

**CONSTITUTION OF  
ASSOCIATION OF INDEPENDENT SCHOOLS OF  
WESTERN AUSTRALIA (INC)**

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S. KEMP  
DEPUTY REGISTRAR  
21 JULY 2017

## 1 NAME

The name of the association is “Association of Independent Schools of Western Australia (Inc)”.

## 2 DEFINITIONS

In this Constitution unless a contrary intention appears:-

**Act** means the *Industrial Relations Act 1979* (as amended).

**Affiliated Organisation** means an organisation referred to in Clause 5.

**Association** means the Association of Independent Schools of Western Australia.

**Board** means the body elected to govern the affairs of the Association.

**Commission** means the Western Australian Industrial Relations Commission.

**Educator** means a person who has registration under the *Western Australian College of Teaching Act* to teach in Western Australia.

**Executive Director** means the Executive Director appointed by the Board in accordance with Clause 13.

**Governing Body** means the council, corporate body, board of trustees, officer or member of a religious order or other body or person in which or in whom the responsibility for the governance of a school is vested.

**Governor** means a member of an Independent School’s Governing Body.

**Independent School** means a school referred to in Clause 5.

**Independent Schools Council of Australia** means the Independent Schools Council of Australia.

**Member** means member of the Association.

**Principal** means the principal or leader of an Independent School.

**Registrar** means the Registrar of the Commission.

**Regulations** mean Western Australian Industrial Relations Commission Regulations (1985) (as amended).

The singular shall include the plural and vice versa.

Words importing any gender shall include the other gender.

Headings to clauses are for reference purposes and shall not affect the interpretation of this Constitution.

### **3            OFFICE**

- 3.1        The office of the Association shall be at 41 Walters Drive, Osborne Park or at such place as the Board may from time to time decide.
- 3.2        The office of the Association shall be the place for conducting the business of the Association and for serving of documents on the Association.
- 3.3        The postal address of the Association is: PO Box 1817, Osborne Park Delivery Centre, WA, 6916.
- 3.4        If the Board decides to change the location of the office of the Association it shall notify the Registrar of such change.

### **4            OBJECTIVES**

The objectives of the Association are to assist, strengthen and promote the interests of Independent Schools in Western Australia and, without limiting the generality of the foregoing, to do all or any of the following:-

- 4.1        to promote consultation and co-operation between Independent Schools;
- 4.2        to consider and promote the relationship of Independent Schools to the educational interests and needs of the community;
- 4.3        to assist, strengthen and promote the interests of and advancement of education in Independent Schools in Western Australia;
- 4.4        to advise, represent and act on behalf of its Members in matters of general concern to the Independent Schools which they represent and for the advancement of education in those schools;
- 4.5        to collect, circulate and publish information about Independent Schools;
- 4.6        to represent to the Government of Western Australia and other authorities within the State and to the public the views of the Association;
- 4.7        to maintain membership of the Independent Schools Council of Australia;

- 4.8 to perform services for the Independent Schools Council of Australia; and for such other bodies and associations as the Board may determine;
- 4.9 to hold or provide for the holding of classes, lectures, meetings, seminars or conferences calculated directly or indirectly to advance or provide a knowledge or understanding of any matter affecting Independent Schools directly or indirectly and collectively or individually or any of the staff of such schools and to obtain assistance from or involvement of any technical or educational authority or body or any person, firm, company or corporation in the holding of such classes, lectures, meetings, seminars or conferences or to arrange for the holding of such classes, lectures, meetings, seminars or conferences by any such technical or educational authority or body or any person, firm, company or corporation;
- 4.10 to conduct or take part in investigations relating to any of the foregoing matters and disseminate the results of those investigations;
- 4.11 to provide such services to the Independent Schools represented by Members and other Independent Schools as the Board may determine including to assist the functions, operations and management of Independent Schools and the provision by them of a liberal, scientific and general education for children at sub-primary, primary and secondary school levels of education.
- 4.12 to take such actions as are related to achieving the above objectives and further development of education generally and particularly in Independent Schools.
- 4.13 to receive funds from any source (including State or Federal Governments and any Independent School) and administer the use to which such funds are put for the advancement of education and these objectives.

## **5            MEMBERSHIP**

- 5.1 The Association shall have two categories of Member, namely
- (a) Independent School
  - (b) Affiliated Organisation
- 5.2 For admission as an Independent School Member, the School must
- 5.2.1 be registered under section 160 of the School Education Act,
  - 5.2.2 provide full-time tuition with adequate staff, equipment and resources to students up to at least the completion of the first year of primary education (Pre Primary),
  - 5.2.3 have educational and philosophical aims consistent with the objectives of the Association.

- 5.3 For admission as an Affiliated Organisation Member, the organisation must
- 5.3.1 have Advanced Determination pursuant to section 157 of the School Education Act 1999, or
  - 5.3.2 provide education services which support the delivery of educational programs in Independent Schools,
- and, in both cases, have educational and philosophical aims consistent with the objectives of the Association.
- 5.4 Subject to meeting the criteria in Clause 5.2 or 5.3, the Board may admit as a Member the school or organisation in the applicable category of membership.
- 5.5 An Independent School Member is entitled to one vote at all meetings and elections of the Association. Provided an Independent School Member has been continuously financial during the twelve (12) months immediately preceding a nomination, an Independent School Member shall also be entitled to nominate any of its Governors or Principal as candidates for election to office on the Board and Committees of the Association and Governors or Principal or school staff as candidates for election to office on the Committees of the Association.
- 5.6 An Affiliated Organisation Member may not vote at any meeting or in any election of the Association and no person representing an Affiliated Organisation shall be eligible to be elected to office on the Board or Committees of the Association.
- 5.7 A Member's membership of the Association shall terminate if:-
- 5.7.1 the Member ceases to satisfy any of the criteria of an Independent School Member in Clause 5.2 or an Affiliated Organisation Member in Clause 5.3; or
  - 5.7.2 the Member brings the Association into disrepute, in the opinion of the Board, reasonably exercised, or
  - 5.7.3 the Member's annual subscription remains unpaid after 31 March of the year following that in which it was due.
- 5.8 A Member may end its membership by written note of resignation addressed to the Association. The notice of resignation shall be served on the Association by
- 5.8.1 delivering it personally to the Association's address shown at Clause 3.1; or
  - 5.8.2 sending it by certified mail to the postal address of the Association.
- 5.9 A notice of resignation takes effect on the day on which it is served on the Association or on a later day specified in the notice.
- 5.10 A Member which resigns its membership of the Association shall not be entitled to a refund of its annual subscription or any portion thereof.

## **6            REGISTER OF MEMBERS**

The Executive Director shall on behalf of the Association maintain a register of current Members, and publish this register annually.

## **7            ANNUAL SUBSCRIPTION**

- 7.1            The Board, no later than 30 November each year, shall determine the amount of the subscription for the following year payable by each Member and is empowered to determine different rates of subscriptions for Members, depending upon pupil enrolment at each Independent School Member or any other special circumstances which, in the opinion of the Board, warrant such differentiation.
- 7.2            If no determination is made as provided for in Clause 7.1 the Board shall be deemed to have determined that the amount of the subscriptions payable shall be the same as for the previous year.
- 7.3            Subscriptions shall be due and payable annually within 30 days of invoice date, or at the time of application for Membership, or as the Board may in its absolute discretion decide.
- 7.4            If a school or organisation becomes a Member during the currency of a financial year it shall be liable to pay to the Association such proportionate part of its full annual subscription as the remaining number of complete quarters of that financial year bears to four (4).
- 7.5            Any Member whose subscription has been paid in advance for the ensuing twelve (12) months by 31 December shall be deemed to be a “financial” Member of the Association until the following 31 December unless the membership is otherwise terminated. A Member who has failed to pay its subscription by 31 December shall be deemed to be an “unfinancial” Member until its subscription is paid in terms of this Constitution, unless its membership is otherwise terminated.
- 7.6            No Independent School Member which is unfinancial is entitled to vote at any meeting or in any election of the Association nor shall any representative of that Member hold any office on the Board or any Committee of the Association. In the event that an Independent School Member becomes unfinancial any office held by that Member’s representative shall thereupon immediately ipso facto become vacant.
- 7.7            The liability of a Member is limited to the amount of:-
- 7.7.1            the annual subscription;
- 7.7.2            any levies approved by the Independent School Members at a General Meeting.

## **8            GENERAL MEETINGS**

- 8.1            The Annual General Meeting of the Association shall be held each year before the end of May at such time, place and date as shall be determined by the Board. At least twenty one (21) days' notice of such a meeting shall be given to all Members.
  
- 8.2            The business of the Annual General Meeting shall deal with the receipt and adoption of reports, the receipt and adoption of annual financial statements and the auditor's report, the election of Board and Committee members, the appointment of an auditor, and the conduct of such other business of which notice shall have been given.
  
- 8.3            An Extraordinary General Meeting may be held at any time by direction of the Board on not less than fourteen (14) days' notice to all Members to deal with such matters as are set out in the notice.
  
- 8.4            The Board shall convene an Extraordinary General Meeting as provided for, within thirty (30) days after the date on which a notice requisitioning such meeting is deposited with the Executive Director. Such requisition shall be in writing, signed by at least eight (8) Independent School Members and shall specify the business with which the meeting is to deal.
  
- 8.5            The quorum at any General Meeting shall be ten percent (10%) of the total number of Independent School Members.
  
- 8.6            If within half an hour from the time appointed for a General Meeting no quorum is present the meeting shall be dissolved. The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other time and place as the Board may determine and notify all Members. If, at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Independent School Members present shall be a quorum.

## **9            CONTROL OF THE ASSOCIATION**

- 9.1            The supreme control of the Association is vested in the Independent School Members of the Association.
  
- 9.2            The management of the Association is vested in the Board, which is empowered to implement the objectives of the Association and perform its role under Clause 10.9.

## **10           BOARD OF THE ASSOCIATION**

- 10.1           The Board shall consist of at least five and not more than twelve persons.
  
- 10.2           At least five of the Board members must have been elected by the Independent School Members at an Annual General Meeting.

- 10.3 The Board shall have the power to co-opt additional persons to be Board members, including the Immediate Past Chair, because of their expertise and experience. The co-option of any person shall not exceed a continuous period of three years and the number of persons co-opted at any one time, shall not exceed three. The Board shall use its best endeavours to ensure that co-options are made to maintain an equal number of Principals and Governors on the Board or to ensure particular areas of expertise are represented.
- 10.4 The Board shall consist of four designated positions, namely:
- 10.4.1 Chair;
  - 10.4.2 Chair of Education Policy Consultative Committee who must be a Principal;
  - 10.4.3 Chair of Legal and Governance Consultative Committee who must be a Governor;
  - 10.4.4 Board representative on the Independent Schools Council of Australia;
- 10.5 At the first meeting following the Annual General Meeting, the Board shall elect from its members, those persons to hold the positions in Clauses 10.4.1, 10.4.2, 10.4.3 and 10.4.4, for the following year. Only a person who is a representative of an Independent School Member shall be eligible to be elected to the designated positions.
- 10.6 The quorum at a Board meeting shall be five persons, of which at least four must have been elected by the Independent School Members.
- 10.7 The Executive Director of the Association shall attend Board meetings in an ex-officio capacity.
- 10.8 A member of the Board shall be elected for a period of three years. An elected member is eligible to serve up to three consecutive terms of three years.
- 10.9 The role of the Board shall be to:
- 10.9.1 Govern the affairs of the Association, its financial management, including the operation of such bank accounts as deemed necessary.
  - 10.9.2 Review and approve the Association's budget.
  - 10.9.3 Develop policy to guide the work of the Association's staff.
  - 10.9.4 Implement State and Federal Government initiatives, as appropriate.
  - 10.9.5 Provide leadership for the Independent School sector.
  - 10.9.6 Develop a strategic plan for the work of the Association.
  - 10.9.7 Implement all other matters pertaining to the objectives of the Association.
  - 10.9.8 The Board shall meet on no less than six occasions each year.

## **11 EDUCATION POLICY CONSULTATIVE COMMITTEE**

- 11.1 The Education Policy Consultative Committee shall consist of up to eight persons, namely:
- 11.1.1 Chair who shall be a Board member and a Principal.
  - 11.1.2 Six elected members who shall be Educators.
- 11.2 The Executive Director of the Association shall, and the Chair of the Board may, attend Committee meetings in an ex-officio capacity.
- 11.3 Subject to the approval of the Board, the Committee may co-opt to the Committee a person because of their expertise and experience to fill a temporary vacancy or to meet a special need.
- 11.4 A Committee member shall be elected to the Committee at the Annual General Meeting and shall hold office for a period of three years. Elected members may serve three consecutive 3 year terms.
- 11.5 The Education Policy Consultative Committee shall meet on at least one occasion each year and also be convened as needed during the year, to have input into any significant issues that may arise.
- 11.6 The role of the Education Policy Consultative Committee is to:
- 11.6.1 Contribute to the consultative processes for the formulation of education policy
  - 11.6.2 Provide advice to the Board on appropriate responses to education policy decisions made by State and Federal Government.
  - 11.6.3 Provide advice to Members on the impact of educational decisions made by the State and Federal Government.
- 11.7 The quorum at an Education Policy Consultative Committee meeting shall be four Committee members.

## **12 LEGAL AND GOVERNANCE CONSULTATIVE COMMITTEE**

- 12.1 The Legal and Governance Consultative Committee shall consist of up to eight persons, namely:
- 12.1.1 Chair who shall be a Board Member and a Governor.
  - 12.1.2 Six elected members, three of whom shall be Governors.

- 12.2 The Executive Director of the Association shall, and the Chair of the Board may, attend Committee meetings in an ex-officio capacity.
- 12.3 Subject to the approval of the Board, the Committee may co-opt to the Committee a person because of their expertise and experience to fill a temporary vacancy or to meet a special need.
- 12.4 A Committee member shall be elected to the Committee at the Annual General Meeting and shall hold office for a period of three years. Elected members may serve three consecutive 3 year terms.
- 12.5 The Legal and Governance Consultative Committee shall meet on at least one occasion each year and also be convened as needed during the year, to have input into any significant issues that may arise.
- 12.6 The role of the Legal and Governance Consultative Committee is to:
- 12.6.1 Address the impact of legislation on the operation of Independent Schools.
  - 12.6.2 Address matters relating to school governance.
  - 12.6.3 Address legal issues confronting school governing bodies.
  - 12.6.4 Monitor industrial matters and provide advice to the Board and to Governing Bodies of Independent Schools.
- 12.7 The quorum at a Legal and Governance Consultative Committee meeting shall be four Committee members.

### **13 EXECUTIVE DIRECTOR**

- 13.1 The Board shall appoint an Executive Director on such terms as it may determine.
- 13.2 The Executive Director, or the Executive Director's nominee when the Executive Director is not available, shall be responsible for the day-to-day operations of the Association and shall act as secretary to the Board, the Education Policy Committee and the Legal and Governance Committee. The Executive Director shall attend all meetings of the Board and all Committees.
- 13.3 The Executive Director shall be responsible for the finances of the Association and shall cause regular financial statements to be prepared for presentation to the Board.
- 13.4 The Executive Director shall be responsible for the employment and supervision of the Association's staff.

## **14 ELECTIONS**

- 14.1 The members of the Board, the Education Policy Consultative Committee and the Legal and Governance Consultative Committee shall be elected by a secret ballot of all the Independent School Members, which shall be held prior to the Annual General Meeting of the Association.
- 14.2 In the event of any conflict between this Constitution and the procedure for elections laid down in the Act and Regulations, the procedure to be followed for election to office in the Association shall be in accordance with the requirements of the Act and Regulations.

## **15 RETURNING OFFICER**

- 15.1 When an election is required to be conducted by this Constitution, the Board shall appoint a returning officer who shall not be the holder of any office in and shall not be an employee of the Association.
- 15.2 The returning officer shall have the conduct of such election in accordance with this Constitution.
- 15.3 The returning officer shall call for written nominations. The closing date for nominations shall be set to enable the result of the elections to be declared at the Annual General Meeting.
- 15.4 The returning officer may appoint such assistant(s) to assist in the conduct of the election in accordance with this Constitution as may reasonably be required; but such assistant, if any, shall not be the holder of any office in and shall not be an employee of the Association.
- 15.5 The Board shall pay the expenses of the returning officer, and any assistant(s) appointed for this task.

## **16 NOMINATIONS**

- 16.1 Written nominations for any office on the Board or a Committee of the Association shall be made and shall be signed by the candidate and endorsed by at least two financial Independent School Members and must be made at the time and place and in the manner specified in the returning officer's advertisement or notice.
- 16.2 The returning officer shall have the power in accordance with this Constitution to accept or reject such nomination; provided that if he rejects any nomination, the following provisions shall have effect:-

- 16.2.1 the returning officer shall notify the person concerned of the defect in the nomination.
  - 16.2.2 the returning officer shall, where it is practicable to do so, give the person concerned the opportunity, if possible, of remedying the defect within not less than seven (7) days of notification;
  - 16.2.3 if the person concerned remedies the defect within such period the returning officer shall thereupon accept such nomination.
- 16.3 Where, after the closing of nominations there are more candidates than the number required for any office the returning officer shall determine by draw, the order in which candidates are to appear on the ballot paper and they shall be listed in that order that they are drawn.
- 16.4 Where there is only one nomination for any particular office the candidate so nominated shall be deemed to be duly elected to that office and no ballot shall be required.

## **17 THE SECRET BALLOT**

- 17.1 Elections will be held by secret ballot.
- 17.2 The returning officer shall fix the closing date of the secret ballot, which shall be 12 noon on a weekday, so that the result of the ballot may be declared at the Annual General Meeting.

## **18 SCRUTINEERS**

- 18.1 Any candidate in any election may, by notice in writing to the returning officer appoint one scrutineer to represent him. The candidate may at any time prior to the ballot, by notice in writing given to the returning officer, change the scrutineer representing him. No candidate may be a scrutineer. The scrutineer may not act for more than one candidate standing for the same position in any ballot. The scrutineer shall be entitled to represent the candidate at all stages of the ballot. The duties of the scrutineer shall be to represent the interest of the candidate who nominated him, to attend at any stage of the ballot as requested by the candidate and to report to the returning officer any irregularity in or in connection with the conduct of the ballot which has come to his notice.
- 18.2 The returning officer shall allow the scrutineers to observe the count and to attend and represent every stage of the ballot the interest of the candidates who appointed them.

## **19 THE CONDUCT OF THE BALLOT**

- 19.1 In the case of equality of votes for any two or more candidates, the result shall be determined by the toss of a coin by the returning officer.
- 19.2 Should there be any protest being entered against a candidate or in respect of any matter or thing done or omitted to be done in connection with the ballot, the voting and/or counting of the votes shall continue and the protest shall be made the subject of an enquiry by the Board after the count has concluded and before the returning officer has announced the result of the ballot.
- 19.3 The Board shall have power to uphold or dismiss the protest, and in the event of the protest being upheld to order a new ballot to be taken and thereupon a new ballot shall be taken in accordance with the provisions of this Constitution.
- 19.4 If any member of the Board be the subject or involved in the protest such member shall not be entitled to attend or in any way participate in any meetings deliberations or decisions of the Board in regard to that protest.

## **20 DECLARATION OF RESULT**

- 20.1 The result of the secret ballot shall be declared by the returning officer declaring the result of the election at the Annual General Meeting and by displaying the same at the office of the Association in a prominent place as soon as it is practicable to do so after the Annual General Meeting.
- 20.2 In the event that it is not possible to declare the result of the ballot at the Annual General Meeting, the returning officer shall inform each candidate in writing or email of the result.

## **21 GENERAL**

- 21.1 Except insofar as any Act from time to time provides otherwise, wherever any person has been declared elected to any office, the person declared to be elected to such office shall hold office subject to this Constitution and notwithstanding any defect or irregularity or protest which may have occurred in or in connection with the calling for and dealing with nominations or the conduct of the ballot and every Member of the Association shall be bound to recognise the person as validly holding such office.
- 21.2 No person shall be eligible to nominate for, or be elected to, or hold any office if that person has been convicted of any crime which would render them unsuitable for such office.

## **22            FINANCE**

- 22.1            The financial year for the Association shall end on 31 December in each year.
- 22.2            The Executive Director shall submit to the Board for presentation to the Annual General Meeting an annual financial statement and auditor's report.
- 22.3            The Association is not carried on for the purpose of profit or gain. The property and income of the Association shall be applied solely towards the promotion of the objectives of the Association. The Association shall not make any distribution whether in money, property or otherwise to its Members.

## **23            AUDIT**

- 23.1            The accounts of the Association shall be audited by a person registered as an auditor pursuant to the Corporations Act within four (4) calendar months after the end of each financial year of the Association.
- 23.2            Such auditor shall hold office until the next Annual General Meeting and unless the auditor otherwise advises the Board shall be available and be deemed to be nominated for reselection and in the event of there being no other nomination shall be reselected.
- 23.3            Should there be any casual vacancy in the office of the auditor such vacancy shall be filled by the Board and such auditor shall hold office until the next Annual General Meeting of the Association.
- 23.4            The auditor of the Association shall before the Annual General Meeting of the Association each year, examine the financial statements and the balance sheet and compare the same with the Association's books and records and if found correct shall sign the same.

## **24            FINANCES AND BANKING**

The finances of the Association shall be under the absolute control of the Board and shall be operated in accordance with Board direction.

## **25            REPRESENTATION**

The Association shall be represented at hearings before the Commission or any Court by:

- 25.1            The Executive Director, or an alternative nominee;
- 25.2            An agent or solicitor as approved by the Executive Director and the Chair of the Board.

## **26            SEAL HOLDERS AND COMMON SEAL**

- 26.1            There shall be a common seal of the Association which shall be in the custody of the Executive Director.
- 26.2            There shall be four (4) seal holders of the Association, one of whom shall be the Executive Director.
- 26.3            The Board shall appoint seal holders as needed from time to time.
- 26.4            All deeds, instruments and other documents required to be executed by the Association or for or on behalf of the Association may be signed or executed 26.4.1 by the common seal of the Association being affixed thereto by at least two of the seal holders who shall also sign such deeds, instruments or documents, or 26.4.2 by joint signatures of the Executive Director and one Board member or two Board members together.

## **27            ALTERATION OF CONSTITUTION**

- 27.1            No amendment of this Constitution shall be made unless approved by the Independent School Members in General Meeting of which not less than twenty one (21) days' notice has been given specifying the reasons for such amendment.
- 27.2            Such notice shall be sent to each Independent School Member at its registered address.
- 27.3            No amendment shall be effective until the Registrar has given the Association a certificate that the amendment has been registered by the Commission.

## **28            NOTICES**

- 28.1            The Association may give notice to a Member:-
  - 28.1.1            personally;
  - 28.1.2            by sending it to the Member at the registered address of the Member by post.
  - 28.1.3            by sending it to the Member by electronic mail to the electronic mail address of the Member.
- 28.2            A notice (including a notice of meeting) or any other communication which is sent by post shall be deemed to be served on the day following that on which the notice or other communication is posted.

- 28.3 The non-receipt of a notice by a Member, or the accidental omission to give notice to any Member, shall not render the proceedings at any meeting invalid.

**29                    DISSOLUTION OF THE ASSOCIATION**

- 29.1 The Association may at any time, with the consent of a majority of three quarters of the Independent School Members present at an Extraordinary General Meeting called for the purpose, be dissolved.
- 29.2 If, after the dissolution or winding up of the Association, there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the Independent School Members of the Association but shall be given or transferred to some other association or institution having objects similar wholly or in part to the objects of the Association and which shall prohibit the distribution of its or their income and property among its or other members or to some charitable object or objects which association, institution or object shall be determined by the Independent School Members of the Association at or before the time of dissolution or winding up, or in default thereof if and insofar as effect cannot be given to such determination then such payment or distribution shall be determined by a Judge of the Supreme Court of Western Australia.