation .....

hereby apply to become a member of the above company. In the event of my admission as a member, I agree to be bound by the rules of the company for the time being in force.

.....

Applicant

Date: .....

I, .....

[Full Name Of Congregational Leader]

Of .....

[Address]

Congregational Leader, Sisters of St Joseph of the Sacred Heart

hereby appoint the above Applicant to become a member of the above company.

.....

Congregational Leader

Date: .....

