

Swan Christian Education Association Inc

Constitution Changes Briefing Note – September 2021

This Briefing Note presents the key changes being proposed to the SCEA Constitution. Rather than identifying every change in sequence through the Constitution, this Note is structured into a series of sections to present each of the main changes and then a list is given of the subsidiary clauses that have been adjusted as a consequence of the main change.

These changes are being proposed after a lengthy and detailed process of consultation and debate. This is the second Briefing Note provided to Members and incorporates changes to the proposals made in the light of Members feedback, both directly and in consultation meetings.

Members are advised that the proposed amended Constitution of the Association make the following changes.

1. General Housekeeping

The proposed Constitution includes a number of minor editorial amendments such as grammatical corrections, consistency of numbering and capitalisation, tidying up of cross-references between clauses, etc.

2. Definition of Child or Children and Parent

It is recommended that these definitions are expanded as follows:

Old Definition:

"Child" or "Children" in relation to membership shall include an adopted child, a foster child, or such other child as is residing with a Member and dependent upon him or her.

New Definition:

"Child" or "Children" in relation to membership shall include an adopted child, a foster child, or such other child as is residing with a Member and dependent upon him or her, or of which the Member is otherwise legal guardian.

Old Definition:

"Parent" means the parent or legal guardian of a Child.

New Definition:

"Parent" means the parent, legal guardian or adult responsible for the care of a Child residing with them.

3. Statement of Faith

The Review Committee sought extensive advice from lawyers and theologians on the intersection of a Statement of Faith and Christian Lifestyle Expectations, both in terms of defining SCEA's identity and understanding of God's purposes and the legal requirements associated particularly with Equal Opportunity and Anti-discrimination Legislation.

In the end, it was agreed that SCEA's current approach should continue. SCEA currently has

- (i) a Statement of Faith embedded in the Constitution which covers foundational beliefs that are unlikely to change with time, and
- (ii) a statement of Christian Lifestyle Expectations which is mandated in the Constitution but is defined outside the Constitution by a Board Policy.

The Statement of Faith was reviewed by Dr Brian Harris who proposed a re-wording into more contemporary language. Dr Harris' paper presenting the current and proposed wording and the rationale for the changes is available as a separate attachment.

Following Member correspondence and discussions at the Members' Consultation Meeting, the Committee has adjusted paragraph (f) which covers the nature and impact of sin, and paragraphs (h) and (i) which cover the person and work of the Holy Spirit.

The proposed wording is as follows:

(f) Though humans are wonderfully made in the image of God, humanity has fallen into sin which expresses itself in each individual life and in a fallen world, alienating us from God.

(h) The divinity of the Holy Spirit, who convicts people of their need for God.
 (i) Conversion is the work of the Holy Spirit who continues to transform our hearts and lives helping us to be more faithful disciples of Jesus.

The Review Committee recommends adoption of the proposed changes as, in the Committee's opinion, it maintains all the elements of the Association's current Statement of Faith.

Adjustments to the Christian Lifestyle Expectations are described in Section 4

4. Christian Lifestyle Expectation

The Constitution sets certain conditions for Association Membership and Staff Membership in current Clauses 13.2 and 14.1 respectively. These conditions include

... must declare [and maintain] their agreement with the Objects of the Association, agree with and accept the Statement of Faith, agree to abide by the Constitution, indicate clearly their acceptance of Christ personally as Saviour and Lord, and give evidence to the satisfaction of the Board or its delegated representatives that they are leading lives compatible with Protestant, evangelical, Christian principles as defined from time to time by the Board.

Termination of membership for Association Members for failing to meet these criteria is covered in current Clause 15.4(b) where one of the grounds for the Board terminating Association Membership is:

... if the person in question is not, in the opinion of the Board, leading a life compatible with Protestant evangelical Christian principles;

Termination of membership for Staff Members for failing to meet these criteria is covered in current Clause 14.1 which states

It shall be a condition of initial and continuing employment that Staff Members of the Association must declare and maintain...

The Review Committee accepted the advice that the term '*leading lives compatible with Protestant, evangelical, Christian principles*' could be subject to differing interpretations depending on an individual's theology or tradition even though it is qualified by the phrase '*as defined from time to time by the Board*'.

It is recommended that this phrase is reworded as follows:

Old phrase:

.. leading lives [a life] compatible with Protestant, evangelical, Christian principles as defined from time to time by the Board

New phrase:

... leading lives [a life] compatible with the Association's Christian Lifestyle Expectations as defined by the Board from time to time

This amendment would apply to the current Clauses 13.2, 14.1 and 15.4(b) which correspond to Clauses 12.2, 13.1 and 14.3(b) in the proposed Constitution.

It is also recommended that an entry is also included in the Definitions.

Following discussion at the Members' Consultation Meeting it was recognised that the Board should be directed to ensure that the Christian Lifestyle Expectations are compatible with the Statement of Faith and that, in order to ensure transparency and accountability, the Board should be required to keep Members informed of any changes to these Expectations. These two requirements are reflected in the proposed new Definition.

New Definition:

(j) "Christian Lifestyle Expectations" means the expectations referred to in Clauses 12.2, 13.1 and 14.3. which must be compatible with the Statement of Faith. The Board shall inform the Association Members in writing of any changes to the Association's Christian Lifestyle Expectations.

Association Members will also continue to have visibility on the Association's Christian Lifestyle Expectations as it is proposed that they will be required to affirm they meet this requirement on a biennial basis (annually for Staff Members).

5. Controversial Issues and Conflicts of Interest

The current Clause includes two elements: Controversial Issue and Conflicts of Interest.

Old Clause(s):

4. Controversial Issues and Conflicts of Interest

- 4.1 In the interest of harmony within the Association and amongst its membership, controversial or divisive doctrines or issues other than those contained in the statement of faith shall not be promoted within the Association or its Schools.
- 4.2 Such issues include:
 - (a) speaking in tongues as a sign of having been filled with the Holy Spirit, and
 - (b) doctrines which are peculiar to a particular denomination.
- 4.3 The Board has the authority to determine whether a particular issue is controversial or divisive within the meaning of this clause but may be overruled by a special resolution passed at a General Meeting of the Association.

4.4 No person may take Office as a Director on the Board or as member of a School Committee or any other Committee unless they declare an actual or perceived conflict of interest before taking office. If whilst holding any Office, a conflict of interest develops, the person concerned must immediately declare that conflict to the Board or Committee as the case may be.

The Review Committee recognised that the Controversial Issue element responded to a particular contemporary issue when SCEA was founded and a desire to potentially avoid controversy over doctrinal matters. The Committee considered identifying the one issue was unhelpful and that it is educationally (and spiritually) advantageous to be able to hold and consider differing perspectives, provided they are respectful and not at odds with the Statement of Faith or the Christian Lifestyle Expectations of the Association.

In the event that individuals generate unhelpful controversy within the Association, the matter should be capable of resolution through mechanisms such as the Enrolment Agreement (for School Members) or the Christian Lifestyle Expectations (for Staff and Association Members). There is also a mechanism within the Association to resolve disputes, namely the Grievance Procedure. The scope of the current Dispute Resolution Clause in the Constitution was considered to be unnecessarily limited, and an amendment is proposed (see below)

The Review Committee considered that Conflicts of Interest are important but are adequately addressed in various codes of conduct and within the Association and external legislation and regulation. A further reference point, the Associations Incorporation Act Model Rules, does not include a rule on Conflicts of Interest.

The Review Committee recommended removing this section of the Constitution.

(A minor consequence is that the numbering of subsequent clauses in the proposed constitution do not match the current constitution)

6. Objects of the Association

The Objects of the Association have been refined to capture the essence of the Mission and Vision of SCEA as accepted/adopted by Association Members on 20 October 2020.

Old Clause(s):

5. Objects

To establish and maintain Schools which will provide an education which treats all aspects of the curriculum in the light of God's word, and in which students are encouraged to develop as fully as possible the abilities which God has given them.

New Clause(s):

4. Objects

4.1 To establish and maintain a system of interdependent Christian schools in Australia that are inspired, shaped and informed by the mission initiated by Jesus Christ to equip and empower children and young people to experience life in all of its fullness

7. School Membership

It has been suggested that the current exclusivity of membership of the School Committees to only Christians is at odds with a welcoming, inclusive missional approach to Christian schooling at SCEA. This does not mean that Christian families do not have a role in setting and maintaining the Christian ethos and distinctive within each school; just that there are potentially less divisive approaches to that engagement.

The Review Committee sought input and advice from the SCEA school principals and from representatives of the current School Committees.

The proposed changes to the Constitution significantly re-frame parental engagement within the life of the school. They provide for greater engagement across all interested and committed parents whilst maintaining Christian leadership and opportunities for spiritual (Christian) input and support.

Old Clauses:

26 School Committee

- 26.1 Each School shall have a School Committee consisting of not less than five (5) and not more than seven (7) School Members of the relevant School, together with the School Principal. The actual number of the Committee will be determined by the School Members at the School Members' Meeting from time to time.
- 26.2 The School Committee Members shall be elected by School Members for a two (2) year term at the Annual School Members' Meeting. At least two Members of a School Committee shall retire annually and shall be eligible for re-election. In the event of a vacancy on the Committee, nominations will be requested from Members of that School and the relevant School Committee shall select a person from amongst the nominations and appoint him or her to the position for the balance of the term.
- 26.3 Only persons who are Association Members at the time of the Annual School Members' meeting are eligible for nomination to a School Committee.
- 26.4 The Board shall appoint:
- (a) A School Committee in respect of any new school established by the Association; and,
 - (b) Association Members (either of the relevant School or of another School), sufficient to constitute the School Committee if there are insufficient nominees elected to constitute a School Committee of at least five (5) School Members of the relevant School. The persons appointed by the Board under this subclause shall serve as School Committee Members in accordance in all respects with this clause.
- 26.5 The School Committee will carry out the role determined by the Board from time to time, including, but not limited to:
- (a) Prayerfully supporting the aims and objectives of the School within the Association's Mission;
 - (b) Representing the views and interest of the parents of the School within the Association;
 - (c) Providing feedback, support and advice to the Principal;
 - (d) Raising funds and in-kind support for school activities and projects as requested by the Principal;
 - (e) Identification, encouragement and support for eligible School Members to become Association Members; and,

- (f) Supporting the School in promotion and marketing.
- 26.6 The School Committee may make recommendations to the Principal of the School; however, its decisions will not be binding upon the School, its Principal or the Association.
- 26.7 Each School Committee shall appoint from amongst its number a Chairman and other Officers as required.
- 26.8 The School Committees will meet monthly during school terms and for any additional meetings that the Committee sees fit.

New Clauses:

25 School Governance

- 25.1 The Board shall prepare governance policies to be implemented by Schools which:
- (a) reflect the partnership that Schools and Parents have in discharging their shared responsibility to equip children and young people to flourish, including implementation of the Board's Parent Partnership Policy in accordance with Clause 16.1;
 - (b) expressly identify the scope of governance authority delegated by the Board to the Schools;
 - (c) recognise the value of each School having the capacity to adapt governance structures within defined parameters to meet their specific context and priorities;
 - (d) identify any requirements for composition, powers and processes of any School-based Committees;
 - (e) provide for feedback mechanisms from School Members to the Board, to inform the regular review of governance policies; and
 - (f) encourage the pursuit of the Objects through the Schools, including through maximising transparency of School operations and governance to School Members.

This proposed change in governance and representation at each school has an impact on other processes and procedures including School Members' Meetings.

Old Clause:

- 17.1 School Members' Meetings
- (a) Each School shall hold an Annual School Meeting (ASM). The purpose of this meeting shall be to elect Members of the School Committee of the particular School, and to consider such other matters as may be appropriate and of which notice has been given. Members of the School Committee of the particular School are to be elected by School Members of that School at this ASM.
 - (b) The Chairman of the School Committee will convene at least one General Meeting of all School Members each school term and any additional meetings as the School Committee considers necessary.
 - (c) The Chairman of a School Committee shall convene a Special School Meeting of the relevant School upon receipt by him or her of a written request setting out the purpose of such meeting and signed by not less than twenty per cent (20%) of the School Members of

the relevant School. Such meeting shall be held not later than four (4) weeks subsequent to the date of receipt of the request.

(d) At least one (1) week's written (email) notice of a School Meeting shall be given. Such notice shall be given to all School members of that particular School.

(e) The quorum for a general School Meeting and special School Meetings shall be ten per cent (10%) of the School members of that particular school, or ten (10) of those School Members, whichever is the lesser.

(f) In the event of a dispute as to the correctness of the procedures in relation to the election of a School Committee, the matter shall, on the request in writing of ten (10) or more School Members of that particular School, shall be referred to the Chief Executive Officer for resolution.

(g) A School Members' Meeting may make recommendations to the Principal of the School; however, its decisions will not be binding upon the School, its Principal or the Association.

New Clause:

16.1 School Members

(a) Each School shall:

i. partner with Parents in discharging their shared responsibility to equip children and young people to flourish; and

ii. establish a Parents in Partnership Committee and Christian Life Committee as described in the Parent Partnership Policy;

iii. establish frameworks specific to the context and priorities of the School to develop and foster that partnership, including through scheduling meetings and other mechanisms for providing transparency of School operations and priorities to School Members, securing Parent feedback, and otherwise strengthening the environment, so that all within the community can belong, learn and thrive.

The proposed Clause 25.1 requires the Board to establish a policy or policies to govern the new structures and approach.

The Review Committee has drafted a Parents in Partnership Policy for the Board to adopt, and a draft copy is available as a separate attachment. This version includes responses to Members' feedback about (a) the definition of Parent, (b) the process for appointment of the Committee Chairperson, (c) who deputises in the absence of the Chairperson, (d) the authority of the Committee in expending funds, and (e) the scheduling of the Annual School Members' Meeting. .

There are a range of adjustments through the constitution based on these changes including definitions of '*Parents in Partnership Committee*' and '*Christian Life Committee*' in the Definitions Clause.

8. Association Membership termination

The Review Committee recommend adding a further reason for the Board potentially to terminate an Association Member's membership.

New Clause:

Clause 14.3 The Board may terminate an Association Member's membership:

....

(c) if the person has not attended a meeting of the Association for two (2) years;

The current safeguards around Association Membership termination contained in current Clause 15.5 (ie a right to challenge and be heard) remain unchanged.

9. Association General Meeting Quorum

It is proposed that the quorum for an Association Members' Meeting is based on a fixed proportion of the membership and excludes a minimum absolute number which, in the current Constitution, would entail an Association Membership greater than 500 individuals.

Old Clause:

17.2(e) The quorum for a General Meeting shall be thirty per cent (30%) of Association Members or 150 Association Members, whichever is the lesser.

New Clause:

16.2(e) The quorum for a General Meeting shall be thirty per cent (30%) of Association Members.

10. Online meetings

In the light of recent pandemic responses, the Committee considered the question of online meetings.

Historically, SCEA has required Members to attend meetings to take part in or to hear debate and resolutions, and to vote. The Committee does not recommend proxies being introduced, and only recommends online meetings when in-person meetings (with numbers necessary for a quorum) are legally prohibited.

New Clause:

17.3 In exceptional circumstances where face-to-face meetings are legally prohibited, Association Members Meetings and Staff Member Meetings may be conducted online as determined by the Board.

11. Board of Directors – maximum numbers

Currently the Constitution allows a maximum of seven (7) elected Directors with the Board having the option of appointing a further three (3) Directors on an interim basis.

The Review Committee recommends amending the maximum number of Board Members to be ten (10) in aggregate.

Old Clauses:

23.2 There shall be seven (7) elected Directors, who shall be elected at an Annual General Meeting.

23.4 The elected Directors may at any time appoint up to three (3) additional Directors because of their particular skill, expertise or experience.....

New Clauses:

- 22.1 There shall be a Board of up to a maximum of ten (10) Directors, who shall be comprised of:
- (a) Association Members elected by the members at an Annual General Meeting in accordance with the Association's By-Law on Election Procedures and following nomination by the Board Recruitment Committee; and
 - (b) Association Members appointed by the Board to fill a casual vacancy, or to fill a position not filled by a vote of the Association Members at the most recent Annual General Meeting.

Concern was raised at the Members' Consultation Meeting that this suggestion placed no limit on the number of Board-appointed Directors in Clause 22.1(b) or any filter on these appointment other than the remaining Board Members' opinions. In the light of this feedback, the Review Committee recommends limiting Board-appointed Directors to three (3) (in line with the current Constitution) and requiring them to be recommended by the Board Recruitment Committee.

Revised New Clause

- 22.1(b) No more than three (3) Association Members recommended by the Board Recruitment Committee and appointed by the Board to fill a casual vacancy, or to fill a position not filled by a vote of the Association Members at the most recent Annual General Meeting.

12. Board of Directors – minimum numbers

The current Constitution specifies a minimum number of Directors but does not provide a solution if the number falls below the minimum. The proposed amendment clarifies what business can be transacted by a Board of less than four (4) Directors.

Old Clauses:

- 23.3 A minimum number of four (4) Directors must be maintained and if necessary clause 23.4 invoked, to achieve this.
- 23.4 The elected Directors may at any time appoint up to three (3) additional Directors because of their particular skill, expertise or experience. Any so appointed Directors shall meet the Association Membership requirements of the Association in clause 13.2 and they may serve until the next Annual General Meeting, at which time they will be eligible for nomination. A Director appointed under this process shall have all the rights of an elected Director. If the number of elected Directors be less than four (4), the Board shall call a Special General Meeting for an election to be held to fill such vacancies as may be needed to ensure that the minimum of four (4) elected Directors is re- established.

New Clauses:

- 22.1 (See New Clause 22.1 above for the provision for the Directors to fill casual vacancies)
- 22.3 A minimum number of four (4) Directors must be maintained and the only business that may be validly conducted by the Board if there are less than four (4) Directors is to resolve to fill casual vacancies or to call a General Meeting for the purpose of electing new Directors nominated by the Board Recruitment Committee.

13. Board of Directors – term of appointment

The Review Committee recommend a maximum number of terms (and years) that a Member can be a Director.

Old Clause:

23.2 Such Directors are elected for a term not to exceed three (3) years and are eligible for re-election for subsequent 3-year terms.

New Clause:

22.2 Directors elected for a term not to exceed three (3) years and are eligible for re-election for two (2) subsequent three-(3)-year terms, subject to not exceeding nine (9) consecutive years as a Director from the date when first elected at an Annual General Meeting or appointed by the Board under Clause 22.1(b).

14. Board Recruitment Committee

The Review Committee accepted advice that the responsibilities and accountabilities of contemporary boards require more intentional selection of Board Directors for a range of skills and experiences. This does not negate the fundamental requirement for each Director to have a heart for the gospel and the kingdom of God as well as the Vision, Mission and Values of SCEA.

It is recommended that a Board Recruitment Committee is established to proactively seek and recommend Board nominations as referenced in Clause 22.1

22.1 *There shall be a Board of up to a maximum of ten (10) Directors, who shall be comprised of:*

(a) Association Members elected by the members at an Annual General Meeting in accordance with the Association’s By-Law on Election Procedures and following nomination by the Board Recruitment Committee; and

The establishment of the Recruitment Committee is covered in the following proposed new clauses.

New Clauses:

23.2 The Board shall also, subject to this Constitution and By-Laws:

(a) establish a Board Recruitment Committee, which shall comprise:

- i. the Chief Executive Officer (CEO);
- ii. a Principal of a School, to be elected by a vote of the Principals of each School, to serve the Committee for a term of three (3) years; and
- iii. three (3) Association Members, to be elected by the Association Members at a General Meeting, to serve the Committee for a term concluding at the third Annual General Meeting after their election.

(b) establish the Terms of Reference for the Board Recruitment Committee, which shall:

- i. detail the Committee’s responsibilities to identify and nominate suitable candidates who have the requisite mix of skills, character and capabilities to contribute as a Director to the effective performance of the Board in advancing the Purposes of the Association; and
- ii. identify the process that the Committee must follow to equip the Association Members with sufficient information to consider and elect nominated Directors at a General Meeting.
- iii. The Board shall inform the Association Members in writing of the Terms of Reference of the Board Recruitment Committee and of any changes to the Terms of Reference.

It should be noted that whilst the Terms of Reference of the Board Nominations Committee are set by the Board, there is a requirement for the Board to keep Association Members informed of these Terms of Reference. The Review Committee have drafted these Terms of Reference for the Board and they are available as a separate attachment to these Briefing Notes. Whilst this does not preclude the Board from changing the Terms of Reference, there is a reasonable degree of transparency so that Members can hold the Board accountable if or when desired.

The Review Committee determined that the Association Members should have the final say in who is appointed as a Board Director (apart from interim Board appointments) and who should represent the Association Members on the Board Nominations Committee. The SCEA tradition of nominees needing a minimum of 50% of Members’ votes to be elected irrespective of the number of nominees and vacancies has been preserved in the Terms of Reference and in a proposed SCEA By-Law on Election Procedures.

The proposed Board Recruitment Committee is referenced elsewhere in the proposed Constitution, including the Definitions section.

15. Grievance Committee nominations

The current Constitution allows for nominations for the Grievance Committee to come from groups of members meeting the criteria for Association Membership, not from individuals. These groups include the Board, the Staff Committee and the current School Committees. With the proposed changes to the requirements for membership of School Committees, these Committees may no longer comprise individuals meeting the criteria for Association Membership.

The Review Committee recommends that the parties that can nominate Grievance Committee candidates should no longer include School Committees, but should include the Board Recruitment Committee as they may well come across suitable nominees in their screening of potential Board candidates.

Old Clause:

28.1 There shall be a Grievance Committee, elected by Association Members, at Annual General Meetings, from nominations submitted by the Board and/or the School Committee and/or the Staff Committee.

New Clause:

27.1 There shall be a Grievance Committee, elected by Association Members, at Annual General Meetings, from nominations submitted by the Board and/or the Board Recruitment Committee and/or the Staff Committee.

16. By-Laws

In considering a proposed By-Law on voting procedures, the Review Committee checked the Clause covering By-Laws. Currently By-Laws are made by the Board. The Committee believes that this is no different from a Board Policy or Directive.

The suggested purpose of a By-Law is that it should be a long-standing direction from Association Members which sits outside the Constitution and can therefore be amended by a simple majority at an Ordinary Meeting, rather than the 75% vote for a Special Resolution required to amend the Constitution. Additionally, a By-Law can be effective immediately and would not need to be lodged with and approved by the Department of Commerce or lodged with the Australian Charities and Not-for-profit Commission.

Old Clause:

33.1 By-Laws to give effect to this Constitution may be made, rescinded or altered by the Board at a properly convened Board Meeting. By-laws must not be inconsistent with this Constitution.

New Clause:

32.1 By-Laws to give effect to this Constitution may be made, rescinded or altered by Association Members at a properly convened Association Meeting. By-Laws must not be inconsistent with this Constitution

A particular By-Law is proposed (as an Ordinary Resolution) by the Review Committee to cover some voting at Association Members' Meetings (attached).

17. Resolving Disputes

The Dispute Resolution Clause currently only refers to disputes that

... arise under the rules or relate to the rules of the Association.

The Review Committee considered this to be an unnecessary (and unhelpful) limitation and proposes the removal of this phrase.

Old Clauses

36 Resolving Disputes

36.1 This rule applies to:

- (a) disputes between Members, and
- (b) disputes between the Association and one or more Members that arise under the rules or relate to the rules of the Association.

36.2 The parties to a dispute shall follow the Association's Grievance Policy

New Clauses

35 Resolving Disputes

35.1 This rule applies to:

- (a) disputes between Members, and
- (b) disputes between the Association and one or more Members.

35.2 The parties to a dispute shall follow the Association's Grievance Policy

18. Winding Up the Association

The current Constitution refers to the proceeds of the winding up of SCEA being required to go to a 'public benevolent institution'.

This term (especially if capitalised as in 'PBI') has a legal and regulatory meaning that would significantly and unnecessarily limit the organisations to which the proceeds could be directed. It is recommended that this is changed to 'registered charity'.

Old Clause

37.1 In the event of the winding up or dissolution of the Association, the assets, if any, remaining after the payment and discharge of all expenses and liabilities, shall be paid by the Board to an institution approved by the Association Members that is a public benevolent institution for the purposes of the Income Tax Assessment Act, being an institution that has as its Objects the Christian education and/or welfare of children.

New Clause:

36.1 In the event of the winding up or dissolution of the Association, the assets, if any, remaining after the payment and discharge of all expenses and liabilities, shall be paid by the Board to an institution approved by the Association Members that is an eligible recipient under the Act and is an institution that has as its Objects the Christian education and/or welfare of children.

Attachments:

Dr Brian Harris' briefing on Statement of Faith

Proposed By-Law: Election Procedures at Meetings of Swan Christian Education Association

Draft Terms of Reference for Board Nominations Committee

Draft Christian Lifestyle Expectations Policy

Draft Parents in Partnership Policy