



**Cornish College**

**ACN 616 523 730**

## **Constitution**

**As approved by the Standing Committee on 4 November 2016**

**Amended at Board Meeting on 17th June 2021**

**Approved by Company on 15<sup>th</sup> July 2021**

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Constitution

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## Cornish College

### Constitution

#### Preamble

*Following the decision by the St Leonard's College Council in 2011 to close its Cornish Campus, an initiative to continue an educational facility at the campus was pursued, driven by a strong group of Cornish Community supporters under the banner "Our New College Association" (ONCA). This Association valued both the unique educational offering and the strong community spirit that existed within the campus.*

*By agreement between the ONCA and St Leonard's College, and with the support of the Uniting Church in Australia, Synod of Victoria and Tasmania, the Trust upon which the land was held was varied to establish Cornish College as a new independent school which opened at the beginning of the 2012 school year.*

*In 2016 Cornish College was established as a separate incorporated entity.*

## 1. Name of the Company

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The name of the company is Cornish College.

## 2. Definitions and Interpretations

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### 2.1 Definitions

In the Constitution:

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

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

**Annual Accounts** mean the accounts prescribed in clause 25.

**Auditor** means the auditor for the time being of the College appointed pursuant to clause 21.

**Basis of Union** means the Basis contained in Schedule 1 to the *Uniting Church in Australia Act 1977* (Vic).

**Board** means the board of directors of the College.

**Business Manager** means the individual appointed pursuant to clause 20.

**Chairperson** and **Vice Chairperson** means the individuals elected pursuant to clause 10.7.

**Church** means the Uniting Church in Australia.

**College** means Cornish College ACN 616 523 730.

**College Community** means current parents, past parents, past staff, former students, current and past Directors and Members and major benefactors as defined by the Board.

**Constitution** means this constitution of the College.

**Council** means the Board.

**Councillors** mean the Directors.

**Deed of Replacement and Appointment of Trustee** means the deed entered into on 28 June 2017 between Cornish and the UCA Property Trust.

**Director** means a director of the College who shall be a member of the Board.

**Early Learning Centre** means an Early Learning Centre that operates as a feeder for enrolments to the College and is registered and operates in compliance with the *Education and Training Reform Act 2006* (Vic) and the *Education and Training Reform Regulations 2017* (Vic).

**General Meeting** means a meeting of the Members of the College.

**Imported Provisions** means the following provisions of the Corporations Act:

- (a) Section 139 (*Company must send copy of constitution to Members*);
- (b) Sections 191, 192, 193 and 195 (*Disclosure of and voting on matters involving directors' material personal interests*);
- (c) Divisions 3 and 5 of Part 2G.2 (*Meetings of members of companies*) (excluding any replaceable rules); and
- (d) Part 2G.3 (*Minutes and Members' access to minutes*).

**Member** means a member of the College pursuant to clause 6.

**Nominations Committee** means the committee prescribed in clause 15.

**Notice** means a notice pursuant to, or for the purposes of this Constitution or the Act.

**Objects** means the Objects of the College prescribed in clause 3.

**Office** means the registered office for the time being of the College.

**Office Bearers** mean the Chairperson, Vice Chairperson and the Treasurer of the College.

**Parent** means the parent of a current student either enrolled at the College or at any institution owned or controlled by the College or to which the College provides educational services that shall be recognised by the College as being part of the College.

**Parents' Association of the College** means the association of the parents of the College established with the authority of the Council to represent the interests of the parents of students of the College.

**Principal** means the Principal of the College appointed pursuant to clause 19 or the individual appointed by the Board to act temporarily as the Principal from time to time.

**Register** means the register of members kept under the Act.

**Registered Entity** means a body corporate registered under the ACNC Act.

**Registered Office** means the registered office of the College.

**Seal** means the common seal of the College.

**Secretary** means the individual(s) appointed pursuant to clause 18.

**Special Resolution** means a resolution that has been passed by at least a seventy five per cent (75%) majority.

**Staff** means any paid employee, whether full or part time and (without limitation) includes the Principal.

**Standing Committee** means the Standing Committee of the Synod.

**State** means the State of Victoria.

**Student** means all students enrolled at the College from ELC 3 to Year 12.



**Synod** means the Synod of Victoria and Tasmania of the Church or the Standing Committee of the Synod when acting on behalf of the Synod between meetings of the Synod.

**UCA Property Trust** means The Uniting Church in Australia Property Trust (Victoria) (ABN 39 703 442 583).

## 2.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) Part 1.2 Division 8 of the Act applies, so far as it can with such changes as are necessary, to this Constitution as if this Constitution was a provision of the Act except where such provision conflicts with the ACNC Act then the ACNC Act shall apply to the extent of any inconsistency whilst the College is a Registered Entity;
- (b) an expression in a clause that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision of the Act;
- (c) words (including defined expressions) importing the singular include the plural and vice versa;
- (d) words (including defined expressions) importing any gender include the other gender;
- (e) words (including defined expressions) importing persons shall include corporations and bodies politic;
- (f) where any word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in visible form including any representation of words in a physical document or in an electronic communication or form or otherwise including signatures affixed electronically in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic);
- (h) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (i) a reference to a document (including this Constitution) includes any variation or replacement of it;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements in any of them (whether of the same or any other legislative authority having jurisdiction);
- (k) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes electronic mail and facsimile transmission;
- (l) any power, right, discretion or authority conferred upon any person or groups of persons under the Constitution may be exercised at any time and from time to time;
- (m) the word "present" in the context of a person being present at a meeting includes participation in the meeting using technology approved by the Board in accordance with this Constitution;
- (n) a reference to an entity includes any successor entity;

- (o) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (p) a reference to a clause is a reference to one of the clauses or sub-clauses;
- (q) if any provision in this Constitution contravenes the Corporations Act, the ACNC Act or any other law, it shall not apply only to such extent as is necessary for compliance with the Corporations Act, the ACNC Act or the other law as the case may be but in no case contrary to the Not-for-Profit clause 25.6 in this Constitution; and
- (r) section 25 of the *Acts Interpretation Act 1901* (Cth) (that deals with electronic documents) and 46 of the said Act (that deals amongst other things with severance of invalid provisions) applies in the interpretation and operation of this Constitution as if it were an instrument made under that statute.

### 2.3 Headings

- (a) Headings do not affect the interpretation of this Constitution.

### 2.4 Application of the Act and ACNC Act

- (a) Each of the provisions of the Act that apply as replaceable rules are displaced by this Constitution and do not apply to the College except as explicitly provided in this Constitution.
- (b) If, while the College is a Registered Entity the Act operates such that an Imported Provision does not apply to the College because the College is a Registered Entity: a clause in the same terms as the Imported Provision, along with any relevant definitions in the Act, is deemed to be included in this Constitution and to apply to the College to the extent the Imported Provision would have applied to the College were the College not a Registered Entity (**Equivalent Rule**);
- (c) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Rule.
- (d) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has in any provision of this Constitution that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- (e) Where the Act and/or the ACNC Act authorises or permits a company to do any matter or thing if so authorised by its constitution the College is and will be taken by this rule to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.

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### **3. Objects of the College**

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#### **3.1 Legal Successor**

The College is the successor to and is to assume the right, title, interest, assets and liabilities of the unincorporated Cornish College and conduct all of its charitable activities.

#### **3.2 Objects**

The College is established for the charitable object of providing an education for students in a learning community that encourages the values and spiritual development consistent with Christian thought and practice as embodied within the Church.

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### **4. Powers of the College**

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#### **Legal Capacity**

Solely for the purpose of carrying out its Objects, the College has the legal capacity and powers of an individual and as prescribed in section 124(1) of the Act.

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### **5. Income and Property of the College**

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#### **5.1 Real Property**

- (a) All real property used by the College shall be vested in the College as trustee and held in accordance with the purposes of the trust pursuant to Deed of Replacement and Appointment of Trustee.
- (b) The trust prescribed in clause 5.1(a) is a charitable trust for the purposes of the endowment, conduct and advancement of education that encourages in students the values and spiritual development consistent with Christian thought and practice as embodied within the Church in and through the College's educational activities.

#### **5.2 Application to Objects**

The income and property of the College, irrespective of its source, must be applied solely towards the promotion of the Objects of the College.

#### **5.3 Operation of Early Learning Centre**

The operation by the College of an Early Learning Centre that is a feeder for enrolments to the College is in compliance with the Objects of the College.

#### **5.4 No payments to Directors and Members**

No part of the income or property of the College must be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the Directors or Members.

#### **5.5 No Payment of Fees to Directors and Members**

The payment of fees to Directors or Members as remuneration for their services as Directors or Members in whatever form by the College is prohibited.

**5.6 Certain Payments Acceptable**

Clause 5.3 does not prevent the payment in good faith of:

- (a) Remuneration to any officers or employees of the College in return for any services actually rendered to the College or for goods supplied in the ordinary and usual way of business;
- (b) For out-of-pocket expenses incurred on behalf of the College including, in the case of the Director or Member, in carrying out the duties of a Director or Member, where the payments do not exceed an amount previously approved by the Board;
- (c) Remuneration for any service rendered to the College by a Director in a professional or technical capacity, other than in the capacity as a Director of the College, where:
  - (i) the provision of the service has the prior approval of the Board;
  - (ii) the amount payable is not more than an amount that commercially would be reasonable payment for the service;
- (d) Expenses for goods supplied in the ordinary and usual course of business;
- (e) Reasonable and proper rent for premises or personal property leased to the College by any Director;
- (f) Reasonable and proper interest on money borrowed from a Director.

**5.7 Tax exempt and Registered Entity**

The College shall take all such action and do all such things as are necessary or expedient to obtain and thereafter to maintain at all times its status as a:

- (a) tax-exempt body within the meaning of s.50-5 of the Tax Act; and
- (b) a Registered Entity.

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**6. Membership**

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**6.1 Number of Members**

The membership of the College shall consist of:

- (a) the Directors;
- (b) two (2) individuals who shall be members of the Church appointed by the Board; and
- (c) three (3) individuals who shall be members of the College Community appointed by the Chairperson after consultation with the Principal and the Parents' Association.

**6.2 Membership**

The rights of a Member are not transferrable.

**6.3 Guarantee**

The liability of the Members is limited.

#### 6.4 Contribution by Members

Each Member undertakes to contribute to the property of the College in the event of it being wound up whilst the Member is a Member, or within one (1) year after the Member ceases to be a Member, for the payment of the debts and liabilities of the College (contracted before the Member ceases to be a Member) and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten (10) dollars.

#### 6.5 No transfer of membership

A Member must not sell, transfer or dispose of their interest in the College to another Member or third party.

### 7. Cessation of Membership

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#### 7.1 Death, resignation and other events

A Member immediately ceases to be a Member if the individual:

- (a) Dies;
- (b) Resigns by giving notice in writing to the College;
- (c) Ceases to be a Director;
- (d) Becomes of unsound mind or an individual whose estate is liable to be dealt with in any way under the law relating to mental health;
- (e) Becomes bankrupt or suspends payment or liquidates by arrangement or compounds with or assigns the Member's joint and separate estate for the benefit of the Member's creditors;
- (f) is or becomes a registrable person for the purposes of the *Sex Offenders Registration Act 2004 (Vic)*;
- (g) Is removed in accordance with clause 7.3;
- (h) Appointed in accordance with clause 6.1(a) has served three (3) years on the day following the third annual General Meeting after the individual's appointment;
- (i) Is convicted on indictment of an offence and the Board does not within one (1) month after that conviction resolve to confirm the Member's membership of the College; or
- (j) is precluded or becomes precluded from holding office as a member or director of a company by virtue of the Act, the ACNC Act, the *Australian Education Act 2013 (Cth)* or as a consequence of any order of, or action by any judicial, administrative or legislative body of competent jurisdiction.

#### 7.2 Resignation of a Member

An individual shall give one (1) months' notice of intention to resign that shall take effect upon the expiry of that notice or by earlier acceptance of the notice by the Board.

### 7.3 Removal of Member

The Board may by resolution, subject to clause 7.4, determine by a Special Resolution to censure, fine, suspend or expel a Member if in its opinion the Member fails to comply with any provision of the Constitution or is guilty of any conduct that the Board considers is unbecoming of a Member or is otherwise prejudicial to the interests of the College.

### 7.4 Notice to Member

The Board may not make a determination under clause 7.3 unless at least twenty one (21) days before the meeting of the Board at which the determination is to be considered, notice is given to the Member of the meeting, what is alleged against the Member and the possible determination, and unless a Member has had an opportunity of giving at the meeting orally or in writing, any explanation or defence the Member may think fit before the Special Resolution is considered by the Board.

## 8. General Meetings

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### 8.1 Annual General Meeting

An annual General Meeting of the College must be held in accordance with the Act.

### 8.2 Power to Convene General Meeting

The Board may convene a General Meeting whenever it thinks fit and must convene a General Meeting of the College when requisitioned by Members in accordance with the Act. No Member may call a General Meeting of the College except as provided by the Act.

### 8.3 Notice of General Meeting

- (a) Except where section 249H(2) of the Act applies, at least twenty one (21) days' notice must be given of a meeting of the Members.
- (b) A notice of a meeting must be given in accordance with section 249J and the replaceable rule in section 249J(4) applies.
- (c) A notice convening a meeting of the College must:
  - (i) specify the place, date and time of the meeting and state the general nature of the business to be dealt with at the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner;
  - (ii) state that:
    - (A) a Member entitled to attend and vote is entitled to appoint a proxy; and
    - (B) a proxy must be a Member.
- (d) If a special resolution is to be proposed the notice of meeting must set out an intention to propose a special resolution and state the resolution.
- (e) The non-receipt of a notice of a General Meeting or advance notice pursuant to clause 8.3(a) by, or the accidental omission to give notice of a General Meeting or advance notice under clause 8.3(a) to a person entitled to receive notice, does not invalidate any resolution passed at the General Meeting.

**8.4 Auditor Entitled to Notice**

The College must give its Auditor:

- (a) Notice of a General Meeting in the same way that a Member is entitled to receive notice; and
- (b) Any other communications relating to the General Meeting that a Member is entitled to receive.

**8.5 Cancellation or Postponement of General Meeting**

- (a) Where a General Meeting (including an annual General Meeting) is convened by the Board, it may, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by it.
- (b) Written notice of cancellation or postponement of a General Meeting must be given to all persons entitled to receive notices of General Meetings from the College at least three (3) days before the date for which the meeting is convened and must specify the reason for cancellation or postponement.
- (c) A notice postponing the holding of a General Meeting must specify:
  - (i) a date and time for the holding of the meeting;
  - (ii) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting;
  - (iii) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.
- (d) The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the meeting may not be less than the number of clear days' notice of the meeting required to be given by this Constitution or the Act.
- (e) The only business that may be transacted at a General Meeting that is postponed is the business specified in the notice pursuant to clause 8.3 that convened the meeting.
- (f) The accidental omission to give notice of the cancellation or postponement of a meeting to, or the non-receipt of any such notice by, any person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.
- (g) Where:
  - (i) by the terms of an instrument appointing a proxy, a proxy is authorised to attend and vote at a General Meeting to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date;
  - (ii) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy unless the Member appointing the proxy gives to the College at its Registered Office notice in writing to the contrary not less

than forty-eight (48) hours before the time to which the holding of the meeting has been postponed.

- (h) Clauses (a) to (g) (both inclusive) do not apply to a General Meeting convened by the Members pursuant to section 249F of the Act or by the Board pursuant to a requisition of Members pursuant to the Act.

#### **8.6 General Conduct of Meeting**

A chair of a General Meeting will be responsible for the general conduct of General Meetings and for the procedures to be adopted at General Meetings. The chair of the General Meeting may make rulings, adjourn the meeting without putting the question (or any question) to the vote if such action is required to ensure the orderly conduct of the General Meeting. A chair of a General Meeting may determine conclusively any dispute concerning the admission, validity or rejection of a vote.

#### **8.7 No Vote Contrary to the Act**

Notwithstanding any other clause, a Member present in person or by proxy will not be entitled to vote and any vote purported to be cast by a Member present in person or by proxy, will be disregarded, on a particular resolution where such a vote is prohibited by the Act.

### **9. Proceedings at General Meetings**

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#### **9.1 Business**

The business of an annual General Meeting is to elect the Directors and to receive and consider the Annual Accounts, the balance sheet and the reports of the Board and the Auditor.

#### **9.2 Attendance by Member**

- (a) A Member may be present and vote in person or may be represented at any meeting of the College by proxy.
- (b) Unless the contrary intention appears, a reference to a Member in clause 9 means a person who is a Member, or is a proxy of that Member.

#### **9.3 Quorum**

- (a) Subject to clause (d) a number equating to one half of the total Members of the College (rounded up when there is not a whole number) present in person or by proxy are a quorum at a General Meeting.
- (b) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it, but if a quorum is present at the beginning of a meeting it is deemed to be present throughout the meeting unless the chair of the meeting on the chair's own motion or at the instance of a Member or proxy who is present, otherwise declares.
- (c) If within fifteen (15) minutes after the time appointed for a meeting a quorum is not present, the meeting:
  - (i) if convened on a requisition of Members is dissolved;



- (ii) in any other case stands adjourned to the same day in the next week and the same time and place, or for such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the meeting.
- (d) At a meeting adjourned pursuant to clause 9.3(c)(ii), three (3) persons each being a Member or proxy present at the meeting are a quorum, and if a quorum is not present within fifteen (15) minutes after the time appointed for the adjourned meeting the meeting is dissolved.

#### 9.4 Chairperson

- (a) The Chairperson is entitled to preside at General Meetings, but if the Chairperson is not present and able and willing to act within fifteen (15) minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement) namely, the Vice Chairperson, a Director chosen by the majority of the Directors present, a Member, chosen by a majority of the Members present in person or by proxy.
- (b) If there is an equality of votes, whether on a show of hands or on a poll, the chair of the meeting is entitled to a casting vote in addition to any votes to which the chair is entitled as a Member or proxy of a Member. The chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

#### 9.5 Determination of Questions

- (a) Every question submitted to a meeting is to be decided by a show of hands, unless a poll is demanded:
  - (i) before the vote is taken;
  - (ii) before the voting results and a show of hands are declared; or
  - (iii) immediately after the voting results on the show of hands are declared by:
    - (A) the chair of the meeting; or
    - (B) at least the number of Members prescribed in clause 9.3(a) present in person or by proxy and having the right to vote at the meetingand the demand for the poll is not withdrawn.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result.

#### 9.6 Majority

Subject to the requirements of the Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### 9.7 Poll

- (a) If a poll is properly demanded and the demand is not withdrawn, it must be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the chair of the meeting then or subsequently determines. The result of the poll is to be deemed the resolution of the meeting at which the poll is demanded.

- (b) A poll demanded on the election of a chair of a meeting or on a question of adjournment must be taken immediately.
- (c) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (d) A demand for a poll may be withdrawn.

#### 9.8 **Objection to Voting Qualification**

- (a) Objection may not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or where the poll is taken and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is valid for all purposes.
- (b) If there is a dispute as to the admission or rejection of a vote, the chair of the meeting must decide it and the chair's decision made in good faith is final and conclusive.

#### 9.9 **Adjournment**

- (a) The chair of a meeting may, with the consent of any meeting at which a quorum is present and must if so directed by the meeting, adjourn the meeting to a new time, day or place, but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (b) If the meeting is adjourned for thirty (30) days or more, notice of the adjournment must be given in accordance with clause 8.3(a).
- (c) Except as provided by clause (b), it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.
- (d) A resolution passed at a meeting resumed after an adjournment is passed on the day it is passed.

#### 9.10 **Voting Rights**

- (a) Subject to the rights and any restrictions attached to or affecting Members and to any other restrictions in this Constitution:
  - (i) on a show of hands, each Member present in person and each other present as proxy of a Member has one vote; and
  - (ii) on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote or each Member that the person represents.
- (b) A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

#### 9.11 **Appointment of Proxy**

- (a) A Member entitled to attend and vote at a meeting of Members may appoint an individual as the Member's proxy to attend and vote for the Member at the meeting. A proxy must be a Member.

- (b) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
  - (i) the Member's name and address;
  - (ii) the College's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the meetings at which the appointment may be used.

An appointment may be a standing one.

- (c) An undated appointment is to be taken to have been dated on the day it is given to the College.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. In that event:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (ii) if the proxy has two (2) or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
  - (iii) if the proxy is the chair, the proxy must vote on a poll and must vote that way;
  - (iv) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

This clause does not affect the way that person can cast any votes attached to that person's membership.

- (e) Except to the extent that the appointment of a proxy expressly limits the exercise by the proxy of the power to vote at a meeting, a proxy has the same rights to attend, vote and otherwise act at the meeting as a Member attending the meeting in person.
- (f) An appointment of a proxy does not need to be witnessed.
- (g) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
- (h) An instrument appointing a proxy is to be taken to confer authority to demand or join in demanding a poll.

#### 9.12 Right to Appoint Attorney

A Member may by power of attorney duly executed in the presence of at least one (1) witness (if necessary) duly stamped, appoint an attorney to act on the Member's behalf at all or any meetings of the College. An attorney must be a Member.

#### 9.13 Receipt of Proxy and Other Instruments

To be effective, an instrument appointing a proxy and any power of attorney under which it is executed or a copy (verified by statutory declaration as a true copy) of the power of attorney, or an instrument appointing the attorney pursuant to clause 9.12, in either case together with

such evidence of due stamping (if necessary) and evidence of non-revocation of the power of attorney as the Board may require, must be received by the College at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time appointed for the meeting or adjourned or postponed meeting or poll which the appointee proposes to attend or on which the appointee proposes to vote.

#### 9.14 **Validity of Vote in Certain Circumstances**

A vote given in accordance with the terms of an instrument of proxy or of power of attorney is valid notwithstanding:

- (a) the previous death or unsoundness of mind of the appointer;
- (b) the revocation of the instrument, or the authority under which the instrument was executed, or of the power,

if notice in writing of the death, unsoundness of mind or revocation has not been received by the College at the Registered Office before the commencement of the meeting or adjourned meeting of which the instrument is used or the power is exercised.

#### 9.15 **Electronic Meeting**

A General Meeting may be called or held using any technology consented to by all of the Members. The consent may be a standing one. A Member may only withdraw their consent within a reasonable period before the meeting.

### **10. Board**

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#### 10.1 **Eligibility**

Any individual other than a current member of the Staff of the College is eligible to be appointed as a Director.

#### 10.2 **Nomenclature**

The Board shall be termed the Council of the College and the Directors shall be described as Councillors or members of Council.

#### 10.3 **Composition of the Board**

The Board shall comprise a diversity of individuals with a variety of skills, qualifications and experience and shall consist of:

- (a) No fewer than ten (10) and not more than twelve (12) individuals including Office Bearers;
- (b) At least four (4) of whom identify as female and four (4) of whom identify as male; and
- (c) The Principal.

#### 10.4 **Term of Directors**

- (a) Subject to clause 10.4(f) a Director other than the Principal may not retain office for more than three (3) calendar years or beyond the third annual General Meeting

following the Director's appointment (whichever is the longer period) without being re-elected.

- (b) At the annual General Meeting in each year one third of the Directors in office other than the Principal, or if their number is not a multiple of three, the nearest to one third, must retire from office.
- (c) A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election.
- (d) The Directors to retire are the Directors who have been longest in office.
- (e) As between Directors who have been in office an equal length of time, the Directors to retire are, in default of agreement between them, to be determined by a majority of the Directors with the Chairperson or, if the Chairperson is not able and willing to act, by the Vice Chairperson alternatively, by a Director chosen by a majority of the Directors exercising both a deliberative and a casting vote.
- (f) A Director shall not be entitled to be elected for more than three (3) consecutive terms.
- (g) The Board excluding the Director concerned, may by a Special Resolution, vote to allow a Director otherwise not eligible for re-election pursuant to clause 10.4(f), to be re-elected for one (1) further term of three (3) years provided that no more than a total of two (2) Directors serving as Directors in any one (1) year may have served for more than three (3) consecutive terms.

#### 10.5 Election of Directors

- (a) At the end of each calendar year the Board shall recommend to the Members for election or re-election subject to clause 10.4(f) and 10.4(g), such number of Directors as prescribed in clause 10.3(a) as equates to the number of those Directors who shall retire at the next Annual Meeting.
- (b) If the Members reject a nomination the Board within thirty (30) days, may if it accepts or disputes the Member's rejection:
  - (i) Submit a further nomination; or
  - (ii) Refer the rejection for resolution pursuant to clause 16.

#### 10.6 Office Bearers

- (a) The Office Bearers of the College will comprise a Chairperson, a Vice Chairperson and the Treasurer.
- (b) The College at the annual General Meeting in accordance with clause 8.3 may increase or reduce the number of Office Bearers.

#### 10.7 Election of Office Bearers

- (a) At the first Board meeting after the annual General Meeting, the Directors must elect such Office Bearers as shall be required to be elected.
- (b) Any two (2) Directors may, at that meeting, nominate another Director for election as a bearer of a particular office.

- (c) If only one (1) candidate is nominated for a particular Office Bearer's position, that candidate is to be deemed elected.
- (d) The candidates who receive the most votes will be elected. If two (2) or more candidates receive an equal number of votes, the chair of the meeting has a casting vote.

#### 10.8 Rotation of office of Office Bearers

Office Bearers shall be elected for a term of three (3) years. On the third anniversary following election at the annual General Meeting in that year, the Office Bearers must retire from office. The retiring Office Bearer may act until the conclusion of the meeting at which the next succeeding Office Bearer is appointed and is eligible for reappointment for one (1) further term of three (3) years provided that subject to clause 10.4(a), a Director may be elected for a third consecutive term of three (3) years by a Special Resolution of the Board.

#### 10.9 Casual Vacancies

Subject to clause 10.1 the Board may at any time appoint a person to the Board, either to fill a casual vacancy or as an additional Director, but so that the total number of Directors is not at any time to exceed the number fixed by this Constitution. The Director so appointed in the case of a casual vacancy holds office for the remaining term of the Director replaced but otherwise shall hold office only until the next annual General Meeting but is then eligible for reappointment. If the Director is so reappointed the date of the relevant annual General Meeting shall be the date of initial appointment for the purposes of clause 10.4.

#### 10.10 Removal of Office Bearer

An Office Bearer may be removed from that office by resolution of the Board of which not less than fourteen (14) days' notice has been given to all Directors for the time being in Australia. The Board may at any time replace an Office Bearer removed pursuant to this clause.

### 11. Remuneration and Expenses

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- (a) A Director may not be paid any remuneration for services as a Director.
- (b) With the approval of the Board a Director may be reimbursed from the funds of the College as prescribed in clause 5.5 (a) – (f) of this Constitution.

### 12. Vacation of Office

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#### 12.1 Vacancy of Office of Director

The office of a Director is vacated if the Director:

- (a) Dies;
- (b) Becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (c) Resigns the office of Director by written notice to the Chairperson;
- (d) Is removed in accordance with clause 12.2;

- (e) Is or becomes a registrable person for the purposes of the *Sex Offenders Registration Act 2004* (Vic);
- (f) Becomes a bankrupt or suspends payment or liquidates by arrangement or compounds with or assigns the Director's joint and separate estate for the benefit of the Director's creditors; Otherwise ceases to be, or becomes prohibited from being, by virtue of the Act or is removed from office as a Director by a resolution pursuant to the Act; or
- (g) is precluded or becomes precluded from holding office as a member or director of a company by virtue of the Act, the ACNC Act, the *Australian Education Act 2013* (Cth) or as a consequence of any order of, or action by any judicial, administrative or legislative body of competent jurisdiction.

## 12.2 Removal of a Director

- (a) The Board may at any time if in its opinion a Director fails to comply with any provision of the Constitution or is guilty of any conduct that the Board considers unbecoming of a Director or is otherwise prejudicial to the interests of the College, requisition a meeting of Members of which notice pursuant to clause 12.3 shall be given, proposing a motion that the Director be removed, which motion shall be required to be passed in accordance with section 203D of the Act.
- (b) The Members may in accordance with section 203D of the Act and subject to clause 12.3, determine to remove a Director from office as a Director if in their opinion the Director fails to comply with any provision of the Constitution or is guilty of any conduct that the Members consider is unbecoming of a Director or is otherwise prejudicial to the interests of the College.

## 12.3 Notice to a Director

The Members may not make a determination under clause 12.2 unless notice of the meeting in accordance with section 203D or section 249H(3) of the Act is given to the Director prescribing what is alleged against the Director and the possible determination and unless the Director has had an opportunity of giving at the meeting orally or in writing, any explanation or defence the Director may think fit before the resolution is considered by the Members.

# 13. Powers and Duties of the Board

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## 13.1 Board to Manage the College

- (a) The management of the business and affairs of the College is vested in the Board.
- (b) The Board may exercise all powers and do all such acts and things that the College is authorised or permitted to exercise and do and that are not by this Constitution or by statute directed or required to be exercised or done by the College in General Meeting.
- (c) The operation and effect of clause 13.1 is not limited in any way by the following provisions of clause 13.2.

## 13.2 Specific Powers of Board

Without limiting the generality of clause 13.1 the Board may exercise all of the powers of the College to create regulations, to borrow or raise money, to charge any property or business of the College, to give any other security for a debt, liability or obligation of the College, to

guarantee or to become liable for payment of money or the performance of any obligations by any other person and may exercise all of the powers of the College in relation to the Seal.

### 13.3 Specific duties of Directors

In addition to their responsibilities at law, each Director is responsible and accountable for compliance by the College with its Objects and must:

- (a) exercise the Director's powers and discharge their duties in compliance with the Act and if applicable the ACNC Act and the *Australian Education Act 2013* (Cth);
- (b) always act in the best interests of the College as a whole and such obligation shall be observed in priority to any duty that a Director may owe any other person or entity;
- (c) always act in good faith, honestly and for a proper purpose;
- (d) exercise appropriate care and diligence;
- (e) prevent the College from carrying on its business while it is unable to pay its debts;
- (f) not improperly use their position to gain an advantage for themselves or for some other person or company; and
- (g) whilst the College is a Registered Entity, comply with the duties prescribed in governance standard 5 of the regulations made under the ACNC Act.

### 13.4 Discretion to exercise powers

The Board may exercise the powers conferred on it in clauses 13.1 and 13.2 in such manner and upon terms and conditions in all respects as it thinks fit.

### 13.5 Powers of delegation

- (a) The Directors may delegate any of their powers to any individuals they select for any period, to be exercised for any objects and purposes in accordance with this Constitution on any terms and subject to any conditions and restrictions as they think fit and may revoke, withdraw, alter or vary the delegation of any of those powers.
- (b) The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for and to the exclusion of, the power conferred in section 198D of the Act.

### 13.6 May appoint attorney or agent

- (a) The Board may, by resolution, power of attorney and Seal or other written instrument, appoint any person or persons to be attorney or agent of the College for such purposes, with such powers, authority and discretions being powers, authorities and discretions vested in or exercisable by the Board for such a period and subject to such conditions as it thinks fit.
- (b) The appointment may be on such terms for the protection and convenience of the persons dealing with the attorney or agent as the Board thinks fit and may also authorise the attorney or agent to delegate all or any of the powers, authorities and discretions vested in the attorney or agent.



**13.7 Execution of College Cheques etc.**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments signed, drawn, accepted, endorsed or otherwise executed by the College and all receipts for money paid to the College will be signed, drawn, executed, endorsed or otherwise executed, as the case may be in such a manner and by such persons as the Board shall determine.

**13.8 Director's Contracts with the College**

Subject to the Act:

- (a) No Director will be disqualified from holding the office of Director by virtue of holding any office or place of profit in any corporation in which the College is a shareholder or is otherwise interested;
- (b) No Director will be disqualified from that office from serving the College in any other office or in any other professional capacity, except that of Auditor of the College;
- (c) No Director will be disqualified by virtue of holding the office of Director from contracting with the College or any corporation in which the College is a shareholder or is otherwise interested or in any related entity, either as vendor, purchaser or otherwise and nor will any contract or arrangement entered into by or on behalf of the College in which any Director is in any way directly or indirectly interested be avoided; and
- (d) A Director is not liable to account to the College for any profit arising from that office or realised by the contract or arrangement, or by any participation in any association, institution, fund, trust or scheme or otherwise by reason only of the Director holding that office or of the fiduciary relations thereby established, provided that the disclosure required by clause 13.9 has been made.

**13.9 Restrictions on Director Voting**

- (a) A Director who has a material personal interest in a matter that is being considered at a meeting of the Board, unless section 195 of the Act permits, must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter.
- (b) No act of the College is invalid or voidable by reason only of the failure of a Director to comply with such prohibition.

**13.10 Professional Capacity**

Subject to the Act:

- (a) Any Director may act or the Director's firm may act in a professional capacity for the College or any other corporation in which the College is a shareholder or any related entity of the College; and
- (b) The Director and that Director's firm will be entitled to remuneration for professional services as if that Director were not a Director, provided that this clause will not authorise a Director or that Director's firm acting as an Auditor of the College.

**13.11 May Affix Seal Notwithstanding Interest**

Notwithstanding that a Director is interested in the contract or arrangement, that Director may be appointed as the Director to sign on behalf of the College or in whose presence the Seal is to be affixed, any instrument to which the interest relates.

**13.12 Disclosure of Interest**

- (a) A Director who is in any way, whether directly or indirectly, interested in the matter in which the College has an interest will declare the nature of the interest at the meeting of the Board as soon as practicable after the relevant facts have come to the Director's knowledge.
- (b) For the purposes of clause (a) a general notice given to the Board by a Director to the effect that the Director is an officer or member of a specified corporation or a member of a specified firm or is otherwise interested in any corporation or firm and is to be regarded as interested in any matter, after the date of the notice, in which that corporation or firm may have an interest, will be deemed to be a sufficient declaration of interest in relation to the matter if:
  - (i) the notice states the nature and extent of the Director's interest in the corporation or firm;
  - (ii) when the matter is first considered, the extent of the Director's interest in the corporation or firm is not greater than as stated in the notice; and
  - (iii) the notice is given at a meeting of the Board or the Director takes reasonable steps to ensure that it is brought up and read at the next meeting of the Board after it was given.
- (c) It is also the duty of the Director who holds any office or possesses any property the holding of which office or the possession of which property might, whether directly or indirectly, create duties or interests in conflict with the Director's duties or interests as a Director of the College, to declare at the first meeting of the Board held after the Director becomes a Director, or if the Director is already a Director at the first meeting of Board held after the Director commenced holding any such office or possess any such property, the fact of the Director's holding such office or possessing such property and the nature, character and extent of the conflict.

**13.13 Record of Disclosures**

It is the Secretary's duty to record in the minutes any disclosure given by a Director pursuant to clause 13.9.

**13.14 Meaning of "Contract"**

In clause 13.5, where the context permits, "*contract or arrangement*" includes a proposed contract or arrangement.

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**14. Proceedings of the Board**

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**14.1 Meetings**

- (a) The Board shall meet together on no less than six (6) occasions during each year for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

- (b) The Chairperson may invite and the Directors may resolve that the Chairperson invite any person despite such a person not being a Director, to a meeting of the Board and to participate in any discussions the Directors think fit, provided that such a person shall not have any voting or other rights.
- (c) Where it is impracticable to meet in person the Directors may meet together by telephone or any other means of instantaneous communication otherwise in accordance with clause 9.15.

#### 14.2 Quorum

- (a) The quorum necessary for the transaction of the business of the Board shall be a majority of the Directors then in office.
- (b) A meeting of the Directors during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under this Constitution for the time being vested in or exercisable by the Board generally.
- (c) Where a quorum cannot be established for a meeting of the Board (or consideration of a particular matter) a Director may convene a General Meeting to deal with a matter or matters in question.
- (d) The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as their number is reduced below the minimum prescribed by clause (a) as a quorum, the continuing Directors may, except in an emergency, act only for the purpose of requesting the Members in General Meeting to fill any vacancies to the extent necessary to bring their number up to that minimum or of summoning a General Meeting.

#### 14.3 Convening meetings

The Chairperson may at any time and the Secretary will on the request of any four (4) Directors, convene by no less than seven (7) days' notice, a meeting of the Board. The Board may by a Special Resolution agree to abridge the notice to such lesser period as it shall determine.

#### 14.4 Notice of Meeting

- (a) Notice of every Board meeting will be given to each Director and may be given to each Director's College provided email address.
- (b) A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw the Director's consent within a reasonable period prior to the meeting.

#### 14.5 Chairperson and Vice Chairperson

The Chairperson is entitled to preside at meetings of the Board but, if the Chairperson is not present and able and willing to act within fifteen (15) minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement):

- (a) the Vice Chairperson;
- (b) a Director chosen by a majority of the Directors present.

**14.6 Voting**

Questions arising at a meeting of the Board are to be decided by a majority of votes and in the event of an equality of votes the chair of the meeting has a casting vote. The chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

**14.7 Committees of the Board**

- (a) The Board may delegate any of its powers to committees consisting of one or more Directors and such other individuals as it thinks fit and the Board may from time to time revoke that delegation.
- (b) The Board may also appoint the Principal and/or the Business Manager to any committee provided that the Business Manager shall have no right to vote.
- (c) A committee will conform to any regulations that may be imposed upon it by the Board in the exercise of its powers.
- (d) So far as they are capable of application and with the necessary changes, the provisions of this Constitution for regulating the meetings and proceedings of the Board govern the meeting and proceedings of committees.
- (e) A Committee shall at its first meeting elect from amongst its members a chair provided that the chair shall be either a Director or the Principal.
- (f) Minutes of meetings of committees maintained in accordance with clause 17 of this Constitution must be tabled at each subsequent meeting of the Board next after the committee meeting.

**14.8 Written Resolution**

- (a) If no less than three quarters of the Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the documents on different days, on the day on which and at the time at which the document was last signed by a Director.
- (b) For the purposes of clause (a):
  - (i) two (2) 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 the Directors;
  - (ii) a reference to all Directors does not include a reference to the Director who, at a meeting of the Board, would not be entitled to vote in the resolution;
  - (iii) any document so signed by a Director may be received by the College at the Registered Office (or other place agreed by the Directors) by post, by facsimile or other electronic means or by being delivered personally by that Director.

## **15. Nominations Committee**

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### **15.1 Membership**

- (a) The Board shall appoint a Nominations Committee of three (3) individuals comprising the following:
  - (i) A Director (who shall not be the Principal);
  - (ii) An individual nominated by the Board representing the College Community; and
  - (iii) An individual nominated by the Parents' Association of the College.
- (b) The individuals prescribed in clause 15.1(a)(ii) and (iii) shall not be Directors.
- (c) The Chairperson of the Nominations Committee shall be the individual appointed pursuant to clause 15.1(a)(i).

### **15.2 Term**

- (a) The members prescribed in clause 15.1(a)(ii) and (iii) shall be appointed for a term of three (3) years, subject to earlier removal or retirement pursuant to the Constitution. At the annual General Meeting in each year one of the members in office, must by rotation retire from office.
- (b) A retiring member may act until the conclusion of the meeting at which the member retires.
- (c) A retiring member is entitled to be reappointed provided that no member may serve for more than two (2) consecutive terms.

### **15.3 Role**

- (a) The role of the Nominations Committee is to consider and recommend for the consideration of the Board the names of individuals suitable for the office of Director (excluding the Principal) and such other committees of the Board or College as may be requested by the Board. The Nominations Committee shall in determining an individual's suitability consider that individual's expertise, skills and affinity with the College, its history and ethos.
- (b) The Board shall upon receiving the name of an individual for appointment as a Director;
  - (i) recommend that individual to the Members for election as a Director pursuant to clause 10.5(a); or
  - (ii) reject that individual and provide to the Nominations Committee in writing its reasons for rejection.
- (c) If the Board rejects a nominated individual the Nominations Committee shall either recommend another individual in accordance with clause 15.3(a) or alternatively, advise the Board that it is unable to recommend any other individual for appointment.
- (d) If the Nominations Committee shall be unable to recommend any other individual for appointment to the Board then the Board must refer the nomination to the Dispute Resolution Committee pursuant to clause 16.

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## **16. Dispute Resolution Mechanism**

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### **16.1 Application**

Where in the Constitution a dispute must be resolved under the Dispute Resolution Mechanism or where either the Board or the Members refer any dispute to the Dispute Resolution Committee, the dispute must be resolved as prescribed in this clause.

### **16.2 Reference to Committee**

The Board must refer the dispute to the Dispute Resolution Committee that shall consist of:

- (a) A suitably qualified independent person who must be jointly appointed by the Board and by the Members in General Meeting.
- (b) Two (2) Directors neither of whom shall be the Principal; and
- (c) Two (2) individuals appointed by the Members.

The Dispute Resolution Committee must decide the dispute and the decision of the Dispute Resolution Committee in each dispute is final.

### **16.3 Nomination of Director**

Where the dispute relates to the nomination of an individual as a Director:

- (a) If the Dispute Resolution Committee accepts the nomination, the nominee is deemed approved on the day of the Committee's decision and is appointed for the term of three (3) years; and
- (b) If the Dispute Resolution Committee rejects the nomination the Board must submit a new nomination for approval pursuant to the Constitution.

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## **17. Minutes**

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### **17.1 Minutes of all proceedings to be kept**

The Board will cause minutes of all proceedings of General Meeting and meetings of the Board, including meetings of committees of the Board, to be duly kept and signed in accordance with the Act.

### **17.2 Minutes to be Signed by Chair**

Except in the case of written resolutions made in accordance with clause 14.8 the Board will cause the minutes of all proceedings of General Meetings and meetings of the Board, including meetings of committees of Board, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

### **17.3 Minutes to be Presumed Accurate**

Where the minutes of proceedings of General Meetings and meetings of the Board, including meeting of committees of Board, are signed in accordance with clause 17.2 those minutes shall be presumed to be an accurate record of the relevant proceedings unless the contrary is proved.

**17.4 Inspection of Minutes**

The minutes of proceedings of General Meetings will be open for inspection by any Member without charge.

**18. Secretary**

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**18.1 Appointment of Secretary**

There must be at least one (1) secretary of the College who is to be appointed by the Board on such terms and on such conditions as it thinks fit. Secretary includes the assistant or acting Secretary of the College and any substitute for the time being for the Secretary.

**18.2 Suspension or Removal of Secretary**

The Board may suspend or remove a Secretary from that office.

**18.3 Powers of Secretary**

The Board may vest in the Secretary such powers, duties and authorities as it may from time to time determine and the Secretary must exercise all such powers and authorities' subject at all times to the control of the Board.

**19. Principal**

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The Board shall appoint the Principal on such terms and conditions as the Board shall determine.

**20. Business Manager**

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**20.1 Appointment**

The Principal in conjunction with the Board shall recommend to the Board for its appointment an individual to fill the role of Business Manager of the College for such term and on such conditions as the Principal and the Board shall jointly determine.

**20.2 Role**

The Business Manager shall perform such duties as may be prescribed by the Principal or the Board from time to time and shall be responsible to the Principal in the performance of those duties.

**21. Auditor**

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**21.1 Appointment**

The College at the annual General Meeting shall appoint a properly qualified auditor.

**21.2 Role**

The auditor shall conduct an annual audit of the accounts of the College and report to the annual General Meeting in accordance with the Act.

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## **22. Seals**

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### **22.1 The Common and Duplicate Common Seal**

- (a) The College may have:
  - (i) a Seal; and
  - (ii) a duplicate Seal which must be a copy of the Seal with the words “Duplicate Seal” added.
- (b) The Board must provide for the safe custody of all Seals in such manner as it thinks fit.

### **22.2 Affixing Seal**

- (a) The Seal will only be used by the authority of the Board or a committee of the Board authorised by the Board in that regard.
- (b) Every instrument to which the Seal is affixed, subject to any provisions contained in this clause 22.2, will be signed by a Director and countersigned by the Secretary, another Director or by some other person appointed by the Board for that purpose.

### **22.3 Facsimile Signature**

The Board may determine either generally or in a particular case and in any event subject to such conditions as it thinks fit that wherever a signature is required by this Constitution on a document to or in which the Seal is affixed or incorporated, that requirement will be satisfied by a facsimile of the signature affixed by mechanical or other means.

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## **23. Inspection of Books**

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- (a) Subject to the Act and any resolution of the College in General Meeting, the Board may determine whether and to what extent and at what times and places and under what conditions and regulations the books and documents of the College or any of them will be open to inspection by the Members and other persons.
- (b) A person, not being a Director, has no right to inspect any of the books or documents of the College except as conferred by the Act, this Constitution or authorised by the Board or by a resolution of the College in General Meeting and is not entitled to require or receive any information concerning the affairs of the College.

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## **24. Notices**

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### **24.1 Method of Service of Notices**

A notice may be served by the College on a Member or other person receiving notice under this Constitution by any of the following methods:

- (a) By serving it personally on the Member or other person;
- (b) By leaving it at the Member’s address or the address of the other person;
- (c) By sending it by post in a pre-paid letter, envelope or wrapper addressed to the Member at the Member’s address or for the other person at that person’s address; or



- (d) By sending to the electronic address, or by facsimile transmission to a facsimile number, nominated by the Member or the person for the purpose of serving notices.

#### 24.2 Notice by Advertisement

Any notice by a court of law or otherwise required or allowed to be given by the College to the Members or any of them by advertisement will unless otherwise stipulated, be sufficiently advertised if advertised once in a daily newspaper circulating in the State.

#### 24.3 Time of Service

- (a) Any notice sent by post, airmail or air courier will be deemed to have been served on the day following that on which the letter, envelope or wrapper containing the notice is posted or delivered to the air courier.
- (b) In proving service of any notice it will be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier.
- (c) A certificate in writing signed by any manager, Secretary or other officer or Staff that the letter, envelope or wrapper containing the notice was so addressed and posted is conclusive evidence of the posting.
- (d) Subject to the Act, if this Constitution requires or permits notice to be given to the College or the officers, neither accidental omission to give the notice or non-receipt of the notice invalidates the meeting, resolution, procedure or other matter to which the notice relates.

#### 24.4 Time of Service Electronically

Any notice sent by facsimile transmission or any other electronic means will be deemed to have been served on receipt of the transmission report or other means of confirmation of successful transmission, confirming successful transmission provided that if the receipt is after 5.00 pm on a Business Day it will be deemed to have been served at 9.00 am on the next Business Day.

#### 24.5 Signature on Notices

The signature on any notice to be given by the College may be written or printed on or a facsimile thereof may be affixed by mechanical or other means subject to the Act.

#### 24.6 Calculation of Notice Period

Where a period of notice is required to be given, the day on which the notice is dispatched and the day of doing the act or other thing will not be included in the number of days or other periods.

### 25. Accounts

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#### 25.1 College to Maintain

The College will keep such accounting, financial and other records of the business of the College as it is required to keep by the Act.

**25.2 Annual Accounts**

At the annual General Meeting in every year the Board will lay before the College statements of financial performance and position for the last financial year of the College, together with such other accounts, reports and statements as are required by the Act.

**25.3 Copy of Accounts**

Other than those Members who have provided written notice to the College stating that they do not wish to receive a copy of every document that is required to be laid before each annual General Meeting by clause 25.2, a copy of these documents will be sent to all persons entitled to receive notices of General Meetings together with the notice of meeting, as required by the Act.

**25.4 Accounts Conclusive**

Every set of accounts of the Board when audited and approved or received by a General Meeting at which it is presented will be conclusive except as regards any material error discovered in it within three (3) months next after its approval or adoption. Whenever any material error is discovered within that period the account will forthwith be corrected and then they will be conclusive.

**25.5 Financial Year**

The financial year of the College is the year ending on 31 December in each year and so that the first financial year shall commence on the day of this Constitution and the last financial year shall commence on 1 January immediately preceding the day of winding up or dissolution of the College in accordance with the Act.

**25.6 Not-for-Profit**

- (a) The College must not be carried on for the purposes of profit or gain to individual Members. No portion of the income and property of the College, however it is derived, may be paid or transferred to Members as dividends, bonuses or otherwise, except as bona fide remuneration or reimbursement or payment for services rendered, goods supplied or expenses incurred on behalf of the College as prescribed in clause 5.5.
- (b) Nothing in clause (a) affects the entitlement of a Director to reimbursement pursuant to clause 11.

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**26. Winding Up**

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**26.1 Voluntary Winding Up**

The College can only be wound up or dissolved voluntarily by the College pursuant to a Special Resolution of a General Meeting.

**26.2 Prohibition on Transfer**

If upon the winding up or dissolution of the College, there remains after satisfaction of all its debts and liabilities any property whatsoever, that property must not be paid to or distributed amongst the Members but must be given or transferred to one or more other funds, authorities or institutions which or each of which:

- (a) has objects similar to the objects of the College; and

- (b) whose constitution prohibits a distribution of its income and property among its members to an extent at least as great as is imposed on the College pursuant to this Constitution,

to be determined by the Synod after consultation with the Board at or before the time of dissolution or failing such a determination, by a judge who has or acquires jurisdiction in the matter.

## **27. Indemnity and Insurance**

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### **27.1 Indemnities**

To the maximum extent permitted by law:

- (a) the College indemnifies out of the property of the College every person who is or has been a Director or other officer (current and former) of the college against liabilities, costs or expenses incurred by that person in defending any proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the court grants relief to the person pursuant to the Act or which are withdrawn before judgment; and
- (b) the College indemnifies out of the property of the College every person who is or has been a Director or other officer (current and former) against any liability incurred by the person, as a Director or other officer (current and former) of the College, to another person (other than the College or a related body corporate of the College) unless the liability arises out of conduct involving a lack of good faith; and
- (c) the College indemnifies out of the property of the College every person who has been a Director or other officer (current and former) of the College against any liabilities, in connection with any administrative or legal proceedings relating to that person's position with the College except as prescribed in section 199A of the Act; and
- (d) the College indemnifies out of the property of the College every person who has been a Director or other officer (current and former) of the College against:
  - (i) reasonable legal costs incurred in defending or resisting or otherwise in connection with proceedings, whether civil or criminal or of an administrative or investigatory nature against the person or in which the person becomes involved because of that capacity; and
  - (ii) reasonable legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the College.

### **27.2 Insurance**

To the maximum extent permitted by law, the College must pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director or other officer (current or former) of the College against a liability:

- (a) Incurred by the person in his or her capacity as an officer of the College or in the course of acting in connection with the affairs of the College or otherwise arising out of the officer's holding of such office, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the College or a contravention of sections 182 and 183 of the Act; or

- (b) For costs and expenses incurred by that person in defending proceedings, whatever their outcome.

### 27.3 Interpretation

In clauses 27.1 and 27.2:

- (a) the term “*proceedings*” means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as such an officer or in the course of acting in connection with the affairs of the College or otherwise arising out of the officer’s holding such office (including proceedings alleging that the officer was guilty of negligence, default, breach of trust or breach of duty in relation to the College); and
- (b) the term “*officer*” has the meaning given to that term in section 9 of the Act.

## 28. Deductible Gift Recipient Status

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### 28.1 Deductible Gift Recipient Endorsement

The College in the furtherance of its Objects is empowered to obtain and thereafter comply with all relevant requirements to maintain, either as whole or in respect of a fund, authority or institution that the College owns or includes, endorsement as a Deductible Gift Recipient (DGR) under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth) so as to ensure that it is an organisation which can receive income tax deductible gifts and contributions within the meaning of that Act.

### 28.2 Deductible Gift Recipient Accounting

Without limiting the operation of clause 28.1, the College must:

- (a) Ensure that all gifts and deductible contributions made to it for its principal purpose in relation to its status as an endorsed DGR are used for that purpose and that receipts issued contain all relevant information as required by the Australian Taxation Office (ATO) from time to time; and
- (b) Maintain adequate accounting and other records that record and explain transactions that are relevant to its status as an endorsed DGR as required by the ATO from time to time.

### 28.3 Transfer on Dissolution or Cessation of Deductible Gift Recipient Endorsement

In the event of the College being dissolved or ceasing to be endorsed as a DGR, any remaining gifts, deductible contributions and any money received in respect of such gifts and contributions, acquired by the College by virtue of such endorsement, must be transferred to an institution:

- (a) which is charitable at law; and
- (b) gifts to which can be deducted under division 30 of the *Income Tax Assessment Act 1997* (Cth) due to it being characterised as a public benevolent institution under 4.1.1 of section 30 – 45 of the *Income Tax Assessment Act 1997* (Cth).

### 28.4 Synod

The identity of the institution referred to in clause 28.3 will be determined by the Synod.

## 29. Alteration of the Constitution

- 29.1 This Constitution may only be amended in accordance with the Act.
- 29.2 No amendment to the Objects of the College shall be made unless the Standing Committee first approves it in writing.

## 30. Regulations

Subject to the Act, the College in General Meeting may make, amend or repeal regulations consistent with this Constitution, for the internal management of the College.

Executed by the Chairperson on behalf of each Member.

**Signed** by Mr Max Verberne )  
)

Lucy

Signature of Chairperson

of 18 Bellaire Court  
BEAUMARIS  
VICTORIA 3193

Address

**DATED** this Seventeenth day of June 2021