

# **ALEXANDER CLARK NECESSITOUS CIRCUMSTANCES FUND**

## **TRUST DEED**

**John Hamilton**

**St Joseph's Nudgee College Scholarships and Bursaries Fund Ltd**  
**ACN 613 768 273**

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## TRUST DEED

### DATE

### DETAILS OF PARTIES

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Name	John Hamilton
<b>Label</b>	<b>Founder</b>
Address	Level 23, 345 Queen Street, BRISBANE QLD 4000

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Name	St Joseph's Nudgee College Scholarships and Bursaries Fund Ltd
<b>Label</b>	<b>Trustee</b>
ACN	613 768 273
Address	2199 Sandgate Road, BOONDALL QLD 4034

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### BACKGROUND

- A. The Founder wishes to establish the Alexander Clark Necessitous Circumstances Fund, a trust, for the purposes of providing relief to Alexander Clark, a student of the College and an individual in necessitous circumstances in Australia resulting from having suffered serious spinal injuries in August 2018.
- B. The Founder has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.
- C. The Trustee has accepted the Settlement Sum and has agreed with the Founder:
- (a) to act as trustee of the trust; and
  - (b) to enter into this document to record the terms of the trust.

### OPERATIVE PROVISIONS THIS DEED WITNESSES

#### 2. DEFINITIONS AND INTERPRETATION

##### 2.1 Definitions

The following definitions apply in this deed:

**Accounting Period** means the period from the date of this deed to the following 31 December and then each period of 12 months ending on 31 December in each year, or any other period that the Trustee decides from time to time.

**Advisory Committee** means a committee established under clause 5.

**Associate** has the meaning outlined in section 78A of the ITAA 36 as if the reference to the "donor" in that section were a reference to the person who under this deed is referred to in relation to the Associate.

**ATO** means the Australian Taxation Office.

**Business Day** means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.

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**College** means St Joseph's Nudgee College, located at 2199 Sandgate Road, Boondall, Queensland.

**College Board** means the St Joseph's Nudgee College Advisory Board.

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

**Donor** means a donor of a gift to the Trust.

**Eligible Beneficiary** means a person in Necessitous Circumstances in Australia.

**Eligible Charity** means a fund, authority or institution:

- (a) to which gifts are deductible under item 1 of the table in section 30-15 of ITAA 97; and
- (b) which is established for any purposes set out in any of the items of the table in Subdivision 30-B of ITAA 97.

**Gift Fund** means the gift fund established under clause 4.

**Government Authority** means:

- (a) a local, state or federal government;
- (b) a minister, department or agency of any government in (a);
- (c) a corporation, authority or body that is constituted under statute or regulation for a public purpose;
- (d) a holder of a statutory office for a public purpose, or a person charged with the administration of a law; or
- (e) a court, tribunal or commission constituted under statute or regulation.

**ITAA 36** means the *Income Tax Assessment Act 1936*.

**ITAA 97** means the *Income Tax Assessment Act 1997*.

**Necessitous Circumstances** has the meaning accepted by the Australian Taxation Office.

**Notice** means a notice, demand, certificate, consent, approval, waiver or communication given under this deed.

**Objects** means the objectives and purposes specified in clause 3.3.

**Responsible Person or Responsible Persons** means natural persons with a degree of responsibility to the general community, as defined in Taxation Ruling TR95/27, including justices of the peace, members of the clergy, church authorities, trustees or board members of a non-profit school or college, justices, magistrates, solicitors, accountants, directors, senior executives of large companies, medical practitioners and other professional persons, teachers in senior positions, persons holding public or elected office, people who hold (or have held) other public positions or people with honours.

**Settled Sum** means \$10.00.

**Trustee Act** means *Trustee Act 1973* (Qld).

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**Trust** means the Trust established under this deed.

**Trustee** means the person or company named in this deed as the Trustee and any other Trustee for the time being of the Trust whether original, additional or substituted.

**Trust Fund** means:

- (a) the Settled Sum;
- (b) all money, investments and assets paid or transferred to and accepted by the Trustee by way of gift or otherwise, comprising or including the Gift Fund and to be held in accordance with this deed;
- (c) all accretions to the Trust Fund;
- (d) all accumulations of income; and
- (e) the money, investments and property from time to time representing the above or into which they are converted.

**Uncommercial Transaction** means the provision of a financial or other benefit on terms which would not be reasonable in the circumstances if the benefit were provided on an arm's length basis and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

## 2.2 Interpretation

This clause 2.2 specifies the rules for interpreting this deed, except where the context makes it clear that a rule is not intended to apply.

In this deed unless the context requires otherwise:

- (a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;
- (b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended, varied or added to; and
- (c) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it.
- (d) The Background and headings are for convenience only and do not affect the interpretation of this deed.
- (e) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this deed), or a provision of a document (including a provision of this deed), is to that document or provision as amended or replaced;

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- (iii) a party to this deed, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) property includes real, personal and intangible property;
  - (vii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
- (f) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
  - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
    - (A) excluding the day, or the day of the act or event; and
    - (B) including the day on which the purpose is to be fulfilled.
  - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
    - (A) the day, or the day of the act or event; until
    - (B) the corresponding day in the next appropriate week, calendar month or year.
  - (iv) If there is no corresponding day for the purposes of clause 2.2(f)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
  - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
  - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

### **3. THE TRUST**

#### **3.1 Declaration of Trust**

The Founder and the Trustee declare that the Trustee will hold, subject to this deed, the Trust Fund, on trust for the Objects of the Trust.

#### **3.2 Name**

The Trust is to be known as the Alexander Clark Necessitous Circumstances Fund.

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### 3.3 Objects of the Trust

- (a) The Objects of the Trust are to provide relief to Alexander Clark, a student of the College and an individual in necessitous circumstances in Australia resulting from having suffered serious spinal injuries in August 2018 and for as long as he remains an eligible beneficiary, by providing and distributing money, property or benefits to him to enable him to:
  - (i) receive the medical care and other services and support he requires as a result of his injury;
  - (ii) ensure that he able live in accommodation that is suitable for his needs;
  - (iii) undertake education including up to any post graduate studies; and
  - (iv) otherwise enable him to enjoy a modest standard of living notwithstanding the physical and financial hardship caused by his injury.
- (b) In establishing the Trust, it is the intention of the Founder that the Trustee will:
  - (i) establish and maintain a public gift fund to receive all gifts of money or property for the promotion of the Objects of the Trust and any money received because of such gifts will be credited to its bank account;
  - (ii) invite members of the College community as well as the general public to make gifts of money or property to the Gift Fund for the promotion of the Objects of the Trust;
  - (iii) do all things necessary to promote the Objects of the Trust.
- (c) If Alexander Clark ceases to be or is no longer an Eligible Beneficiary, then the Trust may provide relief to eligible persons in a class of beneficiaries in similar circumstances as Alexander Clark in Australia, provided that the funds or property are for the relief of their Necessitous Circumstances.

### 3.4 Limitations

The capital and income of the Trust shall be applied solely in the furtherance of the Objects of the Trust and no portion of the Trust Fund shall be paid or applied, directly or indirectly to or for the Founder, the Trustee, a Donor, or an Associate of the Founder, the Trustee or a Donor by way of an Uncommercial Transaction.

### 3.5 Application of Income and capital

- (a) The Trustee must hold the Trust Fund and the income of the Trust Fund derived in each Accounting Period on trust to pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Trust Fund, solely for the purpose of providing and distributing money, property or benefits in accordance with the Objects.
- (b) No part of the Trust Fund or the income may be paid, transferred or distributed, directly or indirectly, by way of bonus, fee or otherwise, to the Trustee, any of its members or directors or to a person or in a manner which would constitute a related party transaction pursuant to the provisions of the Corporations Act, assuming that the Trust was a public company thereunder.

### 3.6 Factors Trustee may consider

In exercising its discretions under this deed, the Trustee may have regard to:

- (a) any recommendations of an Advisory Committee with authority to make the recommendations;
- (b) public rulings or guidelines issued by the ATO or any other applicable Government Authority concerning necessitous circumstances funds and any advice received by the Trustee concerning the interpretation or application of such public rulings or guidelines to the Trust; and
- (c) the provisions and objects, so far as they are consistent with the Objects of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
  - (i) the capital of that other trust has been transferred to or otherwise vested in the Trustee to hold on the trusts of this deed; and
  - (ii) the trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other trust in exercising the Trustee's discretions and powers under this deed.

### 3.7 Policies and rules

For the purpose of paying or applying the income or capital, the Trustee may:

- (a) formulate policies;
- (b) make rules in connection with a policy; and
- (c) revoke or amend a policy or rule and formulate others.

### 3.8 Accumulation of Income

The Trustee may accumulate and invest income of the Trust Fund in accordance with this deed, including without limitation any rules or policies formulated by the Trustee under clause 3.7, insofar as to do so is consistent with the Objects of the Trust.

## 4. ESTABLISHMENT AND OPERATION OF GIFT FUND

### 4.1 Establishment and operation of the Gift Fund

The Trustee shall establish, maintain and operate the Trust Fund, whether income or capital, for the Objects of the Trust as a public fund (**Gift Fund**) in conformity with applicable requirements of the ITAA 36 and the ITAA 97, including the requirements that the Gift Fund be maintained as a fund:

- (a) the public will be invited to contribute for the furtherance of the Objects of the Trust;
- (b) to which gifts of money or property for the Objects of the Trust are to be made;
- (c) to which any money or property received by the Trust in respect of those gifts is to be credited;
- (d) that does not receive any other money or property; and
- (e) which is kept separate from any other fund maintained by the Trustee.

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#### **4.2 Non-profit and application for the Objects of the Trust**

- (a) Subject to this clause 4 and the other terms and conditions of this deed, the Trustee as it thinks fit may at any time pay or apply all or any part of the income or capital of the Trust Fund for the Object of the Trust.
- (b) Any surplus property remaining after winding-up of the Trust must not be distributed other than in accordance with clause 14.

#### **4.3 Limits on use of Gift Fund**

- (a) The Trustee must use the following only for the Objects of the Trust:
  - (i) all gifts and contributions made to the Gift Fund;
  - (ii) any money or property received by the Trustee in connection with or because of those gifts.
- (b) No payments from or distributions of the Trust Fund may be made directly or indirectly by the Trustee at any time otherwise than in accordance with this deed.

#### **4.4 Bank Account**

- (a) The Trustee must open and maintain an account or accounts entitled "Alexander Clark Necessitous Circumstances Fund" at such bank or banks as the Trustee from time to time thinks fit.
- (b) The Trustee shall ensure that all donations to the Gift Fund and any earnings thereon kept in an account separate from any other money. This account may be used only for the Objects of the Trust.

#### **4.5 Gift Fund forms part of the Trust Fund**

To avoid any doubt, it is declared that the Gift Fund forms part of the Trust Fund.

### **5. ADVISORY COMMITTEES**

#### **5.1 Establishment and Purpose**

- (a) The Trustee may:
  - (i) establish Advisory Committees; and
  - (ii) appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- (b) The Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of the Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, will be to advise the Trustee on how payments or applications of income and capital should be made under this deed.
- (d) The Trustee may specify:
  - (i) the manner in which proceedings of each Advisory Committee are to be conducted;

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- (ii) the matters which the Advisory Committee must have regard to in carrying out its functions; and
  - (iii) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

## **5.2 Powers**

The Advisory Committee and the members will have the powers or authorities delegated to them, or any of them, from time to time by the Trustee.

## **5.3 Liability of Advisory Committee.**

The Advisory Committee and the members will not be liable for any loss or damage to the Trust arising by reason of any mistake or omission made in good faith by any member of the Advisory Committee hereof or by reason of any other matter or thing except fraud or wilful neglect on the part of the member of the Advisory Committee who is sought to be made liable.

## **6. TRUSTEE**

- (a) The Trustee may be:
  - (i) a corporation to which the provisions of subclause 6(b) will apply; or
  - (ii) subject to clause 12.2(c), at least two or more natural persons to which the provisions of subclause 6(c) will apply.
- (b) If the Trustee is a corporation:
  - (i) the Trustee must be a corporation or a body corporate whose board of directors must be constituted by a majority of persons who are Responsible Persons.
  - (ii) The Responsible Persons must each be an active director of the Trustee if the Trustee is a company, or if the Trustee is another type of corporation, the Responsible Persons must each be an active member of the board or other controlling body of that corporation.
  - (iii) If the requirements in clauses 6(b)(i) and 6(b)(ii) are at any time not met the Trustee must not exercise any discretion or power until the requirement is met or except:
    - (A) for the purpose of exercising a statutory power to appoint a new or additional Trustee;
    - (B) to protect the Trust Fund; or
    - (C) in the case of urgency.
- (c) If the Trustee is two or more individuals:
  - (i) The Trustee must include at least one person who is a Responsible Person and who is not associated with the Founder in anything other than a professional capacity.

- (ii) If the requirement in clause 6(c)(i) is not met at any time, the Trustee must not exercise any discretion or power until the requirement is met, except to protect the Trust Fund or to appoint a new or additional trustee.
- (d) If the requirements in clauses 6(b) and 6(c) are at any time not met and if the Trustee does not have or is unable to exercise a statutory power of appointing a new or additional trustee as outlined in 6(b)(iii)(A) the Trustee may by writing appoint a new or additional Trustee.

## **7. TRUSTEE'S POWERS**

### **7.1 Investment**

The Trustee must apply or invest money and property forming part of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia including and not limited to the ITAA 36, the ITAA 97, the Trustee Act and all legally binding directions given to the Trustee by the ATO.

### **7.2 Other powers**

In addition to all the powers vested in the Trustee by law, by statute and otherwise by this deed, the Trustee will have, and may exercise at any time or times, all or any of the following powers:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money in any manner the Trustee thinks fit and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (d) take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (e) take any action the Trustee thinks fit for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this deed, generally:
  - (i) perform any administrative act; and
  - (ii) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as

though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;

- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) employ and pay or provide any benefit for any employee (not being a relative or Associate of the Trustee or a relative or Associate of a director or shareholder of the Founder or the Trustee) without being responsible for the default of the employee or for any loss occasioned by the employment;
- (j) engage and pay any agent, contractor or professional person (not being a relative or Associate of the Trustee or a relative or Associate of a director or shareholder of the Founder or the Trustee) without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations:
  - (i) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
  - (ii) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
  - (iii) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Charity to occupy the property on the terms and conditions the Trustee thinks fit; and
  - (iv) do all other things incidental to the exercise of the Trustee's powers under this deed.

### **7.3 Powers are supplementary**

The powers and discretions in clause 7.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

## **8. LIABILITY FOR BREACHES OF TRUST**

The Trustee, where purporting to act in the exercise of the trusts and powers of this deed, and any officer, agent or employee of the Trustee purporting to exercise powers under this deed, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss or liability, unless the loss or liability is attributable to:
  - (c) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee); or

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- (d) the wilful commission or omission of an act known by the Trustee (or by the relevant officer, agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

## **9. INDEMNITY OF TRUSTEE FROM TRUST FUND**

The Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
- (i) entering into this deed or any deed amending this deed;
  - (ii) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (iii) otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 9(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

## **10. ACTING AS TRUSTEE OF OTHER TRUSTS**

Nothing in this deed shall be construed to prevent the Trustee from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this deed, provided that the terms of this deed are complied with and all of the Trust Fund is kept separate and distinct from the property of any other trust.

## **11. BOOKS OF ACCOUNT AND RECEIPTS**

### **11.1 Trustee to keep accounts**

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund.

### **11.2 Financial statements**

As soon as practicable after the end of each Accounting Period the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that Accounting Period. The financial statement must be audited in accordance with the obligations imposed on the Trustee by law.

### **11.3 Audit**

If required by law to be audited, the financial statements of the Trust Fund must be audited by a person, registered, or taken to be registered as an auditor under Part 9.2 of Corporations Act.

### **11.4 Receipts**

Receipts issued for gifts made to the Gift Fund must state:

- (a) the name of the Gift Fund;
- (b) the Australian Business Number applicable to the Trust;

- (c) the fact that the receipt is for a gift;
- (d) all matters required by law to be stated in respect of gifts made to the Gift Fund, including but not limited to the ITAA 36 and the ITAA 97.

## **12. APPOINTMENT, RESIGNATION AND REMOVAL OF TRUSTEE**

### **12.1 Trustee to act continuously**

The Trustee covenants that it will act continuously as Trustee until the Trust is determined, or, until it ceases to be a Trustee in accordance with this deed.

### **12.2 Procedure**

- (a) A Trustee may by deed retire as Trustee provided that (to ensure continued satisfaction of the trustee requirements in clause 6) a new Trustee(s) is appointed in the place of such Trustee.
- (b) A natural person or corporation alone or with others hold office as Trustee of this deed.
- (c) In the event that and for so long as a natural person is a Trustee, the number of Trustees shall not be less than three.

### **12.3 Powers of New Trustee**

Every new Trustee, on execution of a deed in accordance with clause 12.2, shall have all the same powers, authorities, duties and discretions of the outgoing Trustee and may in all respects act as if the new Trustee had been originally named as a Trustee by this deed.

### **12.4 Effect of retirement or removal of Trustee**

On the retirement or removal of a Trustee, the outgoing Trustee immediately ceases to be Trustee and all property, rights and benefits of any kind vested in the outgoing Trustee will vest in the continuing Trustee or the new Trustee when the new Trustee signs the deed.

### **12.5 Change of Trustee**

The College Board may:

- (a) appoint a new Trustee in addition to any existing Trustee (including the first Trustee);
- (b) replace any Trustee (including the first Trustee);
- (c) remove any Trustee (including the first Trustee).

### **12.6 More Than One Trustee**

If at any time there is more than one Trustee:

- (a) any Trustee may delegate any of its functions to any other Trustee;
- (b) a receipt issued by one Trustee will be a sufficient discharge for any person dealing with the Trust;
- (c) no Trustee is liable for the act or default of any other Trustee;

- (d) no Trustee is liable for permitting any other Trustee to receive or hold any part of the Trust Fund or for handing over any part of the Trust Fund to any other Trustee;
- (e) the Trustees may act by majority, but must record their decisions;
- (f) the Trustees may act by written memorandum signed by a majority of them which will be as effective as a resolution at a meeting;
- (g) the Trustees may meet by telephone, but only if those Trustees taking part are all able to hear each other and a minute of the meeting is subsequently signed by a majority of the Trustees; and
- (h) a Trustee who is directly or indirectly interested in any decision may (but need not) refrain from joining in that decision except as a formal party.

### **13. AMENDING THIS DEED**

#### **13.1 Amendment**

The Trustee may by deed revoke, add to or vary any of the trusts, beneficial interests, powers and discretions set out in this deed, so long as:

- (a) no amendment may be made that would, or would be likely to, change the Objects of the Trust;
- (b) no amendment may be made that would be contrary to the terms of this Trust, including without limitation, clause 4 of this deed;
- (c) to the extent, if any, that the amendment is restricted by the provisions of any law or the requirements of any relevant Government Authority, those provisions or requirements have been complied with (including any applicable requirements relating to charitable fundraising);
- (d) no amendment shall be made without notification to the ATO or any other applicable Government Authority and, if obtainable, the written approval of the ATO or any other applicable Government Authority; and
- (e) where the Trust has been endorsed for taxation purposes, no amendment may be made that would, or would be likely to, prejudice the status of the Trust for all relevant taxation purposes, including, as applicable, the endorsement of the Trust as a deductible gift recipient under Subdivision 30-BA of the ITAA 97 and/or endorsement as a charitable institution.

#### **13.2 Notification**

The Trustee, as soon as practicable after any amendment is made to the deed in accordance with clause 13.1, notify the ATO or any other applicable Government Authority of the amendment made.

### **14. WINDING UP OF TRUST**

#### **14.1 Winding up or revocation of endorsement**

Subject to clause 14.2, if:

- (a) the Trust and/or Gift Fund is wound up or dissolved; or

- (b) the Trust and/or Gift Fund endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97 is revoked,

any surplus assets of the Trust remaining after the payment of all expenses and liabilities attributable to the Trust, shall be aid or transferred to such on or more entities, funds, authorities or institutions that are deductible gift recipients (including Eligible Charities) and that pursues objects or purposes which are within the scope of section 30-45 of the ITAA 97, as shall be nominated by the Trustee in writing, in such proportions and at such times as shall be determined by the Trustee (with power to pay or transfer amounts or assets to any one such entity, fund, authority or institutions to the exclusion of any other).

## **14.2 Limitations**

To the extent, if any, that any distribution, payment or transfer to be made by the Trustee in the circumstances mentioned in 14.1 is restricted by the provisions of any law or the requirements of any relevant Government Authority, no distribution, payment or transfer may be made by the Trustee otherwise in compliance with those provisions or requirements (including without limitation, any applicable requirements relating to charitable fundraising).

## **14.3 Eligible Charities**

Where gifts to an Eligible Charity are deductible for income tax purposes only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a payment or transfer under this clause 14 must be made in accordance with those conditions.

## **15. NOTICES**

### **15.1 Service of Notice**

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
- (b) delivered or sent by prepaid post, email or fax to the party's address specified in this deed, or any other address notified by a party to the other party as its address for service.

### **15.2 Effective Service**

- (a) A Notice given in accordance with clause 15.1 takes effect when received, or at a later time specified in it.
- (b) A Notice is taken to be received at the time specified below:
  - (i) if hand delivered – when delivered;
  - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
  - (iii) if sent by email – when, under the *Electronic Transactions (Queensland) Act 2001* (Qld), an electronic communication is taken to be received;
  - (iv) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.

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- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### **15.3 Ineffective Service**

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by email, the party sending the Notice receives an automated email response specifying that the email containing the Notice was undeliverable;
- (c) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

## **16. MISCELLANEOUS**

### **16.1 Governing Law**

This deed is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this deed, and waives any right it may have to claim that those courts are an inconvenient forum.

### **16.2 Counterparts**

This deed may be executed in counterparts. A counterpart may be a copy of this deed printed from a facsimile or email transmission. All counterparts together are taken to constitute one instrument. A copy of this deed which has been executed by a party (**Signatory**) may be relied upon by a party to the same extent as if it was an original of this deed executed by the Signatory.

### **16.3 Severance**

If the whole, or any part, of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this deed has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this deed.

### **16.4 Deed prevails**

In the event of any inconsistency between the provisions of this deed and the constitution of the Trustee, this deed prevails.

## Execution

**Executed** as a deed.

### Founder

**SIGNED SEALED AND DELIVERED** by JOHN HAMILTON, in the presence of:

Signature of witness

NICHOLAS PETER CAMPBELL

Name of witness (BLOCK LETTERS)

Signature of party

20.09.18

Date signed

### Trustee

**EXECUTED** by ST JOSEPH'S NUDGE  
COLLEGE SCHOLARSHIPS AND BURSARIES  
FUND LTD ACN 613 768 273:

Signature of director

Peter Fullagar

Name (BLOCK LETTERS)

Signature of director/secretary

NEIL O'HARE

Name (BLOCK LETTERS)

21/9/2018

Date signed

# DEED OF VARIATION

**Alexander Clark Necessitous Circumstances Fund**

**St Joseph's Nudgee College Scholarships and Bursaries Fund Ltd**  
**ACN 613 768 273**

Level 23 Central Plaza One  
345 Queen Street  
BRISBANE QLD 4000  
Tel: (07) 3231 0600  
Fax: (07) 3221 2921  
Our ref: ADF:NIC:126776

[www.mcw.com.au](http://www.mcw.com.au)

**Brisbane**  
Maroochydore  
Southport  
Sydney  
Canberra  
Melbourne  
Adelaide

# DEED OF VARIATION

DATE:

## DETAILS OF PARTIES

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Name	St Joseph's Nudgee College Scholarships and Bursaries Fund Ltd
<b>Label</b>	<b>Trustee</b>
ACN	613 768 273
Address	2199 Sandgate Road, BOONDALL QLD 4034

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## BACKGROUND

### A. Name of Trust and Creation Date

Alexander Clark Necessitous Circumstances Fund (**Trust**) was established pursuant to a deed of trust dated 21 September 2018 which contained the rules for the Trust (**Trust Deed**).

### B. Rule to Vary

Pursuant to rule 13.1 of the Trust Deed, the Trustee may be deed revoke, add to or vary any of the trusts, beneficial interests, powers and discretions set out in the Trust Deed.

### C. Wish to Vary

The Trustee wishes to vary the Trust Deed in accordance with the terms of this document.

## OPERATIVE PROVISIONS

### 1. VARIATIONS TO DISCRETIONARY TRUST DEED

- (a) The Trust Deed is varied by deleting rule 14.1 and inserting the following in its place:

*"14.1 Winding up or revocation of endorsement*

*Subject to clause 14.2, if:*

- (a) *the Trust and/or Gift Fund is wound up or dissolved; or*
- (b) *the Trust and/or Gift Fund endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97 is revoked,*

*any surplus assets of the Trust remaining after the payment of all expenses and liabilities attributable to the Trust, shall be paid or transferred to such on or more entities, funds, authorities or institutions that are deductible gift recipients which are charitable at law and that pursue objects or purposes which are within the scope of section 30-45 of the ITAA 97, as shall be nominated by the Trustee in writing, in such proportions and at such times as shall be determined by the Trustee (with power to pay or transfer amounts or assets to any one such entity, fund, authority or institutions to the exclusion of any other)."*

- (b) The Trust Deed is varied by deleting clause 14.3.

**2. VARIATION**

The Trustee, by executing this deed, consents to the variation of the Trust Deed set out in this Deed, and has been advised of the nature and purpose of the variation.

**3. INTENTION**

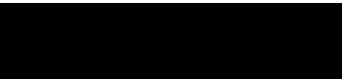
This Deed is not intended to create any new trusts for the Trust.

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## Execution

Executed as a deed.

EXECUTED by ST JOSEPH'S NUDGE  
COLLEGE SCHOLARSHIPS AND BURSARIES  
FUND LTD ACN 613 768 273:

  
\_\_\_\_\_  
Signature of director

*Peter Fullagar*  
\_\_\_\_\_  
Name (BLOCK LETTERS)

  
\_\_\_\_\_  
Signature of director/secretary

*Neil O'Hare.*  
\_\_\_\_\_  
Name (BLOCK LETTERS)

*13/11/2018*  
\_\_\_\_\_  
Date signed