



BBI

The Australian
Institute of Theological
Education

THE CONSTITUTION

OF

BBI THE AUSTRALIAN

INSTITUTE OF

THEOLOGICAL EDUCATION

3 JUNE 2022

BBI The Australian Institute of Theological Education

ABN 22 161 120 118

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1. NAME AND STRUCTURE

1.1 Name of the Company

The name of the Company is BBI The Australian Institute of Theological Education.

1.2 Company Limited by Guarantee

- (a) The Company is an Australian Public Company limited by guarantee and registered as a Charity with the Australian Charities and Not-for-Profits Commission (ACNC).
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or Past Member is liable to contribute is limited to \$10.00.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following expressions in this Constitution have the meaning below:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*.

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

ATO means the Australian Taxation Office.

BBI-TAITE means the Company.

Board or **Board of Directors** means the Board of Directors of the Company.

Board Chair means the person elected as the Board Chair under **Clause 12.2**.

Company means BBI The Australian Institute of Theological Education.

Constitution means this Constitution as amended from time to time, and a reference to a particular Article has a corresponding meaning.

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

Deputy Board Chair is the person elected by the Board of Directors as the Deputy Board Chair under the terms of the Governance Charter.

Director is a person holding office as a director of the Company.

Directors are all or some of the Directors acting as a Board.

Eligible Charity means a fund, authority or institution, which is charitable within the governing law, the laws of the Commonwealth; and the common law, and gifts to which are deductible under item no. 1.1 of the table in Section 30 - 15 of the ITAA 1997.

Exempt Entity means a fund, authority or institution that is a registered charity and endorsed by the ATO under item no. 1.1 of section 50-5 of the ITAA 1997.

Financial Year means the twelve months commencing 1 July in any year.

Independent Non-Executive Director refers to a director who is not a member of management, not employed by the Institute, has no other relationship that would impede the exercise of a Director's judgment, and meets the criteria for 'independence' as set out in the Governance Charter.

Institute means the Company.

ITAA 1997 means the *Income Tax Assessment Act 1997 (Cth)*.

Linkages are the connections or associations the Institute makes with other higher education providers to forward the Objects of the Company through the delivery of high-quality courses and units as part of the academic programs of those institutions.

Member means the Educational Centre for Christian Spirituality Ltd (ECCSL) Board of Directors or any other person(s) or Exempt Entity as may be nominated by The Educational Centre for Christian Spirituality Limited for that purpose from time to time in consultation with the Board of BBI-TAITE.

Person(s) means an individual(s)

Principal/CEO means the person appointed to that office by the Board under **Clause 13.2** of this Constitution.

Secretary means the person appointed to that office by the Board of Directors under this Constitution.

TEQSA means the *Tertiary Education Quality and Standards Agency*.

2.2 Interpretation

- (a) The singular includes the plural and vice versa.
- (b) One gender includes any gender.
- (c) Words or expressions defined in the Act have those meanings.
- (d) Headings are for convenience only, and do not affect interpretation.
- (e) A reference to:
 - (i) a party includes its administrators, successors, substitutes by novation and assigns;
 - (ii) any legislation includes legislation varying, consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;

- (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
- (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.
- (f) The replaceable rules of the Act do not apply to the Institute.

3. OBJECTS OF THE COMPANY

The objects for which the Company is established are:

- (a) To operate, maintain and promote the Company in accordance with the mission of the Roman Catholic Church, its beliefs, traditions and practices.
- (b) To embody and promote a Catholic ethos with an ecumenical spirit, engaging faith, culture and society.
- (c) To teach TEQSA accredited higher education courses, methods, and practices, offering opportunities for growth in knowledge and further transformation.
- (d) To foster and promote excellence in Higher Education teaching, learning and scholarship grounded in and contributing to contemporary research, and drawing from the rich intellectual life of Catholic and other faith traditions to further the goals of theological learning and human development.
- (e) To deliver educational opportunities in Christian spirituality and adult faith formation providing as for anyone desirous of undertaking or continuing these educational opportunities.
- (f) To engage in student-centred learning and teaching that advances understanding and knowledge, encourages free and open enquiry, and enhances professional and vocational excellence.
- (g) To deliver quality education through a variety of partnerships, linkages and cooperative ventures, including with other tertiary institutions,

and doing all other things as may be incidental, ancillary, or conducive to the attainment of these objects.

4. GOVERNANCE CHARTER

The Governance Charter is the written policy document that sets out the roles, responsibilities, authorities and protocols of the Chair of the Board, the Directors of the Company, the Committees of the Board, and the Principal/CEO.

The Governance Charter is to be read in the context of the Constitution of the Company. In the event a provision of the Governance Charter is inconsistent with the provision of this Constitution, the later shall prevail, and the former shall to the extent of the inconsistency, be invalid.

5. APPLICATION OF INCOME AND PROPERTY

5.1 Promotion of Objects

All income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Member of the Company. The Company will give no remuneration or other benefit to the Member except repayment of out-of-pocket expenses or as specified below. Nothing in this paragraph prevents payment:

- (a) for services actually rendered to the Company or for goods and/or services supplied in the usual and ordinary way of business by the Member or a Director;
- (b) of interest on money borrowed from the Member or a Director at not more than commercial rates;
- (c) of rent for premises leased by the Member or any Director to the Company provided that the rent is reasonable and proper;
- (d) of insurance premiums for Directors and officers as permitted by this Constitution;
- (e) reimbursement of out-of-pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board;
- (f) for any service rendered or goods supplied to the Company by a Director in a professional or technical capacity, other than in their capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service; or
- (g) of an honorarium in compensation for services of a Director provided to the Company.

6. WINDING UP

6.1 At the first occurrence of:

- (a) the winding up of the Company; or
- (b) the Company ceasing to be an Exempt Entity

any property whatsoever, excluding surplus gift assets remaining after satisfaction of all debts and liabilities, will not be paid to or distributed to any Member of the Company but will be given or transferred by the Directors to one or more funds, authorities or institutions that the ATO has endorsed as an Exempt Entity.

6.2 In determining where to transfer the residual property of the Company, excluding surplus gift assets, the Directors shall give primary consideration to funds, authorities or institutions having objects similar to the objects of the Company that are Exempt Entities.

- 6.3 Where the Directors are unable to reach agreement as to where the residual property of the Company, excluding surplus gift assets, should be transferred, such decision shall be made by the Member of the Company provided such transfer shall only be made to a fund, authority or institution that is an Exempt Entity.
- 6.4 At the first occurrence of:
- (a) the winding up of the Company; or
 - (b) the Company ceasing to be endorsed as a deductible gift recipient under item no.1 of the table in section 30-15 of the ITAA 1997,
- the Directors must transfer any surplus gift assets remaining after the payment of all liabilities related to those surplus gift assets to an Eligible Charity.
- 6.5 Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 1997 are satisfied, a transfer must be made in accordance with those conditions.
- 6.6 In making any determination where to transfer surplus gift assets the Directors shall give primary consideration to Eligible Charities having objects similar to the objects of the Company.
- 6.7 Where the Directors are unable to reach agreement as to where the surplus gift assets of the Company should be transferred such a decision shall be made by the Member of the Company provided such transfer shall only be made to an Eligible Charity, and not the Member of the Company.

7. MEMBERSHIP

Member

- (a) The Member of the Company shall be The Educational Centre for Christian Spirituality Limited and any other person(s) or Exempt Entity(s) as may be nominated by The Educational Centre for Christian Spirituality Limited for that purpose from time to time in consultation with the Board of BBI-TAITE, whose membership may take effect on and from the time of nomination until revocation by The Educational Centre for Christian Spirituality Limited or if applicable, upon the expiry of their term of office.
- (b) The rights and privileges of every person or exempt entity relate to each Member and are not transferable by a Member's own act or by operation of law and will cease upon that exempt entity or person ceasing to be a Member whether by winding up or otherwise dissolved or deregistered, or by death, retirement or otherwise.

8. REGISTER OF MEMBERS

It will be the responsibility of the Secretary to keep and maintain a register of Members in which the full name and address and date of appointment of a Member will be entered. The register of members will be available for inspection by Members at the registered office of the Company.

9. RIGHTS OF THE MEMBER

9.1 No Membership Fee Payable

No entrance fee, annual subscription or other fees will be payable by Members in respect of their membership.

10. MEETINGS OF MEMBERS

10.1 Use of Technology

Meetings of Members may be held at two or more venues, using any technology that gives the Member a reasonable opportunity to participate.

10.2 Convening of Meetings

- (a) An Annual General Meeting of the Members of the Company will be held and convened in accordance with the Act.
- (b) In addition, the Directors:
 - (i) may call general meetings of the Company at any time; and
 - (ii) must call a general meeting of the Company, as provided in the Act, upon receiving a requisition of the Members of the Company that states the object of the proposed meeting.

10.3 Notice of General Meeting

Subject to consent to shorter notice being given in accordance with the Act, at least 21-days' notice of any general meeting must be given specifying:

- (a) the place, day and hour of the meeting;
- (b) the general nature of any business to be transacted at the meeting;
- (c) if a special resolution is to be proposed, the details of it and intention to propose it;
- (d) if the meeting is to be held in two or more places the technology that will be used to facilitate this;
- (e) any other information required by the Act.

10.4 Accidental Omission

The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

11. WRITTEN RESOLUTIONS OF THE MEMBERS

11.1 No Meeting Required

A resolution may be passed by the Company circulating a resolution, and if the Members have signed a document containing the resolution of the Members, the resolution is passed on the day and at the time the document is last signed by the Members.

12. APPOINTMENT AND REMOVAL OF DIRECTORS

12.1 Directors

- (a) The Board of Directors shall consist of not less than seven and not more than nine Directors.
- (b) The Members shall appoint Directors on rotation for a period not exceeding three years.
- (c) A retiring Director is eligible for reappointment provided that director would not be in office for more than nine consecutive years.
- (d) The Board of Directors or its delegate shall conduct a recruitment process to identify candidates for directorship taking into account the skills required and may propose candidates to the Members for consideration.

12.2 Board Chair

- (a) The Members shall appoint one of the directors, following consultation with the Board, to be the Board Chair by ordinary resolution from time to time for such a period that the Members may resolve.
- (b) The Board Chair shall be entitled to preside as the chair at meetings of Directors.
- (c) Where a Board meeting is held and:
 - (i) there is no Board Chair; or
 - (ii) the Board Chair is not present within 30 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as the chair of the meeting,

the Deputy Board Chair shall preside as the chair of the meeting or, if there is no Deputy Board Chair or the Deputy Board Chair is not present or is unwilling to act then the other Directors present may choose another Director

as the chair of the meeting by a two-thirds majority, or if their number is not three or a multiple of three, then the nearest number to two-thirds.

12.3 Retirement, Resignation, or Termination of a Director

The office of a Director will be vacated if:

- (a) the Director resigns or retires from office by written notice to the Company; or
- (b) the Director is absent for three consecutive meetings of the Board or from more than 50% of Board meetings in any one year without special leave of absence and the Board resolves that his or her office be vacated; or
- (c) is declared a protected person under Part 4.2 of the Guardianship Act 1987 (NSW) or Part 4.3 of the NSW Trustee and Guardian Act 2009; or
- (d) acts in a manner determined by the Board (acting reasonably) to be contrary to the objects of the Company.

12.4 Casual Vacancies

Any casual vacancy occurring in the office of a Director may be filled by the Members by notice in writing, and that Director will hold office only for the remainder of the term of appointment of the person who is being replaced but will later be eligible for re-appointment.

13. COMPANY MANAGEMENT

13.1 Management of Company

Subject to the Act and to any other provision of this Constitution, the business of the Company will be managed by the Board, which may exercise all powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Members.

13.2 Principal/CEO

The Board of Directors shall employ a Principal/CEO to manage the Company on behalf of the Directors of the Company. The Governance Charter sets out the terms of employment and duties of the Principal/CEO.

13.3 Signature of Cheques and Other Negotiable Instruments

All cheques and other negotiable instruments must be signed, drawn, accepted or endorsed as the case may be in any manner that the Board determines.

14. PROCEEDINGS AT MEETINGS OF DIRECTORS

14.1 Meetings of Directors

The Directors may meet together to deal with the business of the Company and adjourn and otherwise regulate their meetings as they think fit, provided that the Directors must meet not less than three times in each calendar year. The Directors may meet in person or use any technology that gives all Directors a reasonable opportunity to participate.

The Governance Charter sets out the protocols for meetings of the Board of Directors.

14.2 Secretary to Convene Meeting

The Secretary will, on the requisition of not less than two Directors, convene a meeting of the Directors.

14.3 Decisions of the Board

A collective decision-making process will decide questions arising at a Directors meeting by all Directors present. For all purposes, any decision will be deemed a decision of all the Directors.

14.4 Quorum

At a meeting of Directors, one half of the Directors are necessary to form a quorum.

14.5 Vacancies

If there are any vacancies in the Directors, the remaining Directors may act so long as the Company has at least three Directors.

14.6 Deputy Board Chair

The Directors will elect one of their number to be the Deputy Board Chair who will act as the Chair of a Board meeting in the absence of the Board Chair.

15. DIRECTORS' INTERESTS

15.1 Conflict of Interest and Related Party Transactions

Subject to the Act each Director must comply with the Act in relation to being present, and participating in collective decision-making, at a Board meeting that considers a matter in which the Director has a material personal interest.

All Directors will act in accordance with the BBI-TAITE *Conflict of Interest and Related Party Transaction Policy* and the ACNC *Governance Standard 5: Duties of Responsible People*.

16. DELEGATION OF BOARD POWERS

16.1 Delegation to a Committee or Attorney

- (a) The Board may delegate any of its powers:
 - (i) to a committee consisting of at least one Director, which may also include people who are not Directors; or
 - (ii) to an attorney,and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This Rule is supplemental to the Act. The Board should give clear instructions as to the terms of any delegation. Powers delegated must be exercised in accordance with any directions of the Board.
- (b) The Board may at any time dissolve any committee or may terminate the appointment of any member of a committee.
- (c) Directors are entitled to attend, speak and vote at any meeting of a committee, unless the directors specify otherwise by resolution.

16.2 Terms of Delegation

- (a) A delegation of powers under **Clause 16.1** may be:
 - (i) made for a specified period or without specifying a period; and
 - (ii) made on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

17. RESOLUTIONS OF DIRECTORS

17.1 Written Resolution

If all of the Directors have signed a document containing a resolution of the Directors, the resolution is passed on the day and at the time the document is last signed by a Director.

17.2 Multiple Copies

For the purposes of **Clause 17.1**, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

17.3 Entitlement to Vote

A reference in **Clause 17.1** to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

17.4 Validity of Acts

All acts of any meeting of the Directors, or of a sub-committee of Directors, or by any person acting as a Director, are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the sub-committee, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the sub-committee, or to act as a Director, or that a person so appointed was disqualified.

18. SECRETARY

The Directors must appoint at least one Secretary.

19. ACCOUNTS AND AUDIT

19.1 Company Must Keep Accounts

The Board must cause the Company to keep written financial records that:

(a) correctly record and explain the Company's transactions (including transactions undertaken as trustee) and financial position and performance; and

(b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

19.2 Financial Reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to the Members in accordance with the Act no later than any deadline set by the Act.

19.3 Audit

The Board must cause the Company's financial report for each financial year to be audited by an auditor approved by the Members and obtain an auditor's report. The eligibility, removal, remuneration, rights and duties of the auditor are regulated by the Act.

19.4 Recording of Minutes

The Directors will cause minutes of:

(a) All proceedings and resolutions of meetings of the Members;

- (b) all proceedings and resolutions of meetings of the Directors, including meetings of any Committee(s);
- (c) all resolutions passed by the members without a meeting; and
- (d) all resolutions by the directors without a meeting,

to be duly entered in books for that purpose in accordance with the Act.

19.5 Basis of Decision

Minutes should record not only the decisions taken, but also the basis on which the decision was made (key documents considered and key points that were taken into consideration by the Board in making its decision), as well as actions arising.

19.6 Signing of Minutes

The Directors will cause the minutes referred to in Section 19.4 (a) and (b) to be signed by:

- (a) the Chairperson of the meeting at which the proceedings took place or at which the resolutions were proposed; or
- (b) the Chairperson of the next succeeding meeting.

19.7 Accurate Record of the Proceedings and Resolutions

Where the minutes referred to in Sections 19.1 (a) and (b) are signed in accordance with Section 19.6, those minutes shall be presumed to be an accurate record of the relevant proceedings and resolutions unless the contrary is proved.

19.8 Books Open for Inspection

Books containing the minutes of proceedings of meetings of the Members will be open for inspection by the Members without charge during the Institute's normal business hours.

20. NOTICES

20.1 Notices

- (a) A notice is properly given by the Company to a person if it is:
 - (i) in writing signed on behalf of the Company (by original or printed signature);
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) delivered personally;
 - (B) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (C) sent by electronic message to the electronic address (if any) nominated by that person.

- (b) A notice is properly given by a Member, a Director or the Secretary to the Company or to any other Member, Director or Secretary if it is:
 - (i) in writing signed by on behalf of that Member, Director or Secretary (by original or printed signature);
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) delivered personally;
 - (B) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (C) sent by electronic message to the electronic address (if any) nominated by that person.

20.2 When Notice Is Given

- (a) A notice given pursuant to **Clause 20.1** is regarded as given and received:
 - (i) if it is delivered personally or sent by electronic message:
 - (A) by 5.00 pm (local time in the place of receipt) on a business day – on that day; or
 - (B) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
 - (ii) it is sent by mail:
 - (A) within Australia – three business days after posting; or
 - (B) to a place outside Australia – seven business days after posting.
- (b) A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service of that notice by the Company.

20.3 Business Days

For the purposes of **Clause 20.2**, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

20.4 Counting Days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

21. INDEMNITY AND INSURANCE

21.1 Indemnity

Subject to the Act, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer (as defined in the Act) of the Company and may indemnify its auditor against a liability:

- (a) incurred, in their respective capacities, to the Company, to a related body corporate or to a person other than the Company (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation under the Act; and
- (b) for costs and expenses incurred by the officer or auditor in defending civil or criminal proceedings in which judgment is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Act.

21.2 Insurance

Subject to the Act, the Company may enter into and pay premiums on a contract of insurance in respect of any person, to the fullest extent permitted by the Act.

21.3 Former Officers

The indemnity in favour of officers under **Clause 17.1** is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company, even though the person is not an officer at the time the claim is made.

22. NON-DISCLOSURE

22.1 Secrecy of Accounting and Other Records

- (a) Every Director, Officer, Secretary, Treasurer (if any), Auditor, manager, trustee, members of a Committee, agent, accountant or staff member is bound to observe secrecy with respect to all accounting and other records of the Institute including all transactions of the Institute;
- (b) If required by the Directors, every such person will, before commencing that person's duties or employment or at any time afterwards, sign and make a declaration in a book to be kept for that purpose that they will not reveal or make known any of the matters, affairs or concerns which may come to their knowledge as Director, Officer, Secretary, Treasurer (if any), Auditor, manager, trustee, member of a Committee, agent, accountant or staff member and whether relating to activities and/or transactions of the Institute, or the state of the account of any individual or to anything else, to any person or persons except in the course and in the performance of their duties, or

under compulsion or obligation of law, or when officially required to do so by the Directors or by the auditors for the time being, or by any General Meeting of the Members.

23. BY-LAWS

The Directors may from time to time make and vary by-laws in relation to the Company and its business that are not inconsistent with this Constitution. These are set out in the Governance Charter.

24. AMENDMENT OF CONSTITUTION

This Constitution may be varied or amended from time to time by the Members but only in accordance with the Act.

Constitution, as amended, dated 3/06/2022