

Constitution Australian Lutheran College

1. Definitions

In this Constitution, unless the contrary intention appears:

- 1.1. **'Auditor'** means the Company's auditor;
- 1.2. **'Church'** means The Lutheran Church of Australia Inc or its successor provided that if The Lutheran Church of Australia Inc or its successor becomes an externally administered body corporate within the meaning of the Corporations Act 2001 pursuant to the provisions of **part 5 of the Associations and Corporations Act 1985** **'Church'** shall mean the association (whether incorporated or otherwise) established in substitution for The Lutheran Church of Australia Inc with a Confession and Objects and a constitution substantially the same as The Lutheran Church of Australia Inc;
- 1.3. **'College'** means the educational facility operated by the Company;
- 1.4. **'Company'** means Australian Lutheran College;
- 1.5. **'Constitution'** means the constitution of the Company as amended from time to time;
- 1.6. **'Director'** includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director;
- 1.7. **'Directors'** means all or some of the Directors acting as a board;
- 1.8. **'General Church Council'** means the General Church Council established under the constitution of the Church.
- 1.9. **'General Synod'** means the General Synod convened in accordance with the constitution of the Church.
- 1.10. **'Initial Members'** means those Members set out in Schedule A;
- 1.11. **'Member'** means a member under clause 7;
- 1.12. **'Office'** means the Company's registered office;
- 1.13. **'Register'** means the register of Members of the Company;
- 1.14. **'Registered address'** means the last known address of a Member as noted in the Register;
- 1.15. **'Seal'** means the Company's common seal (if any); and
- 1.16. **'Secretary'** means:
 - 1.16.1. any person appointed by the Directors to perform any of the duties of a secretary of the Company; and
 - 1.16.2. if there are joint secretaries, any one or more of such joint secretaries.

2. Interpretation

- 2.1. In this Constitution unless the contrary intention appears:
 - 2.1.1. the singular includes the plural and vice versa and words importing a gender include other genders;
 - 2.1.2. words importing natural persons include corporations;
 - 2.1.3. words and expressions defined in the Corporations Act 2001 (Cth) have the same meaning in this Constitution;
 - 2.1.4. headings are for ease of reference only and do not affect the construction of this Constitution; and
 - 2.1.5. a reference to the Corporations Law is a reference to the Corporations Act 2001 (Cth) as modified or amended from time to time.
- 2.2. Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act 2001 (Cth).
- 2.3. To the extent permitted by law, the replaceable rules in the Corporations Act 2001 (Cth) do not apply to the Company.

3. This Constitution

- 3.1. Notwithstanding any provision of the Corporations Act 2001 this constitution can only be amended by a resolution of General Synod or in accordance with the provisions of this clause.
- 3.2. General Church Council may by ordinary resolution amend, alter, add to, or repeal any of the rules, except clause 4, which shall be considered fundamental and unalterable in intent and meaning and clause 24.2 which can only be altered by resolution of General Synod.
- 3.3. Any such amendment, alteration, addition, or repeal must be ratified by an ordinary resolution of the next General Synod.
- 3.4. Notwithstanding clause 3.3 any amendment of this Constitution by General Church Council should be of full force and effect until the time of the next General Synod.
- 3.5. The subsequent resolution of General Synod not to approve an amendment to the Constitution will not affect the validity of any acts by the Company in the meantime.

4. Confession and Objects

- 4.1. The confessional basis of Australian Lutheran College shall be that of the Lutheran Church of Australia Incorporated, namely,
 - 4.1.1. The Church 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.
 - 4.1.2. The Church 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 of 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; the Formula of Concord.
 - 4.1.3. All who teach in and administer the affairs of Australian Lutheran College shall be bound to carry out their duties according to the confessional basis.
- 4.2. The objects of Australian Lutheran College shall be to:
 - 4.2.1. Prepare candidates to be pastors of the Church;
 - 4.2.2. Prepare candidates to be teachers in the schools of the Church;
 - 4.2.3. Prepare candidates for diaconal work in the Church;
 - 4.2.4. Provide continuing and postgraduate studies in theology and education;
 - 4.2.5. Provide theological education to all eligible persons leading to such degrees and diplomas as Australian Lutheran College may from time to time confer; and
 - 4.2.6. Undertake such other activities reasonably incidental thereto which promote the mission of the Church
- 4.3. The Company has all of the capacities and powers conferred by Section 124 of the *Corporations Act 2001* (Cth) provided that as the Company is an incorporated board of the Church the capacities and powers must be exercised consistently with the constitution and by-laws of the Church.

5. Income and Property of Company

- 5.1. The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 5.2. No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or

the payment of interest at a rate not exceeding from time to time the Company's overdraft rates of interest for moneys borrowed from its bankers.

6. Payment to Directors

No payment will be made to any Director of the Company other than payment:

- 6.1. of reasonable out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company;
- 6.2. for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service and the amount payable has the prior approval of the Directors of the Company;
- 6.3. of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company;
- 6.4. relating to an indemnity in favour of the Director and permitted by Section 199A of the *Corporations Act 2001* (Cth) or a contract of insurance permitted by Section 199B; and
- 6.5. that has first been approved by the Directors.

7. Members

- 7.1. The Members of the Company will be the Directors from time to time.
- 7.2. The rights and privileges of every Member will be personal to each Member and are not transferable.

8. Ceasing to be a Member

- 8.1. Membership of the Company will cease:
 - 8.1.1. on the date that the Secretary receives written notice of resignation;
 - 8.1.2. if the Member:
 - (a) dies;
 - (b) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (c) is convicted of a serious criminal offence;
 - (d) is made bankrupt; or
 - (e) the appointment of the Member as a Director is terminated.

9. Calling General Meeting

- 9.1. The Chairman or any two Directors may, at any time, call a general meeting.
- 9.2. A Member may:
 - 9.2.1. only request the Directors to call a general meeting in accordance with section 249D of the *Corporations Act 2001* (Cth); and
 - 9.2.2. not request or call and arrange to hold a general meeting except under section 249E or 249F of the *Corporations Act 2001* (Cth).

10. Notice of General Meeting

- 10.1. Subject to the provisions of the *Corporations Act 2001* (Cth) allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 10.2. A notice calling a general meeting must:
 - 10.2.1. specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the real time technology that will be used to facilitate this; and
 - 10.2.2. state the general nature of the business to be transacted at the meeting.

- 10.3. A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
 - 10.3.1. the **consideration of the annual financial report, Directors' report and the Auditor's report; and**
 - 10.3.2. the appointment and fixing of the remuneration of the Auditor.
- 10.4. The Directors may:
 - 10.4.1. postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 10.2); and
 - 10.4.2. the Directors must give notice of the postponement or cancellation to all persons referred to in clause 40 entitled to receive notices from the Company.
- 10.5. The failure or accidental omission to send a notice of a general meeting to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

11. Quorum

- 11.1. No business may be transacted at a general meeting unless a quorum of Members is present (either in person or by Representations or attorney, and where the meeting is held in two places at once in accordance with technology notified to Members) when the meeting proceeds to business.
- 11.2. A quorum is 50% of the Members at the time appointed for the meeting.
- 11.3. If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - 11.3.1. if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - 11.3.2. in any other case:
 - (a) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (b) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

12. Chairman

- 12.1. The Chairman, or in the Chairman's absence the deputy Chairman, of Directors' meetings will be the Chairman at every meeting of Members.
- 12.2. If:
 - 12.2.1. there is no Chairman or Vice Chairman; or
 - 12.2.2. neither the Chairman nor Vice Chairman is present within 15 minutes after the time appointed for holding the general meeting; or
 - 12.2.3. the Chairman and deputy Chairman are unwilling to act as Chairman of the general meeting,the Directors present may elect a Chairman of the general meeting of the Members.
- 12.3. If no election is made under clause 12.2, then:
 - 12.3.1. the Members may elect one of the Directors present as chairman; or
 - 12.3.2. if no Director is present or is willing to take the chair, the Members may elect one of the Members present as the chair.
- 12.4. If there is a dispute at a general meeting about a question of procedure, the chairman may determine the question.

13. Adjournment

- 13.1. The chairman of a general meeting at which a quorum is present:
 - 13.1.1. in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - 13.1.2. must adjourn the general meeting if the meeting directs him or her to do so.
- 13.2. An adjourned general meeting may take place at a different venue to the initial general meeting.
- 13.3. The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 13.4. Notice of an adjourned general meeting must only be given in accordance with clause 10.1 if a general meeting has been adjourned for more than 21 days.

14. Decision on Questions

- 14.1. Subject to the Corporations Act 2001 (Cth) in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 14.2. A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act 2001 (Cth).
- 14.3. Unless a poll is demanded:
 - 14.4. a declaration by the Chairman that a resolution has been carried, carried by a specified majority, or lost; and
 - 14.5. an entry to that effect in the minutes of the meeting,
 - 14.6. are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
 - 14.7. The demand for a poll may be withdrawn.
 - 14.8. A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

15. Taking a Poll

- 15.1. A poll will be taken when and in the manner that the Chairman directs.
- 15.2. The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 15.3. The Chairman may determine any dispute about the admission or rejection of a vote,
- 15.4. **The Chairman's determination if made in good faith, will be final and conclusive,**
- 15.5. A poll demanded on the election of the Chairman or the adjournment of a general meeting must be taken immediately.
- 15.6. After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

16. Casting Vote of Chairman

- 16.1. The Chairman does not have a casting vote in addition to the **Chairman's** votes as a Member.

17. Offensive Material

A person may be refused admission to, or required to leave and not return to a meeting if the person:

- 17.1. refuses to permit **examination of any article in the person's possession; or**
- 17.2. is in possession of any:
 - 17.2.1. electronic or recording device;
 - 17.2.2. placard or banner; or

17.2.3. other article,
which the Chairman considers to be dangerous, offensive or liable to cause disruption.

18. Entitlement to Vote

18.1. A Member entitled to vote has one vote.

19. Objections

19.1. An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

19.2. An objection must be referred to the Chairman of the general meeting, whose decision is final.

19.3. A vote which the Chairman does not disallow because of an objection is valid for all purposes.

20. Appointment and Removal of Directors

20.1. Australian Lutheran College shall have a Board of Directors consisting of ten directors who shall be

(a) the President of the Church;

(b) two pastors and two lay members of the Church elected by the General Synod;

(c) one pastor and four lay members of the Church appointed by the General Church Council

The Principal of the College shall be a consultant.

20.2. The Directors appointed by General Church Council may be removed from time to time by ordinary resolution of General Church Council.

20.3. A Director appointed by General Synod will commence the term of appointment 3 months after General Synod and will hold office for one synodical term plus 3 months.

20.4. At the end of the term of appointment a Director may be reappointed.

20.5. Notwithstanding Clause 20.3 hereof a Director elected by General Synod may be removed by special resolution of General Church Council.

21. Casual Vacancies

21.1. If there is a casual vacancy in the office of Director the casual vacancy may be filled by General Church Council at the next meeting of General Church Council provided that

21.1.1. a casual vacancy in respect of a lay Director will be filled by a lay person; and

21.1.2. a casual vacancy in respect of a pastor will be filled by a pastor; and a vacancy in respect of a District President will be filled by a District President.

21.2. The **term of a person's appointment by General Church Council to fill a casual vacancy** in respect of a Director appointed by General Synod will expire at the next General Synod plus 3 months

22. Vacation of Office

The office of a Director immediately becomes vacant if the Director:

22.1. is prohibited by the Corporations Act 2001 (Cth) from holding office or continuing as a Director;

22.2. in the case of the appointment by General Church Council the appointment of that Director by the General Church Council is withdrawn by a resolution of the General Church Council;

22.3. In the case of election by General Synod or General Church Council the term of the Director expires unless the Director has been reappointed;

22.4. is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing

- their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- 22.5. resigns by notice in writing to the Company; or
- 22.6. **is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors;** or
- 22.7. is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act 2001 (Cth).

23. Officers

- 23.1. The officers of the Company are the
 - 23.1.1. Chairperson;
 - 23.1.2. Vice Chairperson; and
 - 23.1.3. Secretary.
- 23.2. At the first general meeting of the Company, the Directors must choose three of their number to hold the offices of Chairman, Vice Chairman and Secretary of the Company. Each will hold office for a one-year term.
- 23.3. If the term of the holder of an Office ceases for any reason, the Directors must choose another of their members to hold that office.

24. Powers and Duties of Directors

- 24.1. The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Law do not require to be exercised by the Company in general meeting.
- 24.2. Without limiting the generality of clause 24.1 the Directors:
 - (a) shall submit annually to the General Church Council a report which shall include:
 - i. **a record of the past year's activities in relation to planned objectives;**
 - ii. audited financial statements, including a balance sheet;
 - iii. details of its proposed work program, with accompanying estimates of capital and operating costs and of income for the ensuing two years;
 - iv. an indication of foreshadowed major capital expansion beyond the ensuing three years.
 - (b) **shall indicate the amount not expended in the year's operation when submitting its budget for the following year;**
 - (c) shall consult with the General Church Council in regard to the use of profits from trading or the possible investment of any funds entrusted to its control;
 - (d) shall use money provided for specific budget items for any other purpose only with the sanction of the Executive of the General Church Council;
 - (e) shall enter into or increase any financial commitment or overdraft limit only with the express permission and prior approval of the General Church Council;
 - (f) shall seek the sanction of the General Church Council before making any financial appeal in the Church;
 - (g) shall, if it keeps its own books of account, ensure that the prescribed accounting procedures are used, and shall nominate an auditor for appointment by the General Church Council;
 - (h) may appoint sub-committees which include personnel who are not members of the board, provided that the President of the Church has sanctioned their appointment; and such personnel may be regarded as consultative members of the board;
 - (i) shall define the duties of any executive officer serving it, for approval by the General Church Council, shall direct the work of, and receive reports from, such executive officers;

- (j) shall submit to the General Church Council any proposals regarding the number of office staff it deems necessary;
 - (k) shall provide the necessary regulations for any full-time employees;
 - (l) shall forward copies of its minutes to all members of the General Church Council;
 - (m) shall submit to the General Synod a general and a financial report covering the synodical term.
- 24.3. In addition to the general duties provided for hereunder the duties of the directors are to;
- (a) ensure that all education supplied by the College is in harmony with the confessional basis of the Church;
 - (b) ensure that a high spiritual, vocational, and scholarly standard is maintained in the life and work of the College, and to make adequate provision for counselling of students;
 - (c) ensure that a concern for mission permeates the teaching and curriculum of the College;
 - (d) recommend to General Church Council candidates suitable for call to faculty;
 - (e) recommend to General Church Council candidates suitable for call as principal and appoint a vice principal;
 - (f) approve any sessional, guest and visiting lecturers;
 - (g) ensure that members of faculty and other academic staff are faithful in work and lead exemplary lives;
 - (h) endorse programs of study leading to graduation as pastors, teachers, and diaconal workers;
 - (i) endorse courses of study leading to degrees and awards;
 - (j) receive and consider recommendations concerning study leave and exchange programs for members of faculty and approve the same;
 - (k) approve recommendations concerning recuperative leave for members of faculty;
 - (l) administer the financial affairs of the College and manage the real and personal estate under its care;
 - (m) approve tuition fees and charges payable at the College;
 - (n) adopt a budget and;
 - (o) receive reports from the principal.

25. **Directors' Meetings**

- 25.1. A Director may at any time, and the Secretary must on the request of a Director, call a **Directors' meeting**.
- 25.2. **A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.**
- 25.3. It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 25.4. **Subject to the Corporations Act 2001 (Cth), a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.**
- 25.5. **The Directors need not all be physically present in the same place for a Directors' meeting to be held.**
- 25.6. A Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 25.7. Clause 25.4 applies to **meetings of Directors' committees as if all committee members were Directors.**
- 25.8. The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 25.9. A quorum is one half of the Directors in office at the date of the meeting.

- 25.10. Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairman may call a general meeting of Members to deal with the matter.
- 25.11. Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.
- 25.12. Without limiting any other provision of this Constitution the Board must meet at least twice each year.

26. Decision on Questions

- 26.1. Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and each Director has one vote.
- 26.2. The Chairman of a meeting does not have a casting vote in addition to his or her deliberative vote.

27. Directors' Interests

- 27.1. 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 avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 27.2. No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 27.3. A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 27.4. A Director or a body or entity in which a Director has a direct or indirect interest may:
 - 27.4.1. enter into any agreement or arrangement with the Company;
 - 27.4.2. hold any office or place of profit other than as auditor in the Company; and
 - 27.4.3. act in a professional capacity other than as auditor for the Company, and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 27.5. A Director who has a material personal interest in a matter that is being considered at a Directors' **meeting must not:**
 - 27.5.1. be present while the matter is being considered at the meeting; or
 - 27.5.2. vote on the matter, unless permitted by the Corporations Act 2001 (Cth) to do so, in which case the Director may:
 - 27.5.3. 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;
 - 27.5.4. sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - 27.5.5. vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 27.6. A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

28. Alternate Directors

28.1. (Intentionally deleted.)

29. Remaining Directors

29.1. The Directors may act even if there are vacancies on the board.

29.2. If the number of Directors is not sufficient to constitute a quorum at a Directors meeting, the Directors may act only to:

29.2.1. appoint a Director; or

29.2.2. call a general meeting.

30. Chairman

30.1. The Chairman is entitled **to chair the Directors' meetings.**

30.2. If the Chairman is not **present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin**, the Vice Chairman may chair the meeting but if he is not present within 10 minutes of the time appointed for the meeting to begin the Directors present must elect a Director to be Chairman of the meeting.

30.3. The Vice Chairman **may act as chairman in the Chairman's absence.**

31. Delegation

31.1. The Directors may delegate any of their powers, other than those, which by law must be dealt with by the Directors as a board, to a person or a committee or committees and may at any time revoke any delegation.

31.2. Subject to any direction by the Directors, a committee may regulate its proceedings as it sees fit.

32. Written Resolutions

32.1. The Directors may pass a resolution without a **Directors' meeting being held if all the Directors 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. The resolution is passed when the last Director signs.**

32.2. Separate copies of a document may be used for signing by Directors and may be in the form of a facsimile or electronic transmission.

33. Validity of Acts of Directors

If it is discovered that:

33.1. there was a defect in the appointment of a person as a Director, Alternate Director or **member of a Directors' committee; or**

33.2. a person appointed to one of those positions was disqualified, all acts of the Directors or **the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.**

34. Minutes and Registers

34.1. The Directors must cause minutes to be made of:

34.1.1. the names of the Directors **present at all Directors' meetings and meetings of Directors' committees;**

34.1.2. **all proceedings and resolutions of general meetings Directors' meetings and meetings of Directors' committees;**

34.1.3. all resolutions passed by Directors;

34.1.4. all appointments of officers;

34.1.5. **all orders made by the Directors and Directors' committees; and**

- 34.1.6. all disclosures of interests made under clause 27.
- 34.2. Minutes must be signed by the Chairman of the meeting or by the Chairman of the next meeting of the relevant body.

Secretary

There must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

- 34.3. The Secretary **is entitled to attend and be heard on any matter at all Directors' and general meetings.**
- 34.4. The Directors **may, subject to the terms of the Secretary's employment contract,** suspend, remove or dismiss the Secretary.

35. Common Seal

- 35.1. If the Company has a Seal:
 - 35.1.1. the Directors must provide for the safe custody of the Seal;
 - 35.1.2. the Seal must not be used without **the authority of the Directors or a Directors' committee authorised to use the Seal;**
 - 35.1.3. every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

36. Duplicate Seal

- 36.1. If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
 - 36.1.1. must be a facsimile of the Seal with the addition on its face of the words **'Duplicate Seal';**
 - 36.1.2. must not be used except with the authority of the Directors.

37. Inspection of Records

- 37.1. Except as otherwise required by the Corporations Act 2001 (Cth), the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 37.2. A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

38. Service of Notices

- 38.1. Notice may be given by the Company to any person who is entitled to notice under this Constitution:
 - 38.1.1. by serving it on the person; or
 - 38.1.2. by sending it by post, facsimile transmission or electronic notification to the **person at the person's address shown in the Register or the address, supplied by the person to the Company for sending notices to the person.**
- 38.2. A notice sent by post is taken to be served:
 - 38.2.1. by properly addressing, prepaying (if overseas by air mail) and posting a letter containing the notice; and
 - 38.2.2. two days after the day on which it was posted.
- 38.3. A notice sent by facsimile transmission or electronic notification is taken to be served:
 - 38.3.1. by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - 38.3.2. on the day after its dispatch.

38.4. If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.

39. Persons Entitled to Notice

39.1. Notice of every general meeting must be given to:

- 39.1.1. every Member;
- 39.1.2. every Director; and
- 39.1.3. any Auditor.

39.2. No other person is entitled to receive notice of a general meeting.

40. Audit and Accounts

40.1. The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act 2001 (Cth).

40.2. The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act 2001 (Cth).

41. Establishment and Operation of Gift Fund

41.1. The company shall maintain for the objects of the company a Gift Fund as prescribed in TR 2000/12 and Section 30.125 of the ITAA97:

- 41.1.1. all money, investments and assets paid or transferred to and accepted by the company as additions to the Gift Fund;
- 41.1.2. all accretions to the Gift Fund;
- 41.1.3. all accumulations of income; and
- 41.1.4. the money, investments and property from time to time representing the above or into which they are converted, and includes any part of the Gift Fund.

41.2. The company must use the property described in clause 42.1 above only for the objects of the company as described in Clause 4 of this Constitution.

41.3. The company shall upon receiving a gift, issue a receipt to the donor. Receipts issued for gifts must state:

- 41.3.1. the name of the Gift Fund: **'Australian Lutheran College Gift Fund'**;
- 41.3.2. **the company's** Australian Business Number;
- 41.3.3. the date of the gift;
- 41.3.4. a reasonable description of the contributed property; and
- 41.3.5. the fact that the receipt is for a gift.

42. Winding Up

42.1. If the Company is wound up:

- 42.1.1. each Member; and
- 42.1.2. each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
- 42.1.3. payment of debts and liabilities of the Company (in relation to a person who has ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- 42.1.4. adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$50.00.

42.2. If any surplus remains, other than money, property or other assets held in the Gift Fund where provisions for its disposition are outlined in clause 43.3, following the winding up of the Company the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation which, by its constitution, is

- 42.2.1. required by its Objects to use its assets for the support of the Church or its successor or any body whether incorporated or otherwise under the umbrella of the Church of the members of the Church within Australia;
- 42.2.2. required to apply its profits (if any) or other income in promoting its objects; and
- 42.2.3. prohibited from making any distribution to its Members, such corporation to be determined by the General Church Council of the Church at or before the winding up and in default, by application to the Supreme Court for determination.
- 42.3. At the first occurrence of:
 - 42.3.1. the winding up of the Gift Fund or dissolution of the Company: or
 - 42.3.2. the revocation of the Gift Fund as a deductible gift recipient under Subdivision 30B of the ITAA 97, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, must be transferred to one or more funds, authorities or institutions that have been endorsed by the Australian Taxation Office as a Tax Concession Charity and Deductible Gift Recipient.
 - 42.3.3. Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a transfer under this clause must be made in accordance with those conditions.

In making its determination where to transfer the surplus assets of the Gift Fund the General Church Council shall give primary consideration to funds, authorities or institutions affiliated with the Association and/or having a statement of purposes similar to the statement of purposes of the Association and that have been endorsed by the Australian Taxation Office as a Tax Concession Charity and Deductible Gift Recipient. Where the General Church Council is unable to reach agreement as to where the surplus assets of the Gift Fund should be transferred application shall be made to the Supreme Court of South Australia for determination provided the transfer shall only be made to a fund, authority or institution endorsed by the Australian Taxation Office as a Tax Concession Charity and Deductible Gift Recipient.

43. Indemnity

- 43.1. To the extent permitted by law and subject to the restrictions in Section 199A of the Corporations Act 2001 (Cth) the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 43.2. To the extent permitted by law and subject to the restrictions in Section 199A of the Corporations Act 2001 (Cth) the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 43.3. For the purposes of this clause 43, **'officer' means:**
- 43.4. a Director; or
- 43.5. a Secretary.

Adopted, General Synod
October 2006.