

**Date: 27 October 2016**

# CONSTITUTION

## St Edmund's College Foundation Ltd

ABN: [insert after incorporation]

A Company Limited by Guarantee

## Constitution of St Edmund's College Foundation Ltd

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# Preliminary

## 1. Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

**Advisory Committee** has the meaning given in clause 43.1(b).

**Associate** has the meaning attributed to it by Section 9 of the Corporations Act

**Auditor** means the Company's auditor.

**Board** means the Board of the St Edmund's College Foundation Ltd.

**Chairperson** means the person appointed as Chairperson pursuant to clause 33.

**College** means St Edmund's College (Ipswich)

**College Board** means the Board of St Edmund's College (Ipswich)

**Company** means St Edmund's College Foundation Ltd

**Constitution** means the constitution of the Company as amended from time to time.

**Corporations Act** means the Corporations Act 2001 (Cth) as modified or amended from time to time.

**Deputy Chairperson** means the person appointed as Deputy Chairperson pursuant to clause 33.2.

**Director** includes any person occupying the position of director of the Company.

**Directors** means all or some of the Directors acting as a board.

**Financial Year** means the financial year adopted by the Company.

**'in writing'** and **'written'** includes any form of reproducing words in a visible form.

**Member** means a member under clause 8.

**Office** means the Company's registered office.

**P&F** means the St Edmund's College Parents and Friends Association

**Principal** means the person holding the position of principal of the College from time to time

**Register** means the register of Members of the Company.

**Registered Address** means the last known address of a Member as noted in the Register.

**Responsible Persons** are persons who are considered to have a degree of responsibility to the community as a whole include: church authorities, school principals, judges, clergymen, solicitors, doctors, and other professional persons, mayors, councillors, town clerks and members of parliament. Generally, persons who are acceptable as having a degree of responsibility to the community as a whole are known to a broad section of the community because they perform a public function or they belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct. Other persons who are acceptable are appointees of a Chief Justice of the Supreme Court. Persons who have received formal recognition from the Government for

their services to the community (for example, an Order of Australia award) will also be considered to have the requisite degree of responsibility. (TR 95/27 paragraph 21)

**Seal** means the Company's common seal.

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.

**Special Resolution** has the meaning attributed to it under the Corporations Act

**Sub Committee** means a committee appointed by the Board as per Section 43.1(a)

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
- (d) headings are for ease of reference only and do not affect the construction of this Constitution.

1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the clause.

1.4 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## General

### 2. Name of Company

The name of the Company is **St Edmund's College Foundation Limited**

### 3. Replaceable Rules

The Replaceable Rules do not apply to the Company

## Objects

### 4. Objects

4.1 The object of the Company is to be a not-for-profit organisation working, by remaining faithful to the charism of Edmund Rice, to support the Trustees of Edmund Rice Education Australia and St Edmund's College, through a Memorandum of Understanding, to maintain and improve the facilities and operations of St Edmund's College, Ipswich and to develop the broader interests of the College community by:

- (a) Raising the profile of the College in the broader community

- (b) Encouraging broader participation in the activities of the College community
- (c) Raising funds to support the development of the College by way of membership, donations or any other means of support (which may include the undertaking of, or participation in, commercial ventures of all kinds) as determined by the Foundation Board from time to time.
- (d) Providing benefits to the College community in the form of:
  - i. Scholarships, prizes and bursaries
  - ii. Grants for professional development of staff
  - iii. Funding specific education programs as defined by the College as priorities
  - iv. Funding major projects
  - v. The development of a corpus of assets, the investment income from which is used to fund the Objects of the Company as outlined in Section 2.1.

4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause 4; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

## 5. Powers of the Company

5.1 The Company will have the power to act in accordance with the Law.

5.2 The Company has no power to issue nor allot fully or partly paid shares to any person.

## 6. Not For Profit

6.1 The assets and income of the Company shall be applied solely in furtherance of the above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

# Income and property of Company

## 7. Income and property of Company

7.1 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

# Membership

## 8. Classes of Membership

8.1 Until otherwise determined by the Members in a general meeting, there shall be the following classes of Members:

- (a) Appointed Members;
- (b) Ordinary Members;
- (c) Honorary Members; and
- (d) Life Members.

### 8.2 Appointed Members

(a) The number of Appointed Members to the Company is limited to the following entities:

- The St Edmund's College Principal
- Three representatives of the St Edmund's College Board

(b) Every Appointed Member is entitled to one vote

(c) Appointed Members are not required to pay a membership or subscription fee but will be considered to have all of the rights and entitlements of an Ordinary Member.

### 8.3 Ordinary Members

(a) The Board may from time to time in its absolute discretion admit to ordinary membership of the Company any person who is more than 18 years of age.

(b) Any entity may become an Ordinary Member.

(c) Every applicant for ordinary membership must be nominated as outlined in clause 9

(d) The number of Ordinary Members is unlimited.

(e) Every Ordinary Member is entitled to one vote.

### 8.4 Honorary Members

(a) The Board may elect as Honorary Members of the Company, upon such terms and subject to such conditions as the Board may from time to time determine, such persons who by reason of their special qualifications or contributions to the Company are entitled, in the opinion of the Board, to such privilege.

(b) Any entity may become an Honorary Member.

(c) The currency of an Honorary Membership may not exceed one year, unless renewed by the Board. The Board may in its absolute discretion revoke any Honorary Membership at any time.

(d) The number of Honorary Members is unlimited unless otherwise determined from time to time by the Board.

(e) An Honorary Member has the same social privileges as an Ordinary Member and is entitled to receive notice of and to attend and speak at general meetings, but is not eligible to hold office in the Company and is not entitled to vote.



## 8.5 Life Members

- (a) The Board may nominate for Life Membership any Member who, in the opinion of the Board, is regarded worthy of life membership by reason of their outstanding and meritorious service to the Company over a period of greater than ten (10) years.
- (b) A Life Member must only be an individual person.
- (c) A Life Member may be admitted , on recommendation of the Board, if that recommendation is approved by three quarters majority of Members present and entitled to vote at an annual general meeting of the Company.
- (d) A Life Member is entitled, for life, unless he or she ceases to be a Member (for any reason), to all the privileges of membership without the payment of any further subscriptions.
- (e) A Life Member is entitled to one vote.

## 9. Admission

- 9.1 The Board may impose an annual membership fee on Ordinary Members which shall be such amount and due at such time as the Board may from time to time determine.
- 9.2 The Members of the Company are:
  - (a) the persons who consented to become Members in the application for registration of the Company; and
  - (b) any participant admitted to membership in accordance with this clause 9.
- 9.3 Applications for membership of the Company must be made in writing and be signed by the applicant.
- 9.4 The Directors will consider each application for membership at the next Directors' meeting after the application is received.
- 9.5 In considering an application for membership, the Directors may, in their absolute discretion, approve or refuse the application of any prospective Member.
- 9.6 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance. An applicant for membership becomes a Member upon such acceptance.
- 9.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.
- 9.8 The Board shall cause to be kept in accordance with the requirements of the Corporations Act a Register of Members of the Company and such Register shall contain the following particulars:
  - (a) the name and address of each Member and a description of the type of Membership held
  - (b) the date on which the name of each Member was entered in the Register, and
  - (c) the date on which a Member ceased to be a Member.

## 10. Ceasing to be a Member

- 10.1 A Member's membership of the Company will cease upon:
  - (a) the death of the Member

- (b) the passing of a Special Resolution of Members to that effect
  - (c) if, upon the request of the Principal, the Board so resolves
  - (d) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary
  - (e) If the full amount of the annual membership fee is not received by the Secretary within 28 days after the due date for payment, and the default persists for a further period of 28 days after a further written notice from the Secretary is issued, the Board may pass a resolution cancelling the Member's membership
  - (f) as otherwise provided in this Constitution
- 10.2 Any Member ceasing to be a Member will remain liable for and will pay to the Company any moneys which were due to the Company at the date of ceasing to be a Member.
- 10.3 The Board may by resolutions suspend or expel from the Company a Member on the grounds that:
- (a) in the case of a person other than a person mentioned in Clause 9:
    - i. the Member wilfully refuses or neglects to comply with the provisions of the Constitution or by-laws as adopted from time to time; or
    - ii. the Member is guilty of conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company
    - iii. the Board gives the Member written notice requiring it to show cause why its membership should not be cancelled; and
    - iv. the Board is not satisfied with the Member's response and the parties, having proceeded to resolve their differences by a mediation conducted pursuant to the standard form of Mediation Agreement approved by the Queensland Law Society Inc have been unable to resolve those differences and the Board then unanimously (except any representative or nominee of the Member) resolves to cancel the Member's membership

10.4 Where a Member's membership rights are proposed to be terminated by resolution of the Board, the Board must give that Member:

- (a) at least one week's notice of the meeting, the substance of the allegations against it and the intended resolution; and
  - (b) an opportunity of lodging a written explanation or defence with the Secretary at least 24 hours before the meeting to consider such expulsion
- 10.5 A Member who, for whatever cause, ceases to be a Member of the Company, shall not have any claim, monetary or otherwise, on the Company's funds or property.

## 11. Powers of attorney

- 11.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for noting.
- 11.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

- 11.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 12. Representatives

- 12.1 Any Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
  - (b) remove a Representative.
- 12.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the Member which appointed him or her could exercise if it were a natural person;
  - (b) stand for election as an office bearer or Director; and
  - (c) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- 12.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 12.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 12.5 The appointment of a Representative may set out restrictions on the Representative's powers.

## General meetings

### 13. Calling general meeting

- 13.1 The Board may, at any time, call a general meeting.
- 13.2 The Board or a Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

### 14. Notice of general meeting

- 14.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 14 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to all Members and other persons referred to in clause 57.1 of any general meeting.
- 14.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;

- (b) must state the general nature of the business to be transacted at the meeting; and
  - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 14.3 The business to be transacted at an annual general meeting may, regardless of whether stated in the notice, include:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of directors; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 14.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 13.2).
- 14.5 The Directors must give notice to all Members and other persons referred to in clause 57.1 of:
- (a) the postponement or cancellation of a general meeting;
  - (b) the place, date and time of any new meeting.
- 14.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or other person referred to in clause 57.1 or the non-receipt of a notice (or form) by any Member or other person referred to in clause 57.1 does not invalidate the proceedings at or any resolution passed at the general meeting.

## Proceedings at general meetings

### 15. Member

In clauses 16 (Quorum), 17 (Chairperson), 19 (Decision on questions) and 21 (Voting rights), **Member** includes an Ordinary Member or Life Member present in person or by proxy, attorney or Representative.

### 16. Quorum

- 16.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 12.2 A quorum at a general meeting shall be comprised of the number of Members constituting the Board plus one. A person attending by teleconference or other video or audio conference facility shall be deemed present in person.
- 12.3 For the purpose of determining whether a quorum is present, a person attending as a proxy, or an attorney or as representing a corporation that is a Member, shall be deemed to be a Member.
- 16.4 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and

- (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

## 17. Chairperson

- 17.1 The Chairperson, or in the Chairperson's absence the Deputy Chairperson, will be the chairperson at every general meeting.
- 17.2 The Directors present may elect one of their number to be a chairperson of a general meeting if:
  - (a) there is no Chairperson or Deputy Chairperson; or
  - (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the general meeting.

## 18. Adjournment

- 18.1 The chairperson of a general meeting at which a quorum is present:
  - (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 18.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 18.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 18.4 Notice of an adjourned general meeting must only be given in accordance with clause 14.1 if a general meeting has been adjourned for more than 21 days.

## 19. Decision on questions

- 19.1 Subject to the Corporations Act in relation to special resolutions and clause 19.2, a resolution is carried at a general meeting if a majority of the votes cast on the resolution are in favour of the resolution.
- 19.2 Resolutions as to Special Majority Issues must be referred to the Members and, in order to be carried, require a 75% majority of votes cast by Members to be in favour.
- 19.3 The chairperson of a general meeting does not have a casting vote at general meetings in addition to the chairperson's votes as a Member, proxy, attorney or Representative.
- 19.4 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by any Member or the chairperson of the meeting.
- 19.5 A poll may be demanded before a vote is taken or before or after the voting results on a show of hands are declared.
- 19.6 Unless a poll is demanded:
  - (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

19.7 The demand for a poll may be withdrawn.

19.8 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

19.9 If there is a dispute at a general meeting about a question of procedure, the chairperson of the general meeting may determine the question.

## 20. Taking a poll

20.1 A poll will be taken when and in the manner that the chairperson of the general meeting directs.

20.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

20.3 The chairperson of a general meeting may determine any dispute about the admission or rejection of a vote on a poll.

20.4 The chairperson's determination, if made in good faith, will be final and conclusive.

20.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

20.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## Votes of Members

### 21. Voting rights

21.1 A Member entitled to vote has on a show of hands, subject to clause 23.1, one vote.

21.2 On a poll or show of hands, each Member present in person, by proxy, attorney or delegate is entitled to one vote at general meetings of the Company.

21.3 If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, its committee or trustees or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

### 22. Objections

22.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

22.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

22.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

### 23. Votes by proxy

23.1 If a Member appoints a proxy or an attorney, the proxy or attorney may not vote on a show of hands.

- 23.2 A proxy need not be a Member.
- 23.3 A proxy may demand or join in demanding a poll.
- 23.4 A proxy or attorney may vote on a poll.
- 23.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## 24. Document appointing proxy

- 24.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 24.2 For the purposes of clause 24.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been included with the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 24.3 A proxy's appointment is valid at an adjourned general meeting.
- 24.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 24.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 24.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

## 25. Lodgement of proxy

- 25.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee is intended to vote; or

- (b) the taking of a poll on which the appointee is intended to vote.
- 25.2 The Company receives an appointment of a proxy or attorney and any power of attorney or other authority under which the appointment was executed when they are received at:
- (a) the Office;
  - (b) a facsimile number at the Office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## 26. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) was of unsound mind; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## 27. Mail Votes

27.1 Subject to this Constitution, a resolution of the Company shall be submitted to a mail vote when directed by the Board where it determines that this is appropriate given the expediency of a mail vote and urgency of the matter in question.

23.2 Any such mail vote shall be in accordance with the following procedure:

- (a) the Secretary shall, upon receipt of the directive as aforesaid, forthwith despatch a copy of the resolution to each Member eligible to attend a general meeting in addition to those persons entitled to vote;
- (b) such despatch shall, at the discretion of the Board, be either by post or electronic mail and shall be accompanied by a notice stating the date upon which the voting shall close and whether the voting is by post or by electronic mail;
- (c) the despatch of the resolution and notice shall be deemed to have been received by each person eligible to vote in the case of:
  - i. post – two days after posting, and
  - ii. electronic mail - at the conclusion of the day of despatch;
- (d) all votes must be received by the Secretary in the case of:
  - i. Postal votes – within 14 days; and
  - ii. Electronic mail – within 48 hours of receipt at the resolution and notice or unless otherwise advised;
- (e) Upon the close of voting, the Secretary shall forthwith examine the votes as received by him and forthwith convey by mail to the members of the Company the result of the voting so received by him;



- (f) In the event of an equal number of votes for and against being recorded the resolutions shall be deemed to be not carried;
- (g) A vote on any resolution so taken by post shall be as valid and binding in all respects as if the same had been taken in due manner at a duly convened meeting of the Company and shall be recorded in the minutes.

## Appointment and removal of the Board of Directors

### 28. Number of Directors

- 28.1 The number of Directors on the Board will be seven (7)
  - (a) Three of whom shall be appointed by the College Board
  - (b) One of whom shall be the College Principal
  - (d) Three of whom shall be directors elected by the membership of the Company

It is a fundamental objective of the election and appointment of Directors that at least three of the total number should be old boys of the Edmund Rice education system.

### 29. Appointment of Directors

- 29.1 The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a Company. Those persons hold office subject to the Constitution.
- 29.2 All Directors, other than those elected by the Company membership as indicated in clause 28, must be appointed as indicated in clause 28.
- 29.3 The Principal (not including any person acting in that position temporarily) will be a Director for the period of his or her appointment as Principal.
- 29.4 In the case of a casual vacancy, an appointment will be made at the next general meeting following the vacancy arising or, if the Company would not have time to comply with clause 31.3 for that meeting, at the next general meeting for which the Company is able to comply.
- 29.5 The appointment must be declared by the Company at the general meeting and the appointment will take effect at the end of the meeting.
- 29.6 The appointee must maintain the support of the appointing body. An appointing body may, at any time, request the removal of an appointee and may re-appoint another person to that position.
- 29.7 For as long as the St Edmund's College Foundation Ltd is the Trustee of the St Edmund's College Foundation Trust, it should ensure that the majority of its Directors will be **Responsible Persons**.

### 30. Retirement or Resignation of a Director

- 30.1 At each annual general meeting, all Directors will retire.
- 30.2 A retiring Director remains in office until the end of the relevant meeting and will be eligible for re-appointment or re-election at the meeting.

- 30.3 Any Director may resign at any time by notice in writing delivered to the Secretary but such resignation only takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice when it shall take effect on and from that later date.

## 31. Nomination of Director

- 31.1 A person other than a retiring Director or appointed Director is not eligible for appointment as a Director at a general meeting unless a written notice has been left at the Office :
- (a) stating the name and address of a proposer and a seconder of the nomination (so long as both proposer and seconder are Members of the Company)
  - (b) stating that the person consents to the nomination; and
  - (c) signed by the proposer, seconder, a College Board Director and the nominated person.
- 31.2 A notice given in accordance with Section 31.1 must be left at the Office at least 14 days before the relevant general meeting.
- 31.3 A written notice referring to all Director vacancies must be sent to the Company membership within 14 days of the vacancy taking effect.

## 32. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act or other legislation from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company in general meeting;
- (e) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (f) is an employee or officer of a Member that ceases to be a Member;
- (g) is an employee or officer of a Member and ceases to be an employee of that Member; or
- (h) was nominated to be elected as a Director by a Member that ceases to be a Member.

## 33. Chairperson

- 33.1 The Chairperson of the Company shall be appointed from within the number of Company Directors no later than the first meeting following the Annual General Meeting of the Company.
- 33.2 The Directors may appoint a Director as Deputy Chairperson to act as chairperson in the Chairperson's absence.
- 33.3 The Directors present at a Board meeting may elect a chairperson of the meeting if:
- (a) there is no Chairperson or Deputy Chairperson; or

- (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the Directors' meeting; or
- (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the Directors' meeting.

## Powers and duties of Directors

### 34. Directors to manage Company

- 34.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 34.2 Every Director and other agent or officer of the Company must:
  - (a) keep secret all aspects of all transactions of the Company, except:
    - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
    - (ii) as required by law;
    - (iii) where authorised pursuant to clause 41.8; and
    - (iv) when requested by the Directors to disclose information, to the auditors of the Company or a general meeting of the Company; and
  - (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

## Remuneration of Directors

### 35. Remuneration Directors

- 35.1 The Directors of the Company may not be paid or provided remuneration for their services as Directors.
- 35.2 The Company may reimburse a Director for his or her expenses properly incurred as a Director or in the course of his or her office.

## Related Entities

### 36. Related Entities

- 36.1 In order for the Company to undertake its objects, it may be required, from time to time, to establish other related entities.

### 37. St Edmund's College Foundation Trust

- 37.1 The Foundation will establish the St Edmund's College Foundation Trust. As per the Deed of Trust, executed under the laws of Queensland, the Foundation will be the Trustee of the Trust.

# Proceedings of Board Meetings

## 38. Proceedings of Board Meetings

- 38.1 The Board shall manage the business of the Company and in doing so may:
- (a) pay all expenses incurred in promoting and registering the Company; and
  - (b) exercise all powers of the Company as are not required by this Constitution to be exercised by the Company in general meeting.
- 38.2 A rule, regulation or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
1. A resolution or regulation made by the Company in general meeting shall not invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.
- 38.3 The Board shall not make rules, regulations and by-laws inconsistent with this Constitution or that are inconsistent with the aims, objectives and ethos of St Edmund's College or the Christian Brothers.
- 38.4 The Board may from time to time appoint such subcommittees whether of members of the Board or not and with such powers as the Board shall think fit with power to revoke the appointment of any such subcommittee.
2. A subcommittee in the exercise of the duties delegated or assigned to it shall conform to any regulations directions or instructions that may be prescribed or given by the Board.
3. A subcommittee appointed by the Board shall be under the control and direction of the Board and shall have no direct part or power in the management of the Company.
4. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board from time to time determines.
- 38.5 The Board may exercise all of the powers of the Company to:
- (a) raise or borrow money;
  - (b) guarantee the debts, liabilities or obligations of any person;
  - (c) enter into any financing arrangement;
  - (d) mortgage or charge any property or business of the Company;
  - (e) issue debentures; and
  - (f) give any other security for a debt, liability or obligation of the Company or of any other person, in the manner and on such terms as the Board thinks fit.
5. If the funds of the Company are not sufficient, the Board may recommend that a levy be imposed, in addition to the annual subscription, on each Member or class of Member, but no levy shall be imposed unless it is first approved by a majority of votes at a general meeting.

## 39. Board meetings

- 39.1 A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting.
- 39.2 A Board meeting must be called on at least 48 hours notice of a meeting to each Director.

- 39.3 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 39.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 39.5 Subject to clause 39, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 39.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 39.7 A quorum is a majority of Directors for the time being or three Directors, whichever is higher.
- 39.8 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson of the meeting of Directors may call a general meeting to deal with the matter.
- 39.9 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

## 40. Decision on questions

- 40.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 39, each Director has one vote.
- 40.2 If there is an equality of votes, the chairperson of a meeting of Directors will have a casting vote in addition to his or her deliberative vote.

## 41. Directors' interests

- 41.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 41.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 41.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 41.4 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as auditor in the Company; and
  - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

- 41.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- 41.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

- 41.7 Without limiting his or her other obligations, a Director who is an employee, board member or contractor of a Member that has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless the other Directors resolve otherwise.

- 41.8 A Director who is an employee or board member of a Member may disclose to that Member any information (confidential or otherwise) about the affairs, finances and accounts of the Company that comes into the Director's possession from time to time, subject to requiring the Member to maintain the confidentiality of any confidential information. This right will not apply if:

- (a) the exercise of such a right is inconsistent with this Constitution or the Director's fiduciary or other legal duties; and
- (b) the Board has directed that such information not be disclosed to the relevant Member.

## 42. Remaining Directors

- 42.1 The Directors may act even if there are vacancies on the board.

- 42.2 If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Directors may act only to call a general meeting.

## 43. Committees

- 43.1 The Directors may establish either or both of the following:

- (a) committees with powers delegated by the Directors (**Sub Committees**); and
- (b) advisory committees, with no delegated powers, to advise the Directors on specified matters (**Advisory Committees**).

- 43.2 Board Committee members and Advisory Committee members will be appointed by the Directors.
- 43.3 At least one member of each Board Committee must be a Director.
- 43.4 Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Board Committee or Advisory Committee member was a Director.
- 43.5 Clause 45 regarding written resolutions applies to resolutions of Board Committees and Advisory Committees as if each Board Committee or Advisory Committee member was a Director.

## 44. Delegation

- 44.1 The Directors may, upon any terms and conditions or restrictions as they see fit, delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to:
- (a) a Board Committee;
  - (b) a Director;
  - (c) an employee of the Company; or
  - (d) any other person.
- 44.2 A Board Committee to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 44.3 A Board Committee to which, or person to whom, any powers have been delegated may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 44.4 The Directors may at any time revoke any delegation of power.

## 45. Written resolutions

- 45.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 45.2 For the purposes of clause 45.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 45.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 45.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 45.

## 46. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director; or
- (b) any of the circumstances specified in clause 32 applied to a person appointed as a Director,

all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **47. Minutes and Registers**

47.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Board Committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Board Committees;
- (c) all resolutions passed by Directors in accordance with clause 45;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Board Committees; and
- (f) all disclosures of interests made under clause 415.

47.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

47.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## **Management**

### **48. Local management**

48.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit so long as those affairs are consistent with the affairs of St Edmund's College and the Christian Brothers and are in line with the Memorandum of Understanding between the College and the Company.

48.2 Without limiting clause 48.1 the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under clause 48.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution, on any terms and subject to any conditions determined by the Directors.

48.3 The Directors may at any time revoke or vary any delegation under this clause 482.

### **49. Appointment of attorneys and agents**

49.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;



- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions, determined by the Directors.
- 49.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 49.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 49.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 49.5 An attorney or agent appointed under this clause 49 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## Secretary

### 50. Secretary

- 50.1 There must be at least one secretary of the Company, appointed by the Directors for a term and at remuneration and on conditions determined by the Board.
- 50.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 50.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.
- 50.4 The Secretary shall, in addition to his or her other duties, ensure that the Company complies with the provisions of the Corporations Act relating to the Member's access to the Company's minute book.

## Seals

### 51. Common Seal

- 51.1 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
  - (b) the Seal must not be used without the authority of the Directors;

- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

## **52. Duplicate Seal**

- 52.1 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal';
  - (b) must not be used except with the authority of the Directors.

## **53. Execution of Documents without a Seal**

- 53.1 The Company may execute a document, including a deed, by having the document signed by:
- (a) Two Directors; or
  - (b) A Director and the Secretary, and

If the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in clause 51 or 53.

Notwithstanding the provisions of clauses 51 and 53, any document including a deed may also be executed by the Company in any other manner permitted by law.

## **Audit and accounts**

### **54. Audit and accounts**

- 54.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 54.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and in accordance with the requirements of St Edmund's College.

## **Inspection of records**

### **55. Inspection of records**

- 55.1 Except as otherwise required by the Corporations Act or the Participants Agreement, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 55.2 Except as otherwise required by the Corporations Act or the Participants Agreement, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

# Notices

## 56. Service of notices

- 56.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
  - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 56.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 56.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 56.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 56.5 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.
- 56.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 56.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 56.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 57. Persons entitled to notice

- 57.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director and Secretary; and
  - (c) the Auditor.
- 57.2 No other person is entitled to receive notice of a general meeting.

## Winding up

## 58. Winding up

- 58.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
- (c) payment of debts and liabilities of the Company (in relation to clause 58.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of such Members and former Members amongst themselves, such amount as may be required, not exceeding \$2.

51.2 If any surplus assets remain following the winding up of the Company, the surplus assets will not be paid to or distributed amongst Members, but will be given or transferred to St Edmund's College unless that entity no longer exists; whereby surplus assets will be given or transferred to another body corporate which, by its constitution, is:

- (a) required to pursue objects similar to the objects of the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors.

## Indemnity

### 59. Indemnity

52.1 The Trustees of Edmund Rice Education Australia, St Edmund's College and every officer and past officer (except any auditor) of the Company must be indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an officer of the Company or a subsidiary of the Company including, without limitation, legal costs and expenses incurred in participating or being involved in or in defending legal proceedings. For the purposes of this clause, "legal proceedings" means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the officer being an officer of the Company or the employment of the officer with the Company

52.2 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law.

52.3 Every employee who is not a member of the Board, Secretary or Board officer of the Company may be indemnified out of property of the Company against a liability:

- (a) incurred by the employee acting in that capacity;
- (b) for the costs and expenses incurred by an employee:
  - i. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
  - ii. in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Corporations Act.

# Amending the Constitution

## 60. Amendment of the Constitution

- 53.1 The Company may only modify, amend or repeal this Constitution by a Special Resolution passed by the Members.

# Signing page

---

We, the undersigned, as a person who consents to become a Member, agree to the terms of this Constitution:

**Signed by Gerard Philip Pender** in the presence of

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Signature of witness ←

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

**Date:** \_\_\_\_\_

**Signed by Christopher Leadbetter** in the presence of

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Signature of witness ←

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

**Date:** \_\_\_\_\_

**Signed by Trent Quinn** in the presence of

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Signature of witness ←

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

**Date:** \_\_\_\_\_

Signed by **Gregory Denis Quinn** in the  
presence of

Signature of witness



Name of witness (print)

Signature of officer



Name of officer (print)

Office held

Signed by **Mark Carey Hennelly** in the  
presence of

Signature of witness



Name of witness (print)

Signature of officer



Name of officer (print)

Office held

Signed by **Veronica Joan Ramsay** in the  
presence of

Signature of witness



Name of witness (print)

Signature of officer



Name of officer (print)

Office held

Signed by **Wayne Paul Patch** in the  
presence of

Signature of witness



Name of witness (print)

Signature of officer



Name of officer (print)

Office held

## **DEED OF TRUST**

### **ST EDMUND'S COLLEGE FOUNDATION TRUST**

**Created 08/11/2006**

**Prepared by:**

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**Starfire Solutions does not provide, or purport to provide, legal or financial advice. All matters requiring legal or financial advice should be referred to appropriately qualified professionals.**



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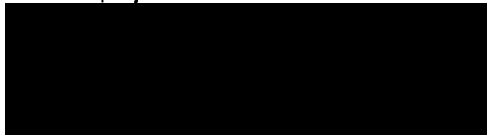
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## This deed of trust

is made on 12/3/2007 between the following parties:

1.



(Settlor)

2. Name: ST EDMUNDS COLLEGE FOUNDATION LIMITED  
Address: 16 MARY STREET  
WOODEND QLD 4305

~~Name:~~

~~Address:~~

~~Name:~~

~~Address~~

(Trustees)

### Recitals

- A. The Settlor wishes to establish a fund for certain public charitable purposes.
- B. The Settlor has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.

### This deed witnesses

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## 1 Name

The Trust is to be known as St Edmund's College Foundation Trust.

---

## 2 Definitions and interpretation

### 2.1 Definitions

In this deed:

**Accounting Period** means the period from the date of this deed to the following 30 June and then each period of 12 months ending on 30 June in each year, or any other period that the Trustee decides;

**Advisory Committee** means a committee established under clause 21;

**Associate** has the meaning outlined in section 78A of the *Income Tax Assessment Act 1936* 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;

**College** means St Edmund's College, Ipswich

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97;

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

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

- (a) which is charitable at law; and
- (b) gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97;

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

**Major Donor** means, at a particular time, a Donor who has made gifts totalling more than \$10,000 to the Trust since the date of this Deed.

**Not for Profit** means, where the assets and income of the Trust shall be applied solely in furtherance of its stated purposes and where no portion is to be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.

**Oral Resolution** means a resolution made orally, by show of hands, by poll, or in any other way required to secure due passage of a resolution, which method of reaching a resolution does not for its validity involve writing to record the resolution: but only so long as such a resolution is recorded by an independent third party who makes a statutory declaration as to the terms of the resolution and its due passage

**Protector** means:

- (a) St Edmund's College Foundation Ltd
- (b) if St Edmund's College Foundation Ltd should cease to exist – the entity (by whatever name called) which succeeds to the whole (or the most) of the assets of St Edmund's College Foundation Ltd, or a body succeeding in such a way to assets of such a successor body.

**Principal Purpose of the Trust** means the purpose outlined in clause 7.4

**Responsible Persons** are persons who are considered to have a degree of responsibility to the community as a whole include: church authorities, school principals, judges, clergymen, solicitors, doctors, and other professional persons, mayors, councillors, town clerks and members of parliament. Generally, persons who are acceptable as having a degree of responsibility to the community as a whole are known to a broad section of the community because they perform a public function or they belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct. Other persons who are acceptable are

appointees of a Chief Justice of the Supreme Court. Persons who have received formal recognition from the Government for their services to the community (for example, an Order of Australia award) will also be considered to have the requisite degree of responsibility. (TR 95/27 paragraph 21)

**Settled Sum** means \$10;

**Specified Income** means income of the Trust other than donations, gifts, government grants, and other voluntary transfers of property to the Trust;

**This Deed** means this Deed of Trust together with any amendment to it.

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

**Trustee** means the person or entity named in this deed as the Trustee and any other trustee for the time being of the Trust; and

**Trust Fund** means:

- (a) the Settled Sum;
  - (b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
  - (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,
- and includes any part of the Trust Fund.

## **2.2 Interpretation**

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; and
- (c) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation.

## **2.3 Headings**

Headings are used for convenience only and do not affect the interpretation of this deed.

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# **3 Declaration of trust**

The Founder and the Trustee declare that the Trustee must hold the Trust Fund and the income from the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.

---

## 4 Establishment

The trust is:

- a) a fund established in Australia for public charitable purposes; and
- b) a public fund established and maintained solely for:
  - (a) the purpose of providing money, property or benefits;
    - to a fund, authority or institution to which gifts are deductible under Item 1 of the table in Subsection 30 - 15(1) of ITAA 97; and
    - for any purpose set out in the item of the table in Subdivision 30-B of ITAA 97 that covers the fund, authority or institution; or
  - (b) the establishment of such a fund, authority or institution.

---

## 5 Best endeavours to comply with tax laws

The trustees must endeavour to operate the trust as:

- (a) a "public fund", the purposes of section 30-15 item 2 ITAA97; and
- (b) a fund established in Australia for public charitable purposes by this deed for the purposes of section 50-5 item 1.5B ITAA97.

---

## 6 General charitable intent

The settlor declares that in settling the settlement sum upon the trustees to be held on trust in accordance with this deed, the settlor is to be taken as evincing a general charitable intent.

---

## 7 Purposes

### 7.1 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 benefits to the St Edmund's College community to undertake the following activities, as the Trustees decide, so long as they are consistent with the trust remaining charitable:
  - To maintain and improve the facilities and operations of St Edmund's College, Ipswich and to develop the broader interests of the College community by:

X  
Subject to  
clause 4

- Raising the profile of the College in the broader community
- Encouraging broader participation in the activities of the College community
- Raising funds to support the development of the College by way of membership, donations or any other means of support (which may include the undertaking of, or participation in, commercial ventures of all kinds) as determined by the Foundation Board from time to time.
- Providing benefits to the College community in the form of:
  - i. Scholarships, prizes and bursaries
  - ii. Grants for professional development of staff
  - iii. Funding specific education programs as defined by the College as priorities
  - iv. Funding major projects
  - v. The development of a corpus of assets, the investment income from which is used to fund the Objects of the Company as outlined in above.
- To the extent that it is consistent with clauses 5 & 6 to do so, the reference in subclause (a) to "benefit" shall be read as extending also to the provision of money or property.
- (b) Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of ITAA 97 are satisfied, a payment or application of income or capital must be made in accordance with those conditions.
- (c) The list of activities referred to in a) is not exhaustive.

## **7.2 Factors Trustee may consider**

In exercising its discretions under clause 7.1, the Trustee may have regard to:

- (a) any recommendations of an Advisory Committee; and
- (b) the provisions and objects, so far as they are consistent with the Principal Purpose of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
  - (1) the capital of the other trust has been transferred to or otherwise vested in the Trustee to hold on the trusts of this deed; and
  - (2) 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.

## **7.3 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.

#### **7.4 Trustee may accumulate**

Despite clause 7.1, the Trustee may, in any Accounting Period accumulate and retain so much of:

- (a) the Specified Income as is:
  - (1) necessary to maintain the capital of the Trust Fund at a level calculated by adjusting the capital at the beginning of that Accounting Period to reflect the movement in the All Groups Consumer Price Index during the Accounting Period immediately before that Accounting Period; or
  - (2) from time to time approved by the Commissioner; and
- (b) all other receipts or income of the Trust as are from time to time approved by the Commissioner.

---

### **8 Uncommercial Transactions**

- (a) Apart from a payment or application under clause 7.1, a payment under clause 23 or a payment or application approved by the Commissioner, no part of the Trust Fund or the income may be paid or applied, directly or indirectly, to or for:
  - (1) the Founder;
  - (2) the Trustee;
  - (3) a Donor; or
  - (4) an Associate of the Founder, the Trustee or a Donorby way of an Uncommercial Transaction.
- (b) In clause 8(a), an **Uncommercial Transaction** means the provision of a financial or other benefit on terms which:
  - (1) would not be reasonable in the circumstances if the benefit were provided on an arms length basis; or
  - (2) are more favourable to the recipient than the terms referred to in clause 8(b)(1),

and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

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### **9 Consultation with other bodies**

- a) For the avoidance of doubt, the trustees are permitted to consult with St Edmund's College and/or St Edmund's College Board to determine funding priorities and needs.
- b) The trustees are not obliged to act upon wishes expressed or suggestions made during the course of such consultations.



- c) Should the protector determine, in its absolute discretion, that the trustees would be better placed in consulting with another person or body, the protector may nominate another person or body for the purposes of this clause.

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## **10 Establishment and operation of Gift Fund**

### **10.1 Maintaining Gift Fund**

The Trustee must maintain for the Principal Purpose of the Trust a fund (**Gift Fund**):

- (a) to which gifts of money or property for that purpose are to be made;
- (b) to which any money received by the Trust because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

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

The Trustee must use the following only for the Principal Purpose of the Trust:

- (a) gifts made to the Gift Fund;
- (b) any money received because of those gifts.

### **10.3 Winding up the Gift Fund**

- (a) At the first occurrence of:
  - (1) the winding up of the Gift Fund; or
  - (2) the Trust ceasing to be a public fund under item 2 of the table contained in section 30-15, of the ITAA97any surplus assets of the Gift Fund must be transferred to
  - (3) Eligible Charitiesas the Trustee decides.
- (b) Where gifts to an Eligible Charity are deductible 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 transfer under this clause must be made in accordance with those conditions.

### **10.4 Bank account**

The Trustee must maintain a separate bank account for the Gift Fund.

### **10.5 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.

---

## 11 Qualifications of Trustee

- (a) For as long as the St Edmund's College Foundation Ltd is the Trustee, it must ensure that the majority of its Board of Directors will comprise a majority of **Responsible Persons**.
- (b) If the requirement in clause 11(a) is at any time not met the Trustee must not exercise any discretion or power until the requirement is met or except:
  - (1) for the purpose of exercising a statutory power to appoint a new or additional Trustee;
  - (2) to protect the Trust Fund; or
  - (3) in the case of urgency.
- (c) If the requirement in clause 11(a) is 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 11(b)(1), the Trustee may by writing appoint a new or additional Trustee.

---

## 12 Appointment and removal of trustees

- (a) For so long as there is a protector, the protector may (from time to time):
  - (i) appoint a new or further trustee,
  - (ii) remove a trustee, and
  - (iii) exercise its powers of removal and appointment simultaneously so as a substitute one or more trustees for one or more other trustees.
- (b) The protector may exercise such powers by deed or oral resolution.
- (c) Otherwise – the trustees, acting by a majority of their number, may exercise such power as to appointment, removal and substitution as a protector might have done, and in like manner as a protector was empowered to so act.
- (d) In any case – a trustee may retire by notice in writing given either to the protector or another trustee.
- (e) Upon the occasion of the appointment, removal, substitution or retirement of a trustee, the person or persons then empowered to appoint, remove or substitute shall take into account the need for the trust to retain its standing as a public fund and a public charitable trust.

---

## **13 Trustee's powers**

### **13.1 Investment**

The Trustee must invest money 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.

### **13.2 Other powers**

The Trustee may:

- (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 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 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:
  - (1) perform any administrative act; and
  - (2) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management (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 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 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) do all other things incidental to the exercise of the Trustee's powers under this deed.

### **13.3 Powers are supplementary**

The powers and discretions in clause 13.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

---

## **14 Investment**

The trustees may invest the fund only in a way that the *Trust Act 1973* (Queensland) allows trustees to invest trust money. This clause applies only so long as section 30-15(2) item 2 ITAA97 makes such a clause necessary to enable gifts to the trust to be income tax deductible.

---

## **15 Liability for breaches of trust**

### **15.1 Trustee**

The Trustee, where purporting to act in the exercise of the trusts of this deed or exercise powers or discretions 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

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

#### **15.2 Officers, agents or employees**

Any officer, agent or employee of the Trustee purporting to exercise powers or discretions 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 that officer, agent or employee of the Trustee; or
- (d) the wilful commission or omission of an act known by that officer, agent or employee of the Trustee to be a fraudulent breach of trust in bad faith.

---

### **16 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:
  - (1) entering into this deed or any deed amending this deed;
  - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (3) 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 16(a) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed.

---

### **17 Books of account and receipts**

#### **17.1 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.

#### **17.2 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.

### **17.3 Audit**

The financial statement must be audited by a person registered, or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001*

### **17.4 Receipts**

Receipts issued for gifts must state:

- (a) the name of the Trust Fund;
- (b) the Australian Business Number applicable to the Trust; and
- (c) the fact that the receipt is for a gift.

### **17.5 Receipts issued for deductible contributions**

Receipts issued for deductible contributions should specify:

- (a) The name and ABN of the DGR
- (b) The fact that the contribution was made for:
  - A right to attend a specified fundraising event, or
  - The purchase of goods and services as a successful bidder at a fundraising auction
- (c) The amount of the contribution (if money),
- (d) The GST inclusive market value of the right or the goods or services (the benefit) received in return for the contribution,
- (e) The date the contribution was made, and
- (f) A description of the contribution if it was property.

---

## **18 Meetings**

- (a) A meeting of the trustees may be held at any time or place. The trustees shall, unless otherwise provided, act unanimously.
- (b) Should a trustee not attend a meeting of the trustees, after reasonable notice of the meeting having been given, the trustees in attendance at the meeting (being a majority in number of the trustees then appointed) may, acting unanimously, dispose of any then essential business required to be undertaken.

---

## **19 Minutes**

Minutes of the proceedings of all meetings of the Trustee shall be recorded in a book to be kept for the purpose by the secretary and shall be signed by the chairman of the meeting or of the meeting at which the minutes are read and confirmed. Every such minute purporting to be so signed shall be prima facie evidence of the facts stated in it.

---

## **20 Secretary**

The trustees shall name one of their number as secretary to hold office during the pleasure of the majority of the trustees.

---

## **21 Advisory Committees**

- (a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- (b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of each 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 clause 7.
- (d) The Trustee may specify:
  - (1) the manner in which proceedings of each Advisory Committee are to be conducted;
  - (2) the matters which the Advisory Committee must have regard to in carrying out its functions; and
  - (3) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

---

## **22 Amending this deed**

The Trustee may by deed revoke, add to or vary any of the provisions of this deed, so long as:

- (a) no part of the Trust Fund or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts; and
- (b) unless the Commissioner consents to the revocation, addition or variation:
  - (1) no part of the Trust Fund or the income of the Trust Fund becomes subject to trusts other than trusts for the provision of money, property or benefits to or for Eligible Charities;
  - (2) no amendment is made to or affecting clauses 7.4 or 8;
  - (3) no amendment is made which authorises the Trustee to invest money of the Trust Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia;
  - (4) no amendment is made to this clause 22 so as to permit this deed to be amended in a manner prohibited by clause 22(b)(1), (2) or (3); and

- (5) the Trustee notifies the Commissioner of the amendment.

---

## **23 Not for Profit**

- (a) The Trust shall be operated on a not-for-profit basis. Monies shall not be distributed to the settler, protector, trustees, managers or employees except as reimbursement for out-of-pocket expenses incurred on behalf of the Trust, or for remuneration for administrative services.

---

## **24 Public fund raising**

The trustees shall invite the public to contribute to the fund held in accordance with this trust. In doing so, the trustees shall comply with the law relating to collections and fund-raising.

---

## **25 General**

### **25.1 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper officer of any recipient of a payment or application of income or capital from the Trust Fund is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

### **25.2 Trustee's discretions and powers**

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

### **25.3 Personal interest of Trustee**

The Trustee and any person who is a member of the board or other controlling committee of the Trustee or a member of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law even though the Trustee or that person:

- (a) has or may have a direct or personal interest or a conflict of fiduciary duty in the method or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly from the exercise of any power or discretion,

and even if the Trustee is a sole trustee.

### **25.4 Delegation of powers**

The Trustee may by power of attorney or otherwise delegate to any person any of the discretions or powers given to it under this deed. The exercise of any of the



discretions or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested under this deed.

#### **25.5 Trustee's receipts**

The Trustee may receive money and other property and give valid receipts for all purposes including:

- (a) those of any statute; and
- (b) the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land,

and even if the Trustee is a sole trustee.

#### **25.6 Trustee's decisions**

The Trustee may decide:

- (a) whether any money is to be considered as capital or income;
- (b) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
- (c) all questions and matters of doubt arising in the execution of the trusts of this deed.

Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

---

### **26 Winding up**

If upon winding-up or dissolution the Trust there remains after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed amongst the settlor, trustees, managers or employees but shall be given or transferred to some other organisation, or the trustees of some other trust, having objects similar to those of this trust and to which income tax deductible gifts can be made.

---

### **27 Governing law**

This deed is governed by the laws of Queensland.

---

**Executed as a deed:**

**Signed sealed and delivered by**

in the presence of:

[Redacted]

Witness Signature

[Redacted]

Name (please print)

**Signed sealed and delivered by  
(Trustee)**

[Redacted]

Signature (Chair)

[Redacted]

Name (please print)

[Redacted]

Signature (Treasurer)

[Redacted]

Name (please print)

[Redacted]

Signature (Secretary)

[Redacted]

Name (please print)

**On behalf of the Trustee, St Edmund's College Foundation Limited.**