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# **Constitution**

**Loxton Lutheran School Incorporated**

**[Board and Membership model]**

*Endorsed by School Council on 30 July 2019*

*To be tabled for adoption at Special General Meeting 25<sup>th</sup> August 2019*



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# Loxton Lutheran School

Incorporated under the Associations Incorporation Act 1985

## Constitution

### Part 1 – Preliminary

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#### 1. Name

The name of the incorporated association is **Loxton Lutheran School Incorporated**.

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#### 2. Definitions

In this constitution:

**Act** means the *Associations Incorporation Act 1985 (SA)*;

**Bishop** means the Bishop of the LCA SA-NT District;

**Board** means the committee of management of the School;

**Board Member** means a member of the Board of the School;

**Business Day** means any day except a Saturday or Sunday or public holiday in South Australia;

**Business Manager** means the position of highest office of business administration in the school appointed by the Principal under rule 29.4;

**Christian** means a person who identifies with the Christian faith.

**Church** means the Lutheran Church of Australia Incorporated ABN 36 763 133 867;

**Commonwealth** means the Commonwealth of Australia;

**Confessional Basis** means the confessions of the Church held to by the School set out in rule 3;

**Executive Director** means the Executive Director and Chief Executive Officer of LESNW;

**Law** means the common law of, and any legislature in force in, the State (or States) in which the School operates and the Commonwealth;

**LCA SA-NT District Inc** means the Lutheran Church of Australia, South Australia and Northern Territory District Incorporated ABN 84 490 129 361;

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**LCA SA-NT District Church Council** means the committee of management (or governing council or board) of LCA SA-NT District;

**LEA** means Lutheran Education Australia Limited ABN 44 143 905 373;

**LEA Board** means the committee of management (or governing council or board) of LEA;

**LESNW** means Lutheran Education South Australia, Northern Territory and Western Australia Incorporated ABN 54 668 475 377;

**LESNW Board** means the committee of management (or governing council or board) of LESNW;

**Member** means a person that is a member of the School pursuant to rule 9;

**Objects** means the objects of the School set out in rule 4;

**Pastor** means a person who is on the roll of pastors of the Church as defined in Article 5 of the Constitution of the Church;

**Principal** means the principal of the School appointed by the Board under rule 29.2(a);

**School** means Loxton Lutheran School Incorporated ABN **74 761 361 828**;

**School Chaplain** means a person acting in a lay ministry role;

**Special Resolution** has the meaning given in rule 26.7(a);

**Spouse** means, in respect of a person:

- (a) that person's husband or wife; or
- (b) the partner of that person, who, although not legally married to that person, lives with that person in a de facto relationship (as defined in section 4AA of the *Family Law Act 1975* (Cth));

**State** means the state or territory of Australia (as the case may be) in which the School pursues the Objects;

**Terms of Reference** means a governing document for a standing committee or sub-committee (as the case may be), which sets out the name, membership, method of appointment of chairperson, responsibilities and, in the case of a sub-committee the duration of the work to be performed;

Unless stated otherwise, as at the date this constitution is adopted by the Members, terms defined in the Act have the same meaning as given in this constitution.

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### 3. Confessional Basis

The School holds to the confessions of the Church and declares that it:

- (a) accepts without reservation the Holy Scriptures of the Old and New Testaments, as a whole and in all their parts, as the divinely inspired, written and inerrant Word of God, and as the only infallible source and norm for all matters of faith, doctrine and life;
- (b) acknowledges and accepts as true expositions of the Word of God and as its own Confession all the Symbolical Books of the Evangelical Lutheran Church contained in the Book of Concord 1580, namely, the three Ecumenical Creeds: the Apostles' Creed, the Nicene Creed and the Athanasian Creed; the Unaltered Augsburg Confession; the Apology of the Augsburg Confession; the Smalcald Articles; the Small Catechism of Luther; the Large Catechism of Luther; and the Formula of Concord;
- (c) acknowledges that the Church requires that all who teach in or administer the affairs of schools must carry out their responsibilities and duties in accordance with this Confession.

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#### **4. Objects of the School**

The School is a not-for profit association that is an integral part of the ministry of the Church and the objects of the School are to:

- (a) establish, maintain and administer educational facilities, and provide education and/or childcare for early years children and/or school age students, alone or in conjunction with other institutions having the same or similar objects;
- (b) uphold and safeguard the confessional teachings of the Church;
- (c) provide children and/or students with a comprehensive program of education and/or care that is conducive to the development of their talents and skills for responsible Christian living and service and meets societal demands;
- (d) encourage children and/or students to strive for excellence in learning according to individual ability;
- (e) help children and/or students to value themselves as persons created in the image of God, redeemed by Christ, and made members of His body, the Church, and to express their new life in Christ in their relationship with God and others;
- (f) promote the spiritual life and development of children and/or students through worship, study of Scriptures, and pastoral care, whereby they may know God and his saving love in Jesus Christ, respond in faith, and grow to Christian maturity;
- (g) encourage children and/or students to give witness to their faith in Christ at school, at home, in their congregations and in the community;
- (h) assist parents and the community in fulfilling their God-given responsibilities to their children;
- (i) serve society by providing responsible citizens equipped to contribute positively to its wellbeing.

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## **5. Relationships**

### **5.1 The Church and the LCA SA-NT District Inc**

The School will:

- (a) accept the constitution and by-laws of the Church and LCA SA-NT District Inc and act in accordance with their requirements;
- (b) undertake to participate in the work of the Church and the LCA SA-NT District Inc and to promote their objects;
- (c) as an agency for Lutheran education within the Church and the LCA SA-NT District Inc declare that all of its activities and programs shall be consistent and in conformity with the constitution of the Church and the LCA SA-NT District Inc;
- (d) communicate and co-operate with the Church, LEA and LESNW, in the manner specified in rules 5.2 and 5.3;
- (e) ensure that any amendments, alterations, additions or repeals to this constitution will be submitted to the LCA SA-NT District Church Council and will not be implemented by the School until approved by the LCA SA-NT District Church Council;
- (f) support the advancement of Lutheran education in a Christian environment as a mission and ministry arm of the Church;
- (g) take all lawful steps necessary to ensure that the School acts in a manner consistent with the Confessions and religious principles of the Church.

### **5.2 LEA**

The School will:

- (a) promote, support and uphold the policies and associated procedures of the LEA Board; and
- (b) in particular comply with the requirements of LEA's and the Church's staffing policies.

### **5.3 LESNW**

- (a) The School as a member of LESNW, accepts that it is accountable to LESNW and agrees to operate under the guidance and direction of LESNW, to the extent of the objects of LESNW as contained in its constitution, and in doing so will:
  - (1) support and uphold the policies of LESNW;
  - (2) assist LESNW in the promotion of its objects;
  - (3) support and promote the office and function of the Executive Director; and
  - (4) co-operate with LESNW staff in general.

- (b) As a school in receipt of government funding, the School will:
  - (1) act responsibly in respect of the use of such funding and be accountable to LESNW for the use of any State and Federal government financial assistance offered by such governments and accepted by the School;
  - (2) report to LESNW in respect of proposed capital projects;
  - (3) submit to LESNW full reports of the financial activities of the School as requested by LESNW;
  - (4) make available to LESNW surplus assets in the case of a winding up of the School pursuant to any conditions specified in rule 34; and
  - (5) provide to LESNW such information as is necessary for the compiling of records by LESNW and/or for use in reporting to government authorities.
- (c) The School agrees to work in close co-operation with the Executive Director in matters relating to any amendments, alterations, additions, or repeals of this constitution, and in doing so must:
  - (1) inform the Executive Director when discussions about such alterations are first initiated by the School;
  - (2) keep the Executive Director regularly informed about the progress relating to such matters; and
  - (3) submit the adopted new document to the Executive Director for endorsement prior to approval by the LCA SA-NT District Church Council.
- (d) The School agrees that the LESNW Board may, by resolution by two-thirds majority of the LESNW Board, remove from office any, or all, Board Members. In the event that all Board Members have been removed from office, until elections are held in accordance with this constitution to appoint new Board Members, all Board duties and responsibilities shall vest in the LESNW Board and then any caretaker Board which the LESNW Board may appoint.

#### **5.4 Members**

In addition to any requirements contained in these rules to refer specific matters to the Members for their decision it is the intention of the School to:

- (a) work cooperatively with the Members to develop and implement a program of mission and ministry which supports the Objects;
- (b) provide the Members with regular reports of the activities of the School;
- (c) provide the Members with copies of annual reports;
- (d) provide the Members with progress reports on pending major capital projects;

- (e) invite the Members to School related functions and activities.

#### **5.5 Supporting congregations and parishes**

The School recognises the support of, and will cooperate and communicate in relation to the mission and ministry of the School with, the Lutheran church or churches, parish or parishes in the area in which the School pursues its Objects, being the Riverland area of South Australia and particularly in the area covered by the Loxton Lutheran Parish.

#### **5.6 Other members of LESNW**

The School agrees to cooperate with other members of LESNW by:

- (a) supporting and attending regular meetings/conferences organised by LESNW;
- (b) sharing information of a generic (and not sensitive or confidential) nature;
- (c) sharing human resources in areas connected with governance, management, administration and curriculum under the guidance of LESNW.

#### **5.7 Governments**

- (a) The School as an educational organisation within the State of South Australia must satisfy the legislative requirements of the State and Federal Governments.
- (b) The School must be accountable to the State and Federal governments including through LESNW for the use of any financial assistance offered by those governments and accepted by the School.

#### **5.8 Other organisations**

Subject to the rules of this constitution, the School may co-operate or affiliate with other bodies, provided always that the Confessional Basis and Objects are upheld.

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### **6. Powers of the School**

The School will have all the powers conferred by section 25 of the Act.

## **Part 2 - Membership**

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### **7. Members**

- (a) The Members agree to be bound by this constitution.
- (b) The rights and privileges of Members include, without limitation:
  - (1) the right to receive notices of general meetings and all other documents sent to Members in respect of general meetings;

- (2) the right to attend and speak at general meetings; and
  - (3) the right to vote at general meetings on any matter.
- (c) The details of all Members will be kept on the School's register of members in accordance with rule 12.
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## **8. Continuing Members**

The Persons recorded as Members on the School's register of members maintained by, or on behalf of, the School at the date of adoption of this constitution and who meet the eligibility for membership requirements as set out in rule 9 are deemed to have fulfilled the requirements of the School for membership in the relevant membership period and will be Members at the date of adoption of this constitution.

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## **9. Eligibility for Membership**

- (a) The following persons shall be eligible to be the Members of the School:
- where there exists a local Lutheran church or churches in the area in which the School pursues its Objects, being the area covered by the Loxton Lutheran Parish; those persons who are appointed from time to time to, and hold the office of, "Church Councillor" (or similar designation or title) of the body constituted as the "Church Council" of that or those local Lutheran church(es);
- (b) The School must communicate with the "Church Council(s)" (as relevant) on an ongoing basis as to the eligibility of the office holders of the relevant body to be members of the School.
- (c) A person eligible to be a member becomes a Member when they give their consent (in writing or otherwise) and their name is entered on the register of Members maintained under rule 12.
- (d) When a Member ceases to hold the office of, as relevant, "Church Councillor" (or similar designation or title) that person shall thereupon cease to be a Member and their name must be removed from the register of Members maintained under rule 12.
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## **10. Resignations**

- (a) A Member may resign from membership of the School by giving written notice to the Board or public officer of the School.
- (b) The resignation of a Member will take effect on the date of receipt of the notice by the School.
- (c) The public officer of the School must record the resignation of any Member in the register of members.
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## **11. Expulsion of a Member**

### **11.1 Expulsion for dissolution or cessation of engagement with Lutheran education**

The Board may resolve to expel a Member if the Member:

- (a) is declared a bankrupt or has a trustee or administrator appointed to control or manage the affairs of the Member; or
- (b) ceases to be a member of a congregation of the Church.

### **11.2 Expulsion for misconduct**

- (a) Subject to giving a Member an opportunity to be heard or to make a written submission, the Board may resolve to expel a Member upon a charge of misconduct detrimental to the interests of the School, which may include, without limitation, a breach or failure to comply with this constitution.
- (b) Particulars of the charge must be communicated to the Member at least one (1) month before the meeting of the Board at which the matter will be determined.
- (c) The determination of the Board must be communicated to the Member, and in the event of an adverse determination the Member will, (subject to rule 11.2(d)), cease to be a Member fourteen (14) days after the Board has communicated its determination to the Member.
- (d) It will be open to a Member to appeal the expulsion to the School at a general meeting. The intention to appeal must be communicated to the Executive Director or public officer of the School within fourteen (14) days after the expulsion determination of the Board has been communicated to the Member.
- (e) In the event of an appeal under rule 11.2(d), the appellant's membership of the School will not be terminated unless the determination of the Board to expel the Member is upheld by the Members in a general meeting after the appellant has been heard by the Members, and in such event the appellant's membership will be terminated at the date of the general meeting at which the determination of the Board is upheld.

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## **12. Register of Members**

- (a) A register of members must be kept and contain:
  - (1) the name, address, email and other such contact details of each Member;
  - (2) the contact details of the current authorised contact person or representative of a Member;
  - (3) the date on which each Member was admitted to the School; and
  - (4) if applicable, the date of and reason(s) for termination of membership.

- (b) The confidentiality of Members' information (including the details of their current authorised contact person or representatives) will be maintained in accordance with the *Privacy Act 1988* (Cth) and any other applicable privacy laws.
- (c) Subject to any applicable privacy laws, the register of members will be available for inspection by any Member who provides reasonable notice of their request for inspection.

## **Part 3 – The Board**

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### **13. Powers, Duties and Finance**

#### **13.1 Powers and duties**

- (a) The affairs of the School will be managed and controlled by the Board which, in addition to any powers and authorities conferred by this constitution, may exercise all such powers and do all such things as are within the Objects, and are not by the Act or by this constitution required to be done by the School in a general meeting.
- (b) Without limiting rule 13.1(a), the Board has authority to:
  - (1) exercise any power conferred on the School by section 25 of the Act;
  - (2) interpret the meaning of this constitution and any other matter relating to the affairs of the School on which this constitution is silent; and
  - (3) co-operate or affiliate with other bodies, associations or organisations, provided always that the Confessional Basis and the Objects are upheld at all times.
- (c) The Board will appoint a public officer as required by the Act.

#### **13.2 Finance**

- (a) In addition to any financial requirements of the School as a member of LESNW (under the LESNW constitution), the Board shall have the general oversight of the financial operations of the School working cooperatively with the Principal, Business Manager and LESNW to ensure the School complies with LESNW policy and government legislation.
- (b) Funding from governments, individuals, organisations and other bodies by way of grants, fees, donations, loans or gifts may be accepted by the School provided that the conditions of acceptance do not conflict with the Confessional Basis and the religious principles of the Church.
- (c) A budget and a schedule of fees payable for tuition provided by the School must be approved annually by the Board.

- (d) The approval of LESNW shall be required in relation to any capital projects undertaken by the Board with respect to:
  - (1) the borrowing of money by the School from Lutheran Laypeople's League of Australia Limited ABN 25 044 678 441 or any other institution providing financial accommodation to service the debt incurred; or
  - (2) the lodging of an application by the School for a government grant to assist with meeting the cost of the project(s).

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## 14. Composition

- (a) Subject to rule 14(b), the Board will comprise of a minimum of seven (7) and a maximum of nine (9) Board Members, as follows:
  - (1) up to four (4) persons who must be communing members of the Church, who will be voting Board Members;
  - (2) up to two (2) persons who must identify as Christians, who will be voting Board Members; and
  - (3) up to one additional (1) person, who will be a voting Board Member; and
  - (4) the following persons who will be, non-voting Board Members:
    - (A) the Principal; and
    - (B) a Pastor.
- (b) In addition to rule 14(a) (for the avoidance of doubt as an addition to the numbers in that rule), the Executive Director of LESNW may nominate and appoint at any time one (1) additional voting Board Member, for a term determined by the Executive Director. The Executive Director may remove and replace such additional Board Member at any time.
- (c) Board Members must support the Objects.
- (d) A majority of voting Board Members must be communing members of the Church.
- (e) The office of Principal must be filled on the Board at all times.
- (f) The office of Pastor must to the extent practicable, be filled on the Board at all times.
- (g) A Board Member must be a natural person.
- (h) A voting Board member must not be a person employed by the School.
- (i) A voting Board Member must not be the Spouse of a person employed by the School.

- (j) Apart from a Board Member appointed under rule 14(b), a Board Member shall hold office for a three (3) year term with one third or as near to one third as possible retiring annually.
  - (k) Board Members at the end of their term of appointment may nominate to be re-elected to the Board if they meet the eligibility criteria contained in this constitution.
  - (l) A Board Member must not hold office for more than three (3) consecutive terms unless:
    - (1) the Board otherwise resolves; and
    - (2) the Executive Director provides written approval.
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## **15. Election of Board Members**

### **15.1 Nomination**

- (a) Subject to rule 14(b), the Board will be responsible for calling for nominations to fill Board vacancies.
- (b) A person may nominate for election to the Board as long as that person is eligible to be appointed to the Board under this rule 15 and the nomination is:
  - (1) in writing;
  - (2) if applicable, on the form prescribed by, or on behalf of, the Board from time to time;
  - (3) to include details of the nominee's suitability for the position, including the nominee's skills, knowledge and experience;
  - (4) signed by the nominee;
  - (5) provided to the School and LESNW at least twenty eight (28) days before the meeting at which they are seeking to be elected.

### **15.2 Casual vacancies**

The Board may, and must use its best endeavours to, fill any casual Board vacancies for the unexpired term of the vacancy.

### **15.3 Fiduciary and other duties**

Board Members must at all times (while acting in their capacity as a member of the Board):

- (a) act honestly;
  - (b) act with reasonable care and diligence;
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- (c) act in the best interests of the School unless such actions are inconsistent with the Confessional Basis, the Objects or the rules of this constitution;
  - (d) not make improper use of information acquired by virtue of being a member of the Board so as to gain, directly or indirectly, any financial or other advantage or benefit for himself or herself or any other person, or so as to cause detriment to the School;
  - (e) accept and abide by the rules of this constitution; and
  - (f) regard the School as an integral part of the Church's education program and ministry.
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## **16. Appointment of office holders**

- (a) The School will have a chairperson and a deputy chairperson appointed in accordance with this rule 16.
  - (b) At the first Board Meeting of every second calendar year (or any other time a vacancy exists) the Board must appoint a chairperson and deputy chairperson.
  - (c) The chairperson must be a Board Member who is entitled to vote under rule 14(a.1) at Board meetings.
  - (d) The deputy chairperson must be a Board Member who is entitled to vote under either rule 14(a.1) or 14(a.2) at Board meetings.
  - (e) The Board may appoint a person to record the minutes of all Board meetings.
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## **17. Office holder roles**

### **17.1 Chairperson and deputy chairperson**

- (a) The chairperson will be the School's presiding officer.
- (b) In the absence of the chairperson the deputy chairperson will act as, and have the rights and powers of, the chairperson.
- (c) The tenure of the chairperson and deputy chairperson is two (2) years and may be renewed by the Board from time to time.
- (d) The chairperson and deputy chairperson have the right to vote at meetings of the Board.

### **17.2 Public officer**

- (a) The public officer will cause to keep all files and records as directed by the Board and as required by the Act.
  - (b) The public officer will attend to all School accounts and matters of finance. This will include preparation and maintenance of financial statements and returns as required by law.
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## **18. Disqualification of Board Members**

A Board Member ceases to be a Board Member if that Board Member is:

- (a) disqualified from being a Board Member by the Act;
- (b) removed by the Members in general meeting;
- (c) expelled as a Member under this constitution;
- (d) permanently incapacitated by ill health or dies;
- (e) absent without apology from more than three (3) consecutive meetings without special leave of absence from the Board;
- (f) no longer eligible pursuant to the requirements of rule 14;
- (g) removed from office by resolution by three-quarters majority of the Board and that resolution is ratified by the Executive Director;
- (h) removed from office by resolution by three-quarters majority of the LESNW Board; or
- (i) resigns from office by giving written notice to the Board.

## **Part 4 – Proceedings of the Board**

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### **19. Proceedings of Board**

#### **19.1 Meetings**

- (a) The Board will meet together for the dispatch of business at least six (6) times per calendar year, at a time and place as determined by the chairperson.
- (b) Subject to rule 19.1:
  - (1) any elected Board Member may call the first Board Meeting of a calendar year and in every second year at that meeting the Board must appoint a chairperson and deputy chairperson.
  - (2) the chairperson of the School may convene a Board meeting at any time; and
  - (3) within one (1) month of receiving a requisition in writing by not less than three (3) Board Members delivered to the office of the School (marked for the attention of the chairperson), the chairperson will convene a Board meeting.
- (c) Board meetings may be conducted face to face, or using technology to enable each Board Member to communicate with the other Board Members, as long as all Board Members are able to communicate to each other simultaneously.

- (d) Subject to the rules of this constitution, questions for decision at a meeting of the Board, must be decided by a majority of Board Members who, being entitled to do so, vote at that meeting. For the avoidance of doubt, the chairperson has only a deliberative vote.

## **19.2 Quorum**

- (a) A quorum for a meeting of the Board will be a simple majority of the elected Board Members who are entitled to vote.
- (b) In the event of there not being a quorum within thirty (30) minutes of the appointed starting time of any Board meeting, the meeting shall be adjourned to the same time on the same day in the following week.
- (c) If within thirty (30) minutes of the appointed starting time of the re-convened meeting a quorum is not present the Board Members present shall constitute a quorum for the purposes of conducting the meeting. At such reconvened meeting there must not be transacted any business other than business left unfinished or on the agenda at the time when the Board meeting was adjourned.

## **19.3 Other business**

- (a) If the number of Board Members falls below seven (7), the continuing Board Members may only act for the purpose of increasing the number of Board Members to seven (7).

## **19.4 Delegation**

- (a) The Board may delegate functions and administrative duties to one or more standing committees or sub-committees of the Board.

## **19.5 Observers**

- a) The Board may invite such observers or consultants (**Observers**) to attend at all or any part of meetings of the Board, subject to the giving of such undertakings as to confidentiality or other matters determined by the Board.
- b) An invitation may be a standing invitation.
- c) Observers may speak but have no right to vote and are subject to the chairperson's direction.
- d) Observer's attendance and participation at meetings, requires the disclosure of conflicts of interest and the confidential treatment of information.

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## **20. Circulating resolutions**

- (a) Board Members may pass a resolution without a Board meeting being held subject to rule 20(b), if a majority of the Board Members entitled to vote on the resolution:

- (1) sign a document containing a statement that they are in favour of the resolution set out in the document; or
  - (2) state by means of electronic communication (including by email), without the necessity of signing, that they are in favour of the resolution, or words of like effect.
- (b) The resolution will not be passed if any one (1) Board Member entitled to vote on the resolution:
- (1) signs a document containing a statement that they are not in favour of the resolution set out in the document; or
  - (2) state by means of electronic communication (including by email), without the necessity of signing, that they are not in favour of the resolution, or words of like effect.
- (c) Each Board Member must be given a copy of a document used for signing by Board Members or notice of the proposed resolution. The wording of the resolution in each copy must be identical.
- (d) Subject to rule 20(b), the resolution is passed when the last Board Member signs or states their assent.
- (e) Passage of the resolution must be recorded in the School's minutes record after ratification at the next Board Meeting.
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## **21. Seal**

- (a) The School will have a common seal upon which its corporate name will appear in legible characters.
  - (b) The Board will provide for the safe custody of the seal in the office of the School.
  - (c) The seal must not be used without the express authorisation of the Board, and every use of the seal will be recorded in the minute book of the School.
  - (d) Any two (2) Board Members must sign every instrument to which the seal is affixed.
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## **22. Disclosure of conflicts of interest**

A Board Member having a direct or indirect pecuniary interest in a contract or proposed contract with the School must disclose the nature and extent of that interest to the Board as required by the Act, and must not vote with respect to that contract or proposed contract. The Board Member must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of the School.

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## **23. Standing committees**

- (a) If directed by LESNW, the School must constitute the following standing committees;
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- (1) the Finance, Risk and Audit Committee;
- (2) the Ministry and Mission Committee.
  
- (b) Additional standing committees may be constituted by the Board as are considered by the Board as desirable or necessary for the effective operation of the School. Such additional standing committees may be constituted and/or disbanded at the Board's discretion without consultation with, or the approval of LESNW.
- (c) The Board shall determine the composition of each standing committee and annually appoint the members, including the convenor for each standing committee.
- (d) Every standing committee must be established pursuant to, and adopt, Terms of Reference that have been approved by either the Board, or the School in general meeting.
- (e) The Terms of Reference for a standing committee may be modified or replaced by the Board or the School in general meeting, from time to time.
- (f) The Board will appoint to each standing committee such number of Board Members, Members or any other person as the Board thinks fit, who may, but need not be Members or Representatives.
- (g) The chairperson of a standing committee must report on the activities of the standing committee at each Board meeting, either in person, by delegation to another person, or in writing.
- (h) A standing committee must conform to any determinations or resolutions made by the Board or the Members which affect the standing committee, and the Board or Members may determine to dissolve a standing committee.

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## **24. Sub-committees**

- (a) The Board may establish one (1) or more sub-committees comprising three (3) or more persons, established for various purposes, consisting of such number of Board Members, Members or any other person as the Board thinks fit.
- (b) Each sub-committee must be formed pursuant to, and adopt, Terms of Reference that have been approved by the Board.
- (c) The Terms of Reference for a sub-committee may be modified or replaced by the Board, from time to time.
- (d) The chairperson of a sub-committee must report on the activities of the sub-committee, as requested by the Board from time to time.
- (e) A sub-committee must conform to any determinations or resolutions made by the Board or the Members which affect the sub-committee, and the Board or Members may determine to dissolve a sub-committee.

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## **25. Special interest groups**

- (a) The Board may recognise any number of special interest groups and invite one (1) or more special interest groups to make recommendations to, and engage with, the Board from time to time.

## **Part 5 – General Meetings**

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## **26. General meetings**

### **26.1 Annual general meetings**

- (a) The Board must call an annual general meeting in accordance with the Act and this constitution, to be held at a time and place as determined by the Board.
- (b) Annual general meetings must be held within five (5) months after the end of the School's financial year (i.e. on or before 31 May each year).
- (c) The order of the business at the meeting will be:
  - (1) the confirmation of the minutes of the previous annual general meeting and of any special general meeting held since that meeting;
  - (2) the consideration of the accounts and reports of the Board (including the reports of the chairperson of the Board and the Principal) and the auditor's report (if an auditor's report is required);
  - (3) the election of persons nominating to fill any Board vacancies;
  - (4) any other business requiring consideration by the School in general meeting.

### **26.2 Special general meeting**

- (a) The Board may call a special general meeting of the School at any time and from time to time.
- (b) Upon a requisition in writing of not less than one-half of the Members delivered to the office of the School, the Board will, within twenty eight (28) days of the receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.
- (c) Every requisition for a special general meeting must be signed by the relevant Members and must state the purpose of the meeting.
- (d) If a special general meeting is not convened within twenty eight (28) days, as required by rule 26.2(b) above, the requisitionists, or at least 50% of their number, may convene a special general meeting. Such a meeting must be convened in the same manner as nearly as practical as a meeting convened by the Board, and for this

purpose the Board will ensure that the requisitionists are supplied free of charge with particulars of the Members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting will be borne by the School.

### **26.3 Notice of general meetings**

- (a) At least twenty one (21) days' notice of any general meeting must be given to Members. The notice must set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.

### **26.4 Proceedings at general meetings**

- (a) At least 50% of the Members present personally or by proxy will constitute a quorum for the transaction of business at any general meeting.
- (b) If within thirty (30) minutes after the time appointed for the meeting a quorum of Members is not present, a meeting convened upon the requisition of Members will lapse. In any other case, the meeting will stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within thirty (30) minutes of the time appointed for the meeting the Members present will form a quorum.
- (c) Subject to rule 26.4(d), the chairperson of the School will preside as the chairperson at a general meeting of the School.
- (d) If the chairperson is not present within five (5) minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires as the chairperson, the Members may choose a Board Member or one (1) of their own number to be the chairperson of that meeting.
- (e) Subject to this constitution and the Act, general meetings of the School will be conducted in accordance with the rules for transacting business adopted by the Church.

### **26.5 Voting at general meetings**

- (a) Subject to this constitution, each Member has only one (1) vote at a general meeting of the School, whether in attendance or by proxy.
- (b) Subject to this constitution, a question for decision at a general meeting, other than where a Special Resolution is required, must be determined by a majority of Members who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting. For the avoidance of doubt, the chairperson has a personal deliberative vote if the chairperson is a Member pursuant to Rule 9.7
- (c) A Board Member that is not a Member pursuant to Rule 9, may attend general meetings of the School in a non-voting capacity.
- (d) Unless a poll is demanded by a Member, a question for decision at a general meeting must be determined by a show of hands.

## **26.6 Poll at general meetings**

- (a) If a poll is demanded by a Member, it must be conducted in a manner specified by the chairperson and the result of the poll is the resolution of the meeting on that question.
- (b) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

## **26.7 Special and ordinary resolutions**

- (a) As defined in the Act, a special resolution of an incorporated association where the rules of the association provide for membership of the association means a resolution passed at a duly convened meeting of the Members if:
  - (1) at least twenty one (21) days written notice specifying the intention to propose the resolution as a special resolution has been given to all Members; and
  - (2) it is passed at a meeting referred to in this paragraph by a majority of not less than three-quarters of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.
- (b) An ordinary resolution is a resolution passed by a simple majority at a general meeting.

## **26.8 Proxies**

A Member is entitled to appoint in writing a natural person who is also a Member to be their proxy and attend and vote at any general meeting of the School. The form of proxy document may be determined by the Board.

# **Part 6 – General**

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## **27. Minutes**

- (a) Proper minutes of all proceedings of general meetings of the School and of meetings of the Board, must be entered within one (1) month after the relevant meeting in such records kept for the purpose.
- (b) The minutes kept pursuant to this rule must be confirmed by the Members or the Board (as relevant) at a subsequent meeting.
- (c) The minutes kept pursuant to this rule must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- (d) Where minutes are entered and signed they will, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at

the meeting will be deemed to have been duly held, and that all appointments made at a meeting will be deemed to be valid.

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## **28. Financial reporting**

### **28.1 Financial year**

The financial year of the School is the period commencing on 1 January and ending on 31 December of each year.

### **28.2 Accounts to be kept**

The School must keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the School in accordance with the Act.

### **28.3 Accounts and reports to be laid before Members and the LESNW**

- (a) The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, must be:
  - (1) laid before Members at the annual general meeting; and
  - (2) provided to the LESNW Executive Director within five (5) days of the annual general meeting.

### **28.4 Annual returns**

If required by the Act, the annual (periodic) return must be lodged in accordance with the Act within six (6) months after the end of each financial year. It must be accompanied by a copy of the accounts, the auditor's report, the Board's statement, and the Board's report.

### **28.5 Appointment of auditor**

- (a) The Board must appoint an auditor to be the auditor of the School.
- (b) The auditor will hold office until the auditor's appointment is revoked by written notice given to the auditor.
- (c) The auditor must hold qualifications as are generally recognised by the accounting profession from time to time.

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## **29. Staff**

### **29.1 Employment of staff**

- (a) Subject to rule 29.1(e), the School may employ or engage professional and support staff to assist the School to fulfil its Objects in accordance with this rule 29.

- (b) The Principal shall appoint such teaching, administration and support staff as may be necessary or desirable to carry out the Objects based on staffing guidelines determined by the Church from time to time.
- (c) The terms of employment of all staff must include a requirement to support the Objects and Confessional Basis.
- (d) Any action to suspend, dismiss or terminate any member of staff or to terminate their period of service must be taken in accordance with the current staffing policies and procedures of the Church.
- (e) Unless determined otherwise by the Board, no Member may be employed to any wage-earning or salaried office of the School.
- (f) The School must pay salaries and wages of any employees and make due provision for long service leave and other conditions of service as may be required by Law.
- (g) Subject to rule 29.1(h), employees of the School are accountable to the Principal.
- (h) The Principal is accountable to the School and the Board through the chairperson.

## **29.2 The Principal**

- (a) The Board must appoint the Principal in consultation with the Executive Director.
- (b) The Board will be responsible for the overall program, supervision of the work, and being concerned with the general welfare of the Principal.
- (c) The Principal shall be the spiritual leader of the School and must:
  - (1) ordinarily be an accredited teacher of the Church;
  - (2) be a member of the Church, unless otherwise approved by the Bishop of the LCA SA-NT Council;
  - (3) uphold the teachings of the Church and model the Christian lifestyle;
  - (4) support the Objects;
  - (5) have a commitment to the principles of Lutheran education; and
  - (6) have completed or undertake to complete within an agreed period of time the necessary theological studies as prescribed in the Church's staffing policy.

## **29.3 Teaching staff**

Teaching staff must:

- (a) support the Objects;
- (b) have a commitment to the principles of Lutheran education;

- (c) be registered teachers within the State;
- (d) be accredited or provisionally accredited according to the policy and procedures laid down by the Church or may be non-accredited where an accredited or provisionally-accredited person is not available; and
- (e) complete the necessary theological studies as prescribed by the Church in its staffing policy.

#### **29.4 Business Manager**

- (a) The Business Manager shall be appointed by the Principal in conjunction with the Board and shall be responsible to the Principal.
- (b) The Business Manager must support the Objects.

#### **29.5 Administration and support staff**

Administration and support staff must support the Objects.

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### **30. The Pastor/School Chaplain**

The Pastor/School Chaplain under the direction of the Principal shall assist the Principal and staff with the pastoral support program of the School.

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### **31. Prohibition against securing profits**

The income and capital of the School must be applied exclusively to the promotion of its Objects and unless expressly permitted under this constitution no portion may be paid or distributed directly or indirectly to any Member, Representative, Board Member or their associates except as bona fide remuneration or an honorarium of a Member, Representative, Board Member or their associates for services rendered or expenses incurred on behalf of the School. This rule does not prohibit the reimbursement of reasonable expenses or the payment of an honorarium to a Board Member.

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### **32. Indemnity**

- (a) Board Members, officers or employees of the School will be indemnified out of the assets of the School against any liability incurred by them in defending any proceedings, whether civil or criminal, brought by reason of their actions in relation to or connected with the School, in which judgment is given in their favour or in which they are acquitted.
- (b) The School may enter into contracts of insurance in respect of the liabilities contemplated in rule 32(a), as permitted by Law and the Act.

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### **33. Winding up**

The Board shall be entitled to resolve to wind up the School as provided in the Act, provided that before a general meeting of the School is convened for the purpose of passing a Special Resolution to wind up the School, the Board must first consult with and obtain the written approval of LESNW and the LCA SA-NT District Church Council to the winding up.

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### **34. Application of surplus assets**

If after the winding up of the School there remains 'surplus assets' as defined in the Act, such surplus assets will be distributed:

- (a) first, to LESNW and applied for the benefit of not-for-profit bodies of LESNW which provide related educational services to children and/or students, provided that LESNW and the not-for-profit bodies have similar objects to the Objects and have rules which prohibit the distribution of their assets and income to their members; and
- (b) if the above is not lawful or possible, to an organisation or organisations that are eligible recipients of the surplus assets and which are identified and determined by a resolution of Members in general meeting.

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### **35. Notices**

#### **35.1 In writing**

- (a) Notice must be in writing (which for the avoidance of doubt includes the text of an electronic communication such as email) and in English, and may be given by an authorised representative of the sender.

#### **35.2 Notice to Members**

- (a) The School may give notice to a Member:
  - (1) personally;
  - (2) by sending it by post to the address of the Member in the register of members or the alternative address (if any) nominated by the Member;
  - (3) by sending it to the electronic address (if any) nominated by the Member.
- (b) A notice to a Member is sufficient, even if the Member (whether or not a joint Member) is dead, mentally incapacitated, an infant, bankrupt or an externally-administered body corporate, and the School has notice of that event.

#### **35.3 Notice to Board Members**

- (a) The School may give notice to a Board Member:

- (1) personally;
- (2) by sending it by post to the Board Member's usual residential or business address or any other address nominated by them;
- (3) by sending it to the electronic address (if any) nominated by the Board Member.

#### **35.4 Notice to the School**

- (a) A person may give notice to the School:
  - (1) by leaving it at the School's registered office;
  - (2) by sending it by post to the School's registered office;
  - (3) by sending it to the electronic address of the School's registered office.

#### **35.5 Time of service**

- (a) A notice sent by post within Australia is taken to be given five (5) Business Days after posting.
- (b) A notice sent by post to or from a place outside Australia is taken to be given ten (10) Business Days after posting.
- (c) A notice sent by email or other electronic means is taken to have been given when the sender's server indicates it has been sent or routed to the recipient's email server and it has not been rejected or returned.

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### **36. Altering this constitution**

- (a) Subject to rule 36(c), this constitution may be altered (including an alteration to the School's name) by:
  - (1) complying with rules 5.1(e) and 5.3(c);
  - (2) the proposed alterations being approved by the Executive Director;
  - (3) the proposed alterations being approved by the LCA SA-NT District Church Council; and
  - (4) subject to rule 36(b), the passing of a Special Resolution of the Members in a general meeting (this includes rescission or replacement by substitute rules),  
  
in the order as set out in this rule 36(a).
- (b) Once the proposed alterations to the constitution have been endorsed by the Executive Director and approved by the LCA SA-NT District Church Council, such proposed alterations must be presented in writing to the Members at least fourteen (14) days before a duly called general meeting.

- (c) Rules 3 and 36(c) of this constitution are considered fundamental and must not be amended, altered, added to or repealed so as to alter their intent and meaning.
- (d) The alteration(s) must be registered as required by the Act.
- (e) The registered constitution will bind the School and every Member to the same extent as if they have respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

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### **37. Standing orders and by-laws**

The Board may establish a set of policies and procedures consistent with this constitution and the Act, to facilitate the effective operation of the School. These and any alterations and/or amendments must be made available to Members upon request.

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### **38. Date of effect**

This constitution will be effective from the date of adoption of this constitution by the Members, and after approval by LCA SA-NT District Church Council.

## **Part 7 – Transitional rules**

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### **39. Transitional rules**

Despite anything else in this constitution, from the date this constitution becomes effective pursuant to rule 38:

- (a) the Board will comprise the natural persons then holding office as members of the Board, being the persons elected or appointed under the previous constitution of the School;
- (b) the Board Members referred to in rule 39(a) shall hold office for the unexpired balance of the term of each respective Board Member's office unless such office is vacated pursuant to rule 18 of this constitution;
- (c) the chairperson and deputy chairperson will be the natural persons then holding the office of chairperson and deputy chairperson, being the persons elected under the previous constitution of the School;
- (d) the chairperson and deputy chairperson referred to in rule 39(c) shall hold such positions for the unexpired balance of their respective terms.
- (e) prior to the first Annual General Meeting following the adoption of this Constitution, the Board as defined by 39(a) will invite eligible Members pursuant to rule 9(a) to give their consent to be registered as Members in accordance with rule 9(c), so as to constitute the Membership of the School.

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**40. Signatories**

A Special Resolution to adopt this Constitution was passed by the Members

Date .....

Signed .....

*Chairperson*  
*Loxton Lutheran School Incorporated*

Accepted by the Lutheran Education South Australia, Northern Territory and Western  
Australia Incorporated

Date .....

Signed .....

*Executive Director*

Approved by the Lutheran Church of Australia  
South Australia and Northern Territory District Incorporated, District Church Council

Date ..... Date .....

Signed ..... Signed .....

*Bishop*

*District Administrator*