

Legal Due Diligence – Request for Information

Transition of the governance and operation of [*insert School name*] from the Canonical Administrator to MACS

Please supply complete, accurate and up-to-date details of all the items listed below, including in cases where documents are mentioned or are relevant, complete, accurate and up-to-date copies of them.

In this request Due Diligence Request for Information (**RFI**), unless the context otherwise requires:

Assets means all the assets required to conduct the School.

MACS means Melbourne Archdiocese Catholic Schools Ltd, a public company limited by guarantee.

Canonical Administrator means the parish priests of the Member Parishes forming the Association of Canonical Administrators established by the Archbishop to govern the operation of the School, who are the proprietors of the School.

RCTC means the Roman Catholic Trusts Corporation for the Diocese of Melbourne ABN 52 768 159 282, a body corporate established under the *Roman Catholic Trusts Act 1907* (Vic).

School means the school operations of **[insert name of School]** governed and operated by the Canonical Administrator.

School Property means the real property held by the RCTC on behalf of the Canonical Administrator on which the School is conducted including any land that is designated for the school even if not currently used in the operation of the School.

Transition means the proposed transfer of the governance and operation of the School from the Canonical Administrator to MACS.

Request for Information	School's Responses
1. General financial and governance information	
1.1 Financial matters	
<p>Please provide a list of all:</p> <ul style="list-style-type: none"> (a) School bank accounts not with the Catholic Development Fund (bank institution name, name on account, balance on the account, authorised signatories); (b) financial facilities (e.g. loans) not with the Catholic Development Fund taken out in relation to the operation of the School (lender name, name on facility, original facility amount, outstanding facility amount, authorised signatories); and (c) School credit cards and/or debit cards not with the Catholic Development Fund (credit card institution, cardholder names, monthly limit, transaction limit, authorised signatories). 	
1.2 Governance	
<p>Please provide:</p> <ul style="list-style-type: none"> (a) the statutes of the Canonical Administrator / Decree of the Archbishop establishing the Canonical Administrator; (b) a copy of all minutes of the School Board/Council for the past three years; (c) a copy of any document relating to the governance of the School. For example: <ul style="list-style-type: none"> (i) the Charter or other governing document of the School Board/Council and any sub-committees; (ii) any similar or related document to the above, including policies and procedures. (d) a current list of the Member Parishes of the Association of Canonical Administrators. 	
1.3 Structure and relationships	
<p>Please provide:</p> <ul style="list-style-type: none"> (a) a list of all the entities or bank accounts that are part of the School and its school community (if any) or are otherwise related to the School (if any). For example: 	

Request for Information	School's Responses
<ul style="list-style-type: none"> (i) school building fund, library fund, scholarship fund, endowment fund, a foundation etc.; (ii) only if not in the school accounts: parents and friends association, alumni association, uniform shop and tuckshop operations (excluding registered third parties through a contract); (iii) principal network accounts or any other type of network accounts within or outside the school accounts. This excludes PAVCSS and VACPSP, which are separately incorporated entities. (iv) 'support groups', such as those established to support a particular sport; (v) any other entity owned or controlled by the School or the Canonical Administrator on behalf of the School, <p>(referred to as School related bodies)</p> <ul style="list-style-type: none"> (b) any rules, trust deeds or other governing documents of the School related bodies. (c) details of how each School related body relates to the School, including membership structure where relevant; (d) any agreements, MOUs or other materials relating to these arrangements (written or unwritten). 	
2. Real property	
2.1 Owned	
<ul style="list-style-type: none"> (a) Please provide the title details (or, if title details are not available, the addresses) of all of the School Property, being the land held by the RCTC on behalf of the Canonical Administrator on which the School is conducted, including any land that is designated for the school even if not currently used in the operation of the School. 	
<ul style="list-style-type: none"> (b) Was any portion of the School Property acquired using School money? If so, please provide further details and any relevant documentation. Please also provide details of any buildings constructed on such School Property. 	
<ul style="list-style-type: none"> (c) Was any portion of the School Property gifted to the School? If so, please provide further details and any relevant documentation. Please also provide details of any buildings constructed on such School Property 	

Request for Information	School's Responses
<p>(d) Are there any portable buildings situated on any part of the School Property acquired using School money? If so, please provide further details and any relevant documentation</p>	
<p>(e) In respect of the School Property, are there any known contamination, environmental or building condition issues (e.g. soil contamination, asbestos, combustible cladding)? If so, please provide details as well as copies of any independent expert reports that have been obtained in relation to such issues.</p>	
<p>2.2 Common Areas</p>	
<p>Please confirm whether there is any real property which is used both:</p> <p>(a) in the operation of the School; and</p> <p>(b) by the Canonical Administrator</p> <p>on a regular and agreed basis (e.g. car parks, hall etc.).</p>	
<p>2.3 Leased or licensed – School as tenant or licensee</p>	
<p>(a) Other than the School Property, are there any properties that are used by the School under lease or licence for the purpose of the School's operations? If so, provide details of all such leasehold or licensed properties and identify, list by title reference (or, if title details are not available, by address) and owner.</p>	
<p>(b) Provide copies of all leases and licences to occupy held by the School (or on its behalf), if any.</p>	
<p>(c) Provide details of any current breaches of lease or other terms of occupancy, if any.</p>	
<p>2.4 Bequests, donations or gifts</p>	
<p>(a) Has the school received any bequests, donations or gifts of money or property (from any source, including an individual or entity) which have conditions attached to them, or in respect of which a promise has been made as to application of the bequest, donation or gift? If so, please provide details.</p>	

Request for Information	School's Responses
<p>(b) Has the school been informed that it will receive a gift of money or property in an individual's Will or via some other means? If so, please provide details.</p>	
<p>(c) Does the school have suggested wording that it provides to individuals (including via its website) for the inclusion of a bequest in favour of the school in their Will? If so, please provide a copy of such wording.</p>	
<p>2.5 Other campus operations</p>	
<p>Do you have any other campus operations including camp sites and overseas campuses? If yes, please provide details.</p>	
<p>2.6 Overseas activity</p>	
<p>Does the school undertake or plan to undertake any activities overseas that will continue after 1 January 2021? These activities may include (but are not limited to) any of the following, and it is irrelevant if they are irregular or minor:</p> <ul style="list-style-type: none"> • sending money or assets overseas; • volunteer programs overseas; • supporting overseas charities; or • sending staff, volunteers or other people (students) overseas. <p>If the answer to this question is yes, please provide details of the relevant activities and how they will be undertaken or are planned to be undertaken following 1 January 2021 (i.e. directly, through a third party, under a licence or partnership arrangement etc.)</p>	
<p>2.7 Student accommodation</p>	
<p>Do you have any arrangements in place for student accommodation? If yes, please provide details.</p>	

Request for Information	School's Responses
2.8 Early Learning Centres	
(a) Is there any Early Learning Centre (ELC)/kinder operated on the School Property? If so, please provide details of the arrangements, including any contracts, leases etc.	
(b) Has the school contributed any money (own or borrowed) towards the construction of an ELC/kinder on the School Property? If so please provide details and any relevant documentation.	
3. Assets (other than real property)	
3.1 Assets	
(a) Please provide a register of all of the Assets including the plant and equipment, fixed assets, motor vehicles and other tangible property of the School.	
(b) Please provide the owner, make, model, year and book value of all motor vehicles used in the operation of the School.	
(c) Please identify whether the School makes use of any portable buildings (e.g. temporary classrooms or bathrooms etc.) and list the same.	
(d) Is the School/Canonical Administrator capable of transferring all of the Assets free from any security, encumbrances or third party interests or is it intended to exclude any assets from the proposed transition? If not, please provide details of any encumbrances (e.g. mortgages, PPSR registrations).	
3.2 Hire purchase and leased assets	
Please provide details of all Assets which are leased, under hire purchase or otherwise used in the School but not owned by the School/Canonical Administrator (e.g. printers/copiers/motor vehicles). Please provide details of all such leases and hire purchase arrangements.	

Request for Information	School's Responses
3.3 Intangible or 'off balance sheet' Assets	
Please identify all intangible Assets of the School and the extent to which any such Asset has been amortised (e.g. goodwill and IP) or not included in the School's balance sheet.	
4. Intellectual property	
4.1 Trade and service marks	
Please provide details (including any documentation and applications to register) of any: <ul style="list-style-type: none"> (a) trade marks (registered or unregistered) owned or used under licence, (b) business names under which the School trades; and (c) registered designs owned or used under licence in the conduct of the School. 	
4.2 Copyright	
What copyright material is owned or used by the School (including under licence)? Please provide any details of any software licences or user agreements in existence.	
4.3 Domain names	
Please list the registered domain names (i.e. website addresses) used in the School. Provide copies of all domain name licences.	
4.4 Confidential information	
Indicate what confidentiality or know how agreements have been signed by employees or third parties with respect to the general business activities of the School and provide details of all agreements or arrangements relating to inventions, discovery, improvements, processes, or other knowledge to which the School (or another on the School's behalf) is a party.	

Request for Information	School's Responses
4.5 Other intellectual property	
Provide details of all other intellectual property rights owned, used or enjoyed by the School or granted to any other person by the School (or on its behalf) in the conduct of the school operations.	
5. Material contracts (value of \$20,000 p.a. or greater)	
5.1 Contracts	
(a) Please list and provide a copy of all contracts entered into by the School (or on its behalf) (Contracts) and advise which of the Contracts are integral to the school operations (e.g. without which the School could not properly function) or which would materially affect the financial position of the School if terminated (Material Contracts).	
(b) Please provide details of all relevant correspondence relating to the performance, enforcement or waiver of any provision or variation of any Material Contract and whether the School has complied with all the obligations it owes under all the Contracts.	
(c) Has any event occurred which may be grounds for termination of any Contract or has any party, alleged that the School is in breach of a Contract or threatened to terminate a Contract? If so, please provide details of correspondence.	
(d) Please advise where the proposed Transition will trigger a Contract to be terminated, renegotiated or varied as a result of the change of control of the School or otherwise.	
(e) Please provide details of all agreements, understandings or arrangements in relation to the School, the School Property or Assets which are not currently subject to formal signed contracts (e.g. the engagement of any contractor by email or verbally).	
(f) Please provide details of any related party arrangements entered into by the School, including all agreements or arrangements, whether formal or informal, between the School and the Canonical Administrator, a member of the School Council/Board, associated person or person, firm, company or trust associated with any member of the School Council/Board for the provision of loans, goods, services or otherwise.	
(g) Please provide copies of all Parish/School Out of School Hours Care (OSHC) agreements/licences.	

Request for Information	School's Responses
(h) Please advise if the School has CRICOS registration, and if so please provide details of any agreements or arrangements with any third parties which are related to the CRICOS registration; please provide copies of any CRICOS, RTO or SEO agreements/contracts.	
(i) Please advise if the School has an RTO registration, and if so, please provide details of any agreements or arrangements with any third parties which are related to the RTO registration. (j) If the School is not registered as an RTO, please provide details of any agreements or arrangements with any third parties regarding provision of vocational training and any similar or related services to the School or to students of the School.	
(k) Please advise if the School is registered as a Student Exchange Organisation, and if so, please provide details of any agreements or arrangements with any third parties relating to the offering of student exchange programs.	
(l) Please provide copies of all hire agreements with third parties accessing school buildings (community group access/scouts/music groups/drama groups, etc.).	
(m) Please list any open ended contracts regardless of monetary value	
5.2 Licences/permits (i.e. approvals from regulators)	
(a) Please provide details of all regulatory approvals, licences and permits required for operation of the School and provide copies of all outstanding applications and correspondence in respect of these items (if any).	
(b) Please provide details of breaches or non-compliance with any such licences or permits and details of any possible refusal to renew or revocations of such licences and permits.	

Request for Information	School's Responses
5.3 Insurance contracts or policies outside of Catholic Church Insurance Limited (CCI)	
Please provide copies of any insurance policies currently held in the name of the School or on its behalf that are not with CCI.	
6. Litigation	
6.1 Current litigation	
Is the School/Canonical Administrator or any person for whose acts or defaults the School/Canonical Administrator may be liable, involved in any legal or administrative proceedings in relation to the School operations, School assets or School Property?	
6.2 Threatened litigation	
Please provide details of any claims, demands or disputes in relation to the school operations between the School (or an authorised person of the School) and any other person or any facts or circumstances, which may give rise to litigation and any litigation proceedings which have been threatened by or are pending against the School or the Canonical Administrator, including in relation to the Assets and the School Property.	
6.3 Defaults and judgments	
(a) Is there any unsatisfied judgment, order, arbitrable award or decision of any court, tribunal or arbitrator against the School or any assets of the School or any freehold property (i.e. has the School been sued and, if so, has the plaintiff succeeded and the School not yet paid the judgement against the School)? If so please provide details.	
(b) Has any receiver or receiver and manager been appointed over the whole or any part of the Assets or has any such appointment been threatened (i.e. has the School or the owner of an Asset not paid something and the dispute over payment escalated)?	
6.4 Notices	
Has the School received any statutory demand within the last 12 months? If so please provide a copy and evidence of its satisfaction.	

Request for Information	School's Responses
6.5 Other information	
Supply details about all parliamentary enquiries in relation to the School (if any).	
7. Employees	
7.1 Listing of employees	
Please provide a list of all employees employed by the School (or on its behalf) or the Canonical Administrator in the conduct of the School operations detailing name, age, start date, number of years continuous employment, function, job title, full-time equivalent load, location, salary or wages and other benefits (including bonus, commission and incentive), notice period, holiday entitlements, terms on termination, and employees on parental leave, paid sick leave or workers compensation. Please group each employee under a specific job category (eg clerical). In relation to each category, estimate the approximate total annual wage or salary cost of each category of employees.	
7.2 Contracts of employment	
(a) Please provide copies of employment contracts of: <ul style="list-style-type: none"> (i) any employee engaged not using the CEM template contract of employment; and (ii) any agreement (verbal or written) providing for conditions above the <i>Victorian Catholic Education Multi-Enterprise Agreement 2018</i> or the <i>Educational Services (Schools) General Staff Award</i>. 	
(b) Please provide details of any agreements (other than the terms contained in standard CEM/CECV contracts of employment) that limits: <ul style="list-style-type: none"> (i) employees entering into or starting a similar profession or trade in competition against the school or any aspect of the school; (ii) the solicitation of/by employees; or (iii) limits the use of confidential information obtained in the course of employment. 	
(c) Please confirm that all employees engaged in the conduct of the School operations are employees of the School, or provide details if otherwise.	

Request for Information	School's Responses
7.3 Employees on visas	
(a) Please list the names of any employees who are on a visa which allows them to work in Australia, the category of visa they hold and the expiry date of the visa.	
7.4 Disputes	
(a) Please provide particulars of any formal Federal or State industrial, tribunal, Commission, common law or pending involving the School, including details of how many similar cases have been resolved in the past 3 years.	
(b) Please provide details (including of any insurance cover) of any outstanding claims by or on behalf of employees or any liability for any workers compensation claim or anticipated claim against the School. Is there any threatened or pending dispute between the School and any employee or group of employees?	
(c) Is there any occupational health and safety investigation or prosecution current? What is the School's occupational health and safety conviction history?	
7.5 Compliance with obligations	
(a) Has the School complied in all material respects with all contractual, statutory, legal and fiscal obligations of and in relation to their employment of their employees and engagement of their consultants, including all codes of practice, industrial instruments and payment of the superannuation guarantee charge and taxes?	
(b) Please provide details of any ex-gratia payments made in the last 12 months and any employees in relation to whom the School considers to be under a moral obligation to provide retirement, death, accident, sickness or disability benefits.	
7.6 External labour hire providers	
(a) Please provide details of any contracts with external labour hire providers whether or not they hold a labour hire licence.	

Request for Information	School's Responses
7.7 Redundancy policies	
(a) Provide details of any redundancy policies or practices applied in the past six years and details of any redundancies or retrenchment plans for the future.	
(b) Are there any retirement benefits outside of the VCEMEA and long service leave (LSL), superannuation or pension schemes or other pension arrangements, whether legally enforceable or not, relating to the School?	
8. Superannuation	
Are there any outstanding employer contributions in dispute relating to superannuation?	
9. Contingent liabilities or liabilities not on balance sheet	
9.1 Contingent liabilities	
(a) Please provide details of any liability agreed to be incurred or any assets agreed to be disposed of, otherwise than in the usual course of business.	
(b) Please provide details of any operational expense agreed to be incurred which is of an unusual nature or abnormal amount having regard to the customary business practices applicable to the school industry in which the School operates and the obligations imposed on the Canonical Administrator as a proprietor of a Victorian school.	
(c) Are there any known potential liabilities that may arise in the near future (e.g. in relation to a potential or on foot litigation)?	
10. Guarantees/warranties and indemnities	
10.1 Guarantees/indemnities	
(a) Please provide details of any agreement under which the School has given warranties or representations (e.g. written or oral promises) in relation to a Contract or goods and/or services provided by the School which the recipient may still be able to enforce and which have not been given in the normal course of business.	

Request for Information	School's Responses
(b) Please list all guarantees provided by the School or any third party in relation to any Contract.	
(c) Please list all guarantees enjoyed by the School in relation to the provision of goods and/or services by it in the conduct of the School.	
(d) Please list all indemnities provided by the School (or the Canonical Administrator) in relation to the school operations.	
10.2 Standard warranty arrangements	
Please provide a copy of the standard sale/supply contract and details of standard warranty arrangements and types of warranties normally given in relation to the conduct of the school operations.	
11. Privacy	
Does the School comply with privacy laws in collection of any personal information in the conduct of the school operations? Please provide details of steps taken to ensure compliance and any relevant privacy policy or disclosure statement.	
12. Regulatory Bodies	
Please confirm whether there have been any reports or complaints made to VRQA, VIT, CCYP or any mandatory reports in relation to the School or any member of staff which CEM/CECV is not already aware of, and if so please provide copies of such.	