



# **St Mark's College Incorporated**

## ***CONSTITUTION***

**Adopted by Council on 20th December 2018**

**St Mark's College**

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# **St Mark's College Incorporated**

(Incorporated under the *Associations Incorporations Act 1985* (SA))

## **Constitution**

### **Preamble**

St Mark's College was established in 1925 as the first university residential college in Adelaide.

The College was the vision of the Reverend K Julian F Bickersteth and Sir Lancelot Stirling in the Anglican Synod of the Diocese of Adelaide that led to the establishment of St Mark's College in 1925.

Prior to the adoption of this constitution, the College was governed by its members. The members were collectively referred to as 'the Council' and were responsible for overseeing the operations of the College and its strategic direction and plans. Under that governance structure, the Board (appointed by the Council) was constituted to control and manage the affairs of the College.

Both the Council and Board of the College formed the view that the existing constitution of the College required amendment to accord with modern corporate governance principles. In amending the constitution, the College recognises the religious and historical foundations of the College and the significant contribution of each member of the Council to the College.

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## 1. Definitions

In this constitution:

**Act** means the *Associations Incorporations Act 1985 (SA)*;

**Board** means the board of members of the College from time to time;

**College** means St Mark's College Incorporated;

**Master** means the master of the College appointed under clause 8(a); **Officer** has the meaning given to it in the Act; and

**Visitor** means the visitor of the College appointed under clause 10(a).

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## 2. Name

The name of the association is St. Mark's College Incorporated (**College**).

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## 3. Objects

The objects of the College are:

- (a) to conduct under the auspices of the Anglican Church of Australia a residential College in affiliation with the University of Adelaide for students of all beliefs and religious faiths attending the University of Adelaide or any other approved tertiary educational institution;
- (b) to maintain the ethos of a tertiary collegiate institution; and
- (c) to preserve, develop and enhance the tradition of the College.

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## 4. Powers

The College may:

- (a) acquire, hold, deal with and dispose of any real or personal property;
- (b) administer any property on trust;
- (c) open and operate bank accounts;
- (d) invest its money;
- (e) borrow money, with or without security;
- (f) give security for the discharge of liabilities incurred by the College;
- (g) affiliate, amalgamate, co-operate and enter into reciprocal arrangements with another association or body having objects similar to those of the College;
- (h) appoint officers and employees on terms and conditions determined by the Board;

- (i) provide scholarships and bursaries tenable at the College and to provide other forms of assistance for students of the College;
  - (j) establish and maintain endowment or trust funds for the benefit of the College on terms determined or approved by the Board;
  - (k) enter into any contract it considers necessary or desirable;
  - (l) exercise such other powers as are reasonably necessary for, or in connection with or incidental to the performance, exercise or discharge of its functions or objects.
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## **5. Prohibition of distribution**

- (a) The income and property of the College must be used and applied solely to the promotion of its objects and the exercise of its powers.
  - (b) No portion of the income or property of the College may be distributed directly or indirectly to or among the members of the Board, former members or associates of former members of the College.
  - (c) Nothing in this clause prevents the payment in good faith:
    - (1) of remuneration to an Officer or employee of the College;
    - (2) to an Officer or other person for services actually rendered to the College; or
    - (3) to an Officer of out of pocket expenses, money lent or reasonable and proper charges for the hire of goods, rent for premises or the provision of services by that Officer.
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## **6. No membership**

This constitution does not provide for membership of the College.

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## **7. Board**

### **7.1 Composition**

- (a) The Board shall comprise not less than seven nor more than nine members.
  - (b) The composition of the Board shall be based on a skills matrix determined by the Board from time to time.
  - (c) At least one member of the Board shall have a past association with the College.
  - (d) The members of the Board shall be appointed by the Board on recommendation of the nominations subcommittee.
  - (e) The Master shall not be a member of the Board.
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## **7.2 Term of office**

A member of the Board shall:

- (a) hold office for a term of three years;
- (b) on completion of the term of office, be eligible for re-election;
- (c) subject to any contrary resolution of the Board, not hold office for more than three consecutive terms.

## **7.3 Removal and vacation of office**

- (a) A member of the Board may be removed from office by a special resolution of the Board (excluding the relevant Board member) to terminate the office of the Board member for cause.
- (b) The office of a member of the Board becomes vacant if the member:
  - (1) dies;
  - (2) is permanently incapacitated by ill health;
  - (3) is disqualified from being a member of the Board under the Act;
  - (4) automatically retires pursuant to clause 7.2;
  - (5) does not attend three or more consecutive meetings of the Board without leave of absence from the Board; or
  - (6) resigns by notice in writing to the Board.
- (c) When the office of a member of the Board becomes vacant before the end of the term for which the member was appointed, a casual vacancy occurs.
- (d) A casual vacancy in the office of a member of the Board shall be filled in the same manner in which that member was appointed under clause 7.1.
- (e) Any person appointed to fill a casual vacancy shall hold office for the remainder of the term of office of that member and shall be eligible for re-election.

## **7.4 Election of chair and deputy chair**

- (a) The Board shall elect from the members of the Board a chair and a deputy chair from time to time on such terms (including remuneration) as the Board may determine in its discretion. If votes are tied, the elections will be decided by drawing of lots among the tied candidates.
- (b) The chair and the deputy chair, respectively, shall:
  - (1) hold office for a term of three years;
  - (2) on completion of the term of office, be eligible for re-election;

- (3) subject to a contrary resolution of the Board, not hold office for more than three consecutive terms.
- (c) Where the office of the chair or the deputy chair becomes vacant before the end of the term for which the chair or the deputy chair was elected, a casual vacancy occurs.
- (d) The Board must elect a member of the Board to fill the casual vacancy.
- (e) The person appointed to fill a casual vacancy holds office for the unexpired balance of the term of the chair or the deputy chair as the case may be whose vacancy he or she fills.

## **7.5 Meetings**

- (a) The Board must meet at least nine times each year.
- (b) A meeting of the Board must be called by the chair, or in his or her absence, the deputy chair if the chair or any member of the Board in writing requests one.
- (c) Notice of a Board meeting must be given to each Board member.
- (d) The notice must:
  - (1) specify the place, date and time of the meeting;
  - (2) state the business to be transacted; and
  - (3) be given at least forty-eight (48) hours before the meeting, unless all Board members otherwise agree.
- (e) Four members of the Board are a quorum and no business may be conducted at a meeting of the Board unless a quorum is present.
- (f) The chair will preside at each meeting of the Board and in the absence of the chair, the deputy chair will preside. If neither the chair nor the deputy chair are present the members of the Board present at the meeting will decide who of them will preside.
- (g) A decision carried by a majority of votes of the members of the Board at the meeting is a decision of the Board.
- (h) Each member of the Board is entitled to one vote on a matter arising for a decision by the Board and the chair at the meeting has a casting vote in addition to a deliberative vote.
- (i) The members of the Board may meet together either in person or by using any technology (such as telephone or video-link) for the dispatch of business, as long as all members of the Board are able to communicate with each other simultaneously.
- (j) A resolution passed by a telephone or video-link or any other technology is, notwithstanding that the members are not present together at one place at the time of the conference, treated as having been passed at a meeting of the Board held on the day and at the time at which the meeting using such technology was held.

- (k) If all the members of the Board sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is treated as having 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 member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member.
- (l) Any written resolution may consist of several documents in like form, each signed by one or more members of the Board.
- (m) Subject to this constitution, the Board may decide its own procedure.

## **7.6 Powers of the Board**

- (a) The Board:
  - (1) is responsible for the control and management of the affairs of the College, including the funds and other property of the College;
  - (2) may exercise all the powers of the College.
- (b) The Board may appoint subcommittees, delegate any of its powers (and withdraw any such delegation of powers) to any such subcommittees from time to time.
- (c) The Board may, with respect to any subcommittee:
  - (1) specify in writing from time to time the terms of reference and functions of the subcommittee;
  - (2) appoint such persons as they consider appropriate to the subcommittee (including persons who are not members of the Board), and remove any such person from the subcommittee at any time by written notice;
  - (3) specify the period and conditions (including remuneration) of any such appointment to the subcommittee;
  - (4) terminate the subcommittee at any time.
- (d) Without limiting the generality of the Board's powers under clauses 7.6(b) and 7.6(c):
  - (1) the Board may establish a nominations subcommittee; and
  - (2) the Visitor shall be consulted on the appointments of the Chair and the Master and shall otherwise be invited to attend, observe and speak at all meetings of the nominations subcommittee.
- (e) Unless the Board decides otherwise, the chair of any subcommittee must be a member of the Board.
- (f) The Board may make a charter, not inconsistent with this constitution, for the better management of the affairs of the College.

## 7.7 Validity of acts of the Board

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership and, despite the subsequent discovery of a defect in the appointment of a member, an act or proceeding of the Board will be valid and effectual as if the member had been properly appointed.

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## 8. Master

- (a) The Board must appoint a person to be the master or College head.
  - (b) The Master is responsible to the Board for the leadership and management of the College.
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## 9. Fellows, Honorary Fellows, Honorary Scholars and Distinguished Collegians

- (a) The Board may in consultation with the Master appoint fellows of the College (**Fellows**).
  - (b) The Board may in consultation with the Master who must before any such appointment consult with those Fellows and Honorary Fellows who are resident in Australia appoint honorary fellows of the College (**Honorary Fellows**).
  - (c) Nomination for honorary fellowship accompanied by supporting details must be circulated to each member of the Board, and to the Fellows and Honorary Fellows who are resident in Australia not less than one month before an appointment is made.
  - (d) The Board may in consultation with the Master appoint honorary scholars (**Honorary Scholars**).
  - (e) The Board may in consultation with the Master appoint distinguished collegians of the College (**Distinguished Collegians**).
  - (f) The Board may determine and vary from time to time the rights, powers and duties of Fellows, Honorary Fellows, Honorary Scholars and Distinguished Collegians.
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## 10. Visitor

- (a) The Bishop of Adelaide of the Anglican Church of Australia will be the visitor of the College (**Visitor**).
  - (b) The Visitor's powers include at the written request of the Board the settlement of any dispute or matter of controversy affecting the College.
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## 11. Administration

### 11.1 Public Officer

- (a) The Board must appoint a person to be the public officer of the College.
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- (b) The public officer must carry out the duties delegated by the Board and those imposed by law.

## **11.2 Financial Year**

The financial year of the College begins on 1 January and ends on 31 December.

## **11.3 Accounts and auditor**

- (a) The College must cause proper accounts to be kept of its financial affairs and must for each financial year, prepare a statement of accounts that present fairly the results of the activities of the College.
- (b) The accounts and statements of accounts of the College must for each financial year be audited by auditors appointed by the Board.
- (c) Within five months of the end of each financial year of the College, the Board shall appoint a person to be auditor of the College.
- (d) The auditor shall hold office until the Board meets to appoint an auditor for the next financial year of the College, and is eligible for re-appointment.
- (e) If a vacancy in the office of auditor occurs being appointed pursuant to clause 11.3(c), the Board must fill the vacancy and the appointment will be for the balance of that calendar year.

## **11.4 Common seal**

- (a) The College may have a common seal on which is inscribed the name of the College.
- (b) The Board must authorise the affixing of the common seal to a document and it must be affixed in the presence of two members of the Board.

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## **12. Miscellaneous**

### **12.1 Indemnity**

To the extent permitted by the Act, every member of the Board, auditor, officer, employee or agent of the College must be indemnified out of the property of the College against any liability incurred by that person in that capacity in defending any proceedings:

- (a) in which judgment is given in favour of that person, or
- (b) in which the person is acquitted.

### **12.2 Liability of Officers**

Except as otherwise provided by law, an Officer is not, by reason only of being an Officer, liable to contribute to the payment of the debts and liabilities of the College or the costs, charges and expenses of the winding up of the College.

### 12.3 Confidentiality

Each member of the Board who acquires information about the affairs of the College must not, except to the extent necessary to perform his or her duties or to perform a function or exercise a power authorised by this constitution, divulge or make use of in any way, the information acquired unless the Board relieves the member of this obligation.

### 12.4 Notice of claim

A member of the Board must notify the Chair and the Master in writing immediately after the member becomes aware of any circumstances or claim which could give rise to, or which could reasonably be expected to give rise to, a liability of the College.

### 12.5 Access to Corporate Records

- (a) On ceasing to be a member of the Board, the member must return to the College all Corporate Records in the possession, custody or control of the member.
- (b) The College must keep a complete set of Corporate Records provided by or on behalf of the College to the Board member in secure custody for at least seven years.
- (c) At any time on written request, the member of the Board may, for the purpose of defending any proceedings in which the Board member is involved as a party, witness or otherwise and in which the Board member is involved because they are or were an officer of the College, have access, at no cost, to relevant Corporate Records and obtain a copy of them.
- (d) For the purposes of this clause 12.5, **Corporate Records** means documents of business value, including documents providing evidence of business transactions, and without limitation, includes all papers and minutes circulated to the member of the Board and all documents of the College referred to in any of those papers and minutes including documents which are subject to legal privilege.

### 12.6 Winding up of the College

- (a) If the College is wound up:
  - (1) assets representing specific trusts must be transferred to an institution or institutions similar to the College which is or are willing to maintain the purpose of each of the trusts;
  - (2) assets accruing by virtue of an act of parliament must be applied to a purpose consistent with the provisions of the act;
  - (3) the assets remaining after paying all liabilities must not be paid or distributed among:
    - (A) the members of the Board;
    - (B) former members of the Board or of the College (if any); or
    - (C) associates of members or former members of the Board (if any) or of former members of the College (if any),

but must be transferred to any one or more co-residential undergraduate colleges affiliated with the University of Adelaide.

- (b) If the assets of the College cannot be disposed of according to clause 12.6(a), any assets remaining on a winding up of the College must be transferred to an institution or institutions having similar purposes to those of the College and which has/have rules that prohibit the distribution of its or their assets and income among members to an extent at least as great as that imposed on the College by this constitution.
- (c) If the requirements under clause 12.6(b) cannot be complied with, the assets referred to in that clause must be transferred to a tertiary educational institution.

## **12.7 Notices**

- (a) A notice may be served by the College either:
  - (1) personally, by post to the recipient's last notified address;
  - (2) by facsimile transmission to the recipient's last known number notified to the Master; or
  - (3) by other electronic means to the recipient's last known electronic address notified to the Master.
- (b) If posted, the notice is taken to be given at the time when the notice would have been delivered to the recipient's last notified address in the ordinary course of post.
- (c) If sent by facsimile transmission, the notice is taken to be given if the correct facsimile number of the recipient appears on the facsimile transmission report generated by the sender's facsimile machine and to have been effected at the time the facsimile transmission is sent.
- (d) If sent by electronic transmission, the notice is taken to be given at the time and on the day shown in the sender's 'sent items' folder, if it shows that the whole notice was sent to the recipient's last notified e-mail address and no automatically generated message is subsequently received by the sender that the email was undeliverable or undelivered.

## **12.8 Alteration of constitution**

- (a) This constitution may be altered or replaced by special resolution (as defined in the Act) of the Board.
- (b) The alteration or replacement shall be:
  - (1) registered as required by the Act; and
  - (2) notified to the Visitor.

## 12.9 Transitional provisions

When this constitution becomes the College's constitution:

- (a) the Council, as defined in clause 5 of the previous constitution of the College, shall dissolve;
- (b) the Board will comprise the natural persons then holding the offices as members of the Board as at the time of adoption of this constitution, namely:
  - (1) the five members appointed as the interim Board at the ordinary general meeting of the College held on 24 July 2018; and
  - (2) the chair appointed at the special general meeting of the College held on 28 August 2018;
- (c) the five members of the Board referred to in clause 12.9(b)(1) shall hold office until such time as six new members of the Board are appointed, which appointments shall be no later than 31 December 2019, unless such office is earlier terminated or vacated pursuant to clause 7.3 of this constitution;
- (d) despite the term of office stipulated in clause 7.2, with respect to the six new members of the Board appointed to replace the five member interim Board as contemplated under clause 12.9(c):
  - (1) two members shall hold office for a term of one year;
  - (2) two members shall hold office for a term of two years; and
  - (3) two members shall hold office for a term of three years,and the specific member(s) to hold office for the respective periods shall, in absence of agreement, be determined by drawing lots, administered by the chair;
- (e) the member of the Board elected as chair shall remain in the office of chair of the Board for the unexpired balance of her term, unless such office is earlier terminated or vacated pursuant to clause 7.3 of this constitution; and
- (f) notwithstanding that the Board will comprise of only six members at the time of adoption of this constitution, it is acknowledged that the appointment of new members of the Board contemplated under clause 12.9(c) shall occur as soon as reasonably practicable and that the College will not be in breach of clause 7.1(a) for the period until such appointments are made.