



**ELTHAM COLLEGE**

# **CONSTITUTION**

**ACN 004 992 750**

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# 1. Definitions and interpretation

In this Constitution the following words have the following meanings unless the contrary intention appears:

**Board of Directors** means the whole or any number (not being less than a quorum) of the Directors acting at a duly convened meeting of the Directors;

**Business Manager** means the person appointed as the Business Manager of the College pursuant to clause 13;

**Chair** means the chairperson as duly elected from time to time;

**Chair of the Board of Directors** means the person appointed as Chair of the Board of Directors pursuant to clause 7.9;

**College** means Eltham College ACN 004 992 750;

**Constitution** means the Constitution for the time being of the College;

**Director** means any director of the College and includes any person occupying the position of a director;

**Elected Director** means each of the Directors elected to office by virtue of an election held at a general meeting referred to in clause 7.2(b)(i), and **Elected Directors** means a reference to all of them jointly;

**Financial Year** has the same meaning as in section 9 of the Law;

**Founder** means Mr Leslie Edward Clarke A M, architect and founder of the College;

**Law** means the *Corporations Act 2001* as amended, modified or re-enacted from time to time;

**Life Member** has the meaning given to that term in clause 4.2(b);

**Life Governor** has the meaning given to that term in clause 4.2(c);

**Member** means a person who has been admitted to membership of the College by the Board of Directors in accordance with the procedure set down in clause 4.1 and whose Subscription in respect of any year is paid at or prior to the annual general meeting held in that year, and includes Ordinary Member and Life Member;

**Ordinary Member** has the meaning given to that term in clause 4.2(a);

**Officer** means:

- (a) a Director of the College, whether past, present or future by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such a position; and

(b) any person who by virtue of any applicable legislation or law is deemed to be a Director or officer of the College, including without limitation, the people defined as an officer of a company by section 241(4) of the Law;

**Principal** means that person appointed as the Principal of the College for the time being pursuant to clause 11;

**Register** means the register or registers of Members of the College kept pursuant to the Law;

**Registered Address** means the address appearing in the Register;

**Registered Office** means the registered office for the time being of the College;

**Representative** means a representative appointed by a Member to represent the Member in any or all of his or her dealings with the College;

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

**Secretary** means any person, however named, appointed to perform the duties of Company Secretary of the College and includes the acting Company Secretary or any substitute for the time being;

**School** means the school established and operated in accordance with the objects of the College;

**Standing Committees** means the Executive Committee, the Risk Committee and the Finance Committee.

**Sub-Committees** means the sub-committees of the Board of Directors from time to time;

**Subscription** means the amount or amounts payable by a Member;

**Vice Chair of the Board of Directors** means a person appointed as Vice Chair of the Board of Directors pursuant to clause 7.9;

**Writing** includes typewriting, printing, lithography, photography and other physical, magnetic or electronic modes of representing or reproducing words in the visible form and **written** has a corresponding meaning;

Words or expressions contained in this Constitution will be interpreted in accordance with the provisions of the Law, words importing a gender include any gender and words importing the singular include the plural and vice versa;

Reference to a person includes any other entity recognised by law and vice versa; and

The Replaceable Rules provided in the Law will not apply to this College except so far as they are repeated or contained in this Constitution. Otherwise this Constitution will change in accordance with changes of the Law.

## 2. **Objects**

2.1 The College is established for the following primary objects:

- (a) To establish, operate and maintain one or more co-education schools.
  - (b) To establish, operate and maintain a pre-school.
- 2.2 The College may undertake the following secondary objects provided that their operation may not adversely impact a primary object.
- (a) To operate child minding and other children's services.
  - (b) To operate adult education programs, out of school hours programs, and other educational and training services including distance and on line learning.
  - (c) To form commercial or strategic alliances in pursuit of these objects.
  - (d) To establish, operate and maintain funds for carrying out the objects of the College, approved by the Australian Taxation Office as deductible gift recipients, which will allow donors to obtain tax deductibility of their donations to such funds.
  - (e) To establish, operate and promote any trusts which may seem directly or indirectly conducive to any of the objects of the College.
  - (f) To do such other things as may assist the College in the pursuit of its objects, provided that the College may or may not pursue these secondary objects.

### **3. Income and property**

#### **3.1 To be applied solely towards promotion of objects**

Subject to clause 3.2, the income and property of the College however derived, will be applied solely towards the promotion of the objects of the College as set out in clause 2, and no portion of that income or property will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members of the College.

#### **3.2 Payment of remuneration**

- (a) The College may, in good faith, pay remuneration to any officers of the College or to any Member of the College in return for any services actually rendered to the College or for goods supplied in the ordinary course of business and may pay interest at a rate not exceeding the rate for the time being fixed for the purpose of this clause by the Constitution on money borrowed from any Members of the College or reasonable and proper rent for premises demised or let by any Member to the College.
- (b) A Director of the College may be appointed to any salaried office of the College, and paid any remuneration or other benefit in money or money's worth including repayment of out-of-pocket expenses and interest at the rate referred to in clause 3.2(a) on money lent or reasonable and proper rent for premises demised or let to the College.

## **4. Membership**

### **4.1 Procedure for membership**

- (a) Any person who applies to be and who is elected as a Member as provided in this clause 4.1 will be a Member of the College and no person will be entitled to be admitted as a Member of the College except in pursuance of this clause 4.1.
- (b) An application for membership of the College must be made on a form provided by the Board of Directors for that purpose, must set out the full name, address and occupation of the applicant, and such other information as the Board of Directors may reasonably require, and must be signed by the applicant.
- (c) As soon as practicable after receipt of an application for membership, the application will be considered by the Board of Directors at their meeting, who will determine the admission or rejection of the applicant and a record will be kept by the Secretary of the names of the members present and voting at each such meeting.
- (d) The Board of Directors may in its absolute discretion admit or refuse any application for membership and in no case will it be required to give any reason for the rejection of an applicant.
- (e) A Member on payment of his or her initial Subscription will be deemed to have submitted himself or herself to this Constitution and subject to this Constitution, will be entitled to the advantages of the type of membership of the College to which he or she is elected. Subscriptions must be paid annually and a Member whose Subscription is in arrears will not be entitled to vote at any meeting of the College.

### **4.2 Types of Members**

The College will consist of the following types of Members which the Board of Directors will have the power to elect to membership as the Board of Directors may from time to time deem advisable:

- (a) ordinary members who having paid such initial Subscription as the Board of Directors may determine from time to time to the College and having applied for membership within 3 months after such payment is admitted to membership of the College by the Board of Directors.
- (b) Life members each being a person who in the opinion of the Board of Directors has rendered outstanding service or substantial service over a long period to the College and who agrees to become a life member of the College.
- (c) Life governors each being a person who in the opinion of the Board of Directors has rendered outstanding governance over a long period to the College and who agrees to become a life governor.

### **4.3 Register of Members**

A Register of Members must be kept by the Secretary, showing in respect of each Member, his or her name, address and date of admission to the College.

## **5. Cessation or suspension of membership**

### **5.1 Resignation**

A Member may at any time by giving notice in writing to the Secretary resign his or her membership of the College.

### **5.2 Cessation of membership**

- (a) A person will cease to be a Member:
- (i) on tendering his or her written resignation from membership;
  - (ii) on his or her death;
  - (iii) in the case of an Ordinary Member, upon his or her annual Subscription being in arrears for a period exceeding 2 months; and
  - (iv) if at a general meeting of the College a motion to that effect is passed by a special resolution.

### **5.3 Suspension and expulsion**

- (a) Subject to clause 5.3(b), the Board of Directors by resolution may suspend or expel any Member from the College if the Member:
- (i) refuses or neglects to comply with the provisions of the Constitution of the College; or
  - (ii) is guilty of any conduct which in the opinion of the Board of Directors is unbecoming of a Member or prejudicial to the interest of the College,

upon which, notice of such resolution will be given to the person so qualified and such person will be deemed to have ceased being a Member of the College as from the date of such resolution and notwithstanding any other clause of this Constitution the Board of Directors may in its absolute discretion reject any later application by any person so removed from the Register of Members without being bound to give reasons or may admit such people on such terms and conditions as it may in its absolute discretion think fit.

- (b) The Member must be given notice of the meeting of the Board of Directors referred to in clause 5.3(a) and of what is alleged against him or her and of the intended resolution at least one week before the meeting of the Board of Directors at which such a resolution is to be considered. At the meeting and before the passing of the resolution the Member may give orally or in writing any explanation or defence he or she may think fit. Further, the Member may by notice in writing lodge with the Secretary at least 24 hours

before the time for holding the meeting at which the resolution is to be considered, elect to have the question dealt with by the College in an arbitration with an arbitrator being approved by the President of the Law Institute of Victoria. Each party shall bear their own costs in relation to the arbitration.

#### **5.4 Effect of resignation, cessation, suspension and expulsion**

- (a) During the Member's suspension, the Member will have no right to vote at any meeting of Members.
- (b) A person ceasing to be a Member will not be relieved from liability for payment of any outstanding Subscription or other money due or payable by him or her at the time of termination of membership.
- (c) Any Member who resigns or for any reason ceases membership or is expelled from the College must, in order to regain membership, follow the procedure required for those originally seeking membership.

### **6. Subscriptions**

- 6.1 The Board of Directors may require payment by Members, as a condition of membership, of Subscription of such amount and payable at such times and in such manner as it may determine.
- 6.2 Each Member must continue to pay the Subscription at the times and at the rate established by the Board of Directors unless notified of any change in relation to the Subscription.
- 6.3 Any contribution levied under this Constitution becomes due and payable to the College in accordance with a resolution of the Board of Directors.
- 6.4 Contributions levied under this Constitution may be recovered as a debt due and payable by the College in any court of competent jurisdiction.
- 6.5 A Member who does not render payment of the Subscription within 2 months after the date the Subscription becomes due or by any later period as determined by the Board of Directors, will be deemed to no longer be a Member and may be suspended or expelled as a Member under clause 5.3.
- 6.6 Until otherwise decided by the Board of Directors:
  - (a) The annual Subscription for Members will be determined by the Board of Directors from time to time.
  - (b) No Life Member or Life Governor will be required to pay any Subscription for membership of the College.
  - (c) The initial Subscription due by each Member will be payable upon election and annual Subscriptions will thereafter be due on the first day of January, or such other date as fixed from time to time by the Board of Directors.



## 7. Directors

### 7.1 Number of Directors

- (a) There shall be 13 Directors of the College.
- (b) The College may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of Directors, provided that the minimum number must always be 3.

### 7.2 Appointment of Directors

- (a) Only a person who is a Member will be eligible to be a Director.
- (b) The Directors of the College will be comprised of the following:
  - (i) 12 persons elected by the Members in accordance with clause 7.4, who will be known as the **Elected Directors**; and
  - (ii) The Principal of the College.

### 7.3 Term of Directors

- (a) Subject to this clause Elected Directors will hold office for 3 years.
- (b) Elected Directors in office at the time of the adoption of this Constitution will remain in office until the end of their existing term, and will be deemed to be Elected Directors during such term.
- (c) A Member elected at general meeting to complete the unexpired portion of the 3 year term resulting from a casual vacancy will hold office for the unexpired portion.
- (d) In relation to the 2013 annual general meeting only, the following shall apply:
  - (i) four Elected Directors will be eligible to serve a term of 3 years;
  - (ii) one Elected Director will be eligible to serve a term of 2 years,
  - (iii) one Elected Director will be eligible to serve a term of 1 year; and
  - (iv) any other Elected Directors will be eligible to serve the unexpired portion of a 3 year term resulting from a casual vacancy.
- (e) For the avoidance of doubt, all Elected Directors elected subsequent to the 2013 annual general meeting will be eligible to hold terms in accordance with clause 7.3(a).
- (f) A retiring director is eligible to be elected to serve further terms.

## 7.4 Election of Elected Directors

- (a) The members will, at each annual general meeting, elect a person or persons to fill each vacancy in the number of Elected Directors.
- (b) A person will not be eligible for inclusion in an election for the office of Elected Director at an annual general meeting unless he or she or some other Member has, at least 11 clear days before the meeting, left at the Registered Office a notice in writing duly signed by the nominee giving his or her consent to the nomination and signifying his or her candidature for the office or the intention of such Member to propose him or her. Seven days prior to the meeting at which the election is to take place, notice of each and every candidature will be forwarded to all registered Members.
- (c) The manner of counting the votes of Members cast at an annual general meeting for the election of Elected Directors shall be as follows:
  - (i) Only wholly valid ballot papers shall be counted.
  - (ii) For each vacancy there shall be a process of counting the votes cast (**a ballot**).
  - (iii) Each candidate shall in respect of each ballot paper be awarded one point for each other candidate allocated a lower number on that ballot paper. The points awarded for each candidate shall be totalled and the candidate with the highest total shall be declared elected, and if there is more than one vacancy, the candidate with the next highest total shall also be declared elected and so on successively for the number of vacancies. If there is a tie and the number of candidates who are tied is less than or the same as the number of vacancies still unfilled, all such tied candidates shall be elected. If the number of tied candidates is greater than the number of vacancies remaining unfilled, clauses 7.4(c)(iv) and, if applicable, 7.4(c)(v) below will apply.
  - (iv) If there is a tie and the number of tied candidates is greater than the number of vacancies remaining unfilled, the number of points allocated to each such tied candidate under all ballot papers shall be compared and the tied candidate with the greatest number of first preferences awarded to him or her shall be elected, or if no one tied candidate has a greater number of first preferences awarded to him or her than any other tied candidate then the same test shall be applied to the second preferences and so on through the sequence of preferences on the ballot paper until one candidate shall be found to have been awarded a greater number of the preferences being compared than the other tied candidates, whereupon that tied candidate shall be elected.
  - (v) If clause 7.4(c)(iv) above applies and there is at least one vacancy remaining to be filled from those tied after its application it shall be applied again successively among the tied candidates remaining unelected until no vacancies remain unfilled, provided that if despite such reapplication of clause 7.4(c)(iv) above there remains a tie for any vacancy unfilled

there shall be a further election for the remaining vacancy or vacancies which shall take place in accordance mutatis mutandis with this clause 7.4 and the only candidates shall be those tied for such vacancy or vacancies.

- (d) When counting the votes and declaring candidates elected in accordance with clause 7.4(c), the Secretary shall also determine the term of office of each Elected Director such that the term length will be assigned to those elected in descending order of number of points received in accordance with the procedure in clause 7.4(c).

## **7.5 Principal**

The Principal will be an ex-officio member of the Board of Directors and of such committees of the Board of Directors as provided for in this Constitution.

## **7.6 Vacation of office of Director**

In addition to the provisions of the Law and subject to this Constitution, the office of a Director becomes vacant if a Director:

- (a) ceases for any reason to be a Member;
- (b) dies;
- (c) becomes bankrupt or suspends payment or compounds with his or her creditors generally, or is incapable of performing his or her duties;
- (d) becomes prohibited from being a Director of a company by reason of any order made under the Law;
- (e) ceases to be a Director by operation of the Law;
- (f) by notice in writing to the College resigns from office;
- (g) is removed by resolution of the College;
- (h) is absent without the permission of the other Directors for 3 or more consecutive meetings of the Board of Directors;
- (i) is directly or indirectly interested in any contract or proposed contract with the College and fails without reasonable excuse to declare the nature of his or her interest as required by the Law;
- (j) if he or she holds any office of profit in the College other than as set out in clause 3.2; and
- (k) in the case of the Principal, ceases to be employed in the capacity of Principal.

Nothing in this paragraph affects the operation of the Constitution of the College.

## **7.7 Removal of Director**

The Members of the College may by ordinary resolution at a General Meeting of which special notice has been given remove an Elected Director before the

expiration of his or her period of office. Notice of intention to move this resolution must be given to the College at least two months before the meeting is to be held.

### **7.8 Vacancies**

- (a) Any casual vacancy in the office of an Elected Director may be filled by the Board of Directors from among Members. Such appointment will be until the next Annual General Meeting.
- (b) If at any annual general meeting of the College at which an election of members to the Board of Directors ought to occur the place of the retiring Directors are not filled, then the vacancy or vacancies will be filled by the Board of Directors.

### **7.9 Insufficient Directors**

Notwithstanding any other provision in this Constitution, the continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a general meeting; or
- (c) in emergencies.

### **7.10 Chair and Vice Chairs**

- (a) The Directors will elect from among the Elected Directors Chair of the Board of Directors and 2 Vice Chairs of the Board of Directors.
- (b) The Chair of the Board of Directors and Vice Chairs of the Board of Directors will hold office for a minimum of 3 years, subject to re-election and the continuing confidence of the majority of the Board of Directors.
- (c) The Board of Directors will elect a Chair for each of the Standing Committees of the Board of Directors from the Elected Directors.

In the absence of the Chair of the Board of Directors, the Board of Directors will elect one of the Vice Chairs of the Board of Directors and in their absence, one of the other Elected Directors to be the Chair of the meeting of the Board of Directors. The Chair will at each meeting of the Board of Directors be entitled to a deliberative vote and in the case of an equality of votes, he or she will also be entitled to an additional or casting vote.

### **7.11 Standing Committees**

- (a) The Standing Committees of the Board of Directors are the Executive Committee, the Risk Committee, and the Finance Committee.
- (b) The membership of the Executive Committee will be determined from time to time by the Board of Directors but will at least consist of the Chair of the Board of Directors and both Vice Chairs.

- (c) To enable the Board of Directors to exercise proper control and custody over all financial affairs, a Finance Committee comprising of a minimum of 4 Elected Directors, together with the Principal and the Business Manager will operate. There will also be the opportunity for other Directors to work on this committee. The committee will review all financial statements and matters submitted by the Business Manager and prepare reports to be reviewed and adopted by the Board of Directors.
- (d) To enable the Board to monitor and review the propriety and integrity of matters of Governance, Risk and Corporate Ethics, a Risk Committee will operate. The committee will consist of 3 Elected Directors and any other person appointed by the committee from time to time. The committee will meet regularly to assiduously assess and review the corporate operations of the College. This committee may appoint any person whose expertise may, from time to time, be helpful to the committee in the pursuit of its duties. The Board Chairperson, the Chair of the Finance Committee, the Principal and the Business Manager may not be members of the committee and the Committee may, from time to time, request the attendance of other directors or senior employees of the College at meetings of the Risk Committee.
- (e) The provisions of this Constitution applying to the meetings of the Board of Directors will apply to meetings of the Standing Committees.
- (f) Of the members of the Board of Directors appointed to a Standing Committee, one will be elected as Chair of that Standing Committee.

#### **7.12 Sub-Committee**

- (a) The Board of Directors may from time to time appoint from amongst their number any Sub-Committee of 2 or more persons for such purpose or purposes and with such powers and duties as the Board of Directors may from time to time delegate. The quorum of any such committee consisting of 4 or more will be 3 and if the committee consists of less than 4 the quorum will be 2.
- (b) Of the members of the Board of Directors appointed to a Sub-Committee, one will be elected as Chair of the Sub-Committee. The provisions of this Constitution applying to meetings of the Board of Directors will apply to meetings of Sub-Committees and Sub-Committees will be able to appoint any person to the Sub-Committee whose expertise may from time to time be helpful to the Sub-Committee in the pursuit of their duties.

## **8. Powers and duties of Directors**

### **8.1 Powers of Directors**

- (a) Subject to the Law and to any other provision of this Constitution, the business of the College will be managed by or under the direction of the Directors and the custody and control of its funds and property will be vested in the Directors.
- (b) The Board of Directors may exercise all the powers of the College except any powers that the Law or this Constitution requires the College to exercise in a general meeting.

- (c) The Board of Directors will, in accordance with the provisions of the Constitution, have power to control, expend or invest the funds of the College.
- (d) Subject to any resolution passed by the College in general meeting, the funds of the College must be used in pursuance of the objects of the College in such manner as the Board of Directors determines.
- (e) The Board of Directors may exercise all the powers of the College to acquire assets, to borrow money and to mortgage or charge its property and to issue debentures and other securities whether outright or as a security for any debt, liability, or obligation of the College.
- (f) The Board of Directors may raise or secure the payment or repayment of moneys in such manner and upon such terms and conditions in all respects as they think fit and in particular by the issue of debentures or the creation of any mortgage, charge or other security on the undertaking or the whole or any part of the property and assets of the College (both present and future).
- (g) The rate of interest payable in respect of money lent by Members to the College must not exceed the lowest rate paid for the time being by the Commonwealth Bank in respect of term deposits of like amounts, reflecting the period of the intended borrowing.
- (h) The Board of Directors will have power from time to time to make, vary and repeal policies for the proper conduct and management of the College.
- (i) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the College can be signed, drawn, accepted, endorsed or otherwise executed as the case may be by any 2 Directors or in such other manner as the Directors may from time to time determine.
- (j) Other powers and duties of the Board of Directors will include the power:
  - (i) to manage the affairs of the College and to watch over its concerns and welfare;
  - (ii) to control and manage all the real estate and other assets of the College or used for the purposes of the College and to provide for the maintenance and protection thereof;
  - (iii) from time to time to fill any vacancy in the office of Principal of the College upon such terms and conditions in all respects as the Board of Directors considers desirable;
  - (iv) to determine the numbers of teaching staff, officers and employees of the College;
  - (v) to fix all salaries, wages and other allowances payable out of the funds of the College;
  - (vi) to fix the payments to be made for tuition of pupils and the terms upon which pupils will be received as day pupils and as Board of Directors;

- (vii) to fix the days for opening and closing of school terms and vacations;
- (viii) to cause to be kept a correct register of all pupils, their ages, the dates of entering and departure from the College and together with the names and addresses of their parents and guardians;
- (ix) subject to this Constitution, to delegate to and resume from the Principal and Business Manager such powers and authorities as the Board of Directors determines;
- (x) to establish superannuation and/or endowment funds for such employees of the College as the Board of Directors thinks fit or otherwise to assist any such employees or their dependants;
- (xi) to frame such policies or regulations for the general conduct and management of the College and the business of the Board of Directors as may be considered necessary; and
- (xii) in addition to the particular powers set out in the previous paragraphs of this clause 8.1(j), to exercise all such powers of the College and do all such acts, matters and things as are by the Law or by the regulations for the time being of the College required to be exercised by the College in general meeting subject nevertheless to such regulations and to the provisions of the Law.

## **8.2 Power of attorney**

- (a) The Directors may by power of attorney appoint any person or persons to be an attorney or attorneys of the College for any purpose, with such power, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution), for such period and subject to such conditions as they think fit.
- (b) A power of attorney given under clause 8.2(a) may contain such provisions for the protection and convenience of people dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate any of the powers, authorities and discretions vested in him or her.

## **9. Minutes**

The Directors must ensure that minutes are taken:

- (a) of names of Directors and others present at all meetings of the Board of Directors and their committees; and
- (b) of all resolutions and proceedings at all meetings of the Board of Directors.

Such minutes must be signed by the Chair of the meeting at which the proceedings were held or by the Chair of any succeeding meeting, and tabled at the next meeting of the Board of Directors.

## **10. Proceedings of Directors**

### **10.1 Meeting of Directors**

- (a) The Board of Directors may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.
- (b) An ordinary meeting of the Board of Directors will be held no less than 4 times in each school year, being once in each school term. A meeting schedule for the Board of Directors and its Standing Committees will be adopted by the Board of Directors at its first ordinary meeting in each school year.
- (c) The Secretary must whenever so required by the Chair of the Board of Directors or by 3 Directors in writing summon a meeting of the Board of Directors.
- (d) If less notice than is provided in this Constitution is given of a Directors' meeting, that meeting will not be invalidated by such insufficient notice if all the Directors, excluding, if need be, a Director who has requested and been granted by the Board of Directors leave or absence from that meeting, are present at the notified place and time and unanimously agree to waive, in respect of such meeting, the provisions of this clause 10.1.
- (e) A notice of a special meeting must state the business to be considered at that meeting, and no business other than that stated in the notice will be considered at that meeting.
- (f) A meeting of Directors for the time being at which a quorum is present will be competent to exercise all or any of the authorities, powers and discretions by or under the regulations of the College for the time being vested in or exercisable by the Directors generally.

All acts done at any meeting of the Board of Directors or of a committee of the Board of Directors or by any person acting as a member of the Board of Directors will notwithstanding that it will afterwards be discovered that there was some defect in the appointment of any member of the Board of Directors or person acting as aforesaid or that he or she was disqualified be as valid as if every such person had been duly appointed and was qualified to be a member of the Board of Directors.

### **10.2 Voting**

- (a) At a meeting of the Board of Directors each Director present in person or participating in the meeting via an approved telecommunications means will have one vote.
- (b) Subject to this Constitution, questions arising at any meeting of the Board of Directors must be decided by a majority of votes and a determination by a majority of the Directors present at or otherwise participating in a duly convened meeting will for all purposes be deemed a determination of the Board of Directors. In the case of an equality of votes the Chair of the Board of Directors has a second or casting vote.



### 10.3 Resolutions without meetings

- (a) The Directors may pass a resolution without a Directors' meeting being held if no less than two-thirds of 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 and deliver a copy of the signed document to the Secretary by any means of communication.
- (b) 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.
- (c) The resolution is passed when the last director signs.
- (d) The document or documents referred to in the clauses 10.3(a) and 10.3(c) must be entered in books kept for that purpose.

### 10.4 Quorum

- (a) The quorum necessary for the transaction of the business of the Board of Directors and the Standing Committees of the Board of Directors must be not less than a majority of the Directors eligible to vote.
- (b) If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board of Directors, that meeting will lapse and all business proposed to be transacted at that meeting will be brought before the next ordinary or special meeting of the Board of Directors.

### 10.5 No quorum

The continuing Directors may act notwithstanding any vacancy in their body. If the number of Directors is reduced below the number fixed by this Constitution as the necessary quorum of Directors, the continuing Director or Directors may act for the purposes of increasing the number of Directors to that number or of summoning a general meeting of the College but for no other purpose.

### 10.6 Voting by interested Director

- (a) A Director who has a material personal interest in a matter that is being considered at a meeting of the Board of Directors or one of its committees:
  - (i) must not vote on the matter; and
  - (ii) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting unless excused by virtue of clause 10.6(b).
- (b) Clause 10.6(a) of this clause does not apply:
  - (i) to an interest that the Director has:
    - (A) as a Member of the College; and
    - (B) in common with the other Members of the College; and
  - (ii) if the Board of Directors has at any time passed a resolution that specifies the Director, the interest and the matter and

states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.

## **10.7 Alternate Directors**

- (a) Any Director by resolution of the Board of Directors may appoint any Member to be an alternate or substitute Director in his or her place during such period as he or she thinks fit.
- (b) Any Member while he or she so holds office as an alternate or substitute Director will be entitled to receive notice of meetings of the Directors and to attend and vote accordingly and to exercise all the powers of the appointor in his or her place.
- (c) An alternate or substitute Director must vacate office:
  - (i) if the appointing Director vacates or is removed from office as a Director pursuant to this Constitution; or
  - (ii) if the appointing Director removes the alternate Director from office. Any appointment or removal under this clause must be effected by notice in writing under the hand of the Director making the appointment or removal.

## **10.8 Validity of acts**

All acts done or carried out by any meeting of the Directors or of a committee of Directors or by any person acting as a Director will be valid even though it is discovered afterwards that there was some defect in the appointment of a Director or person acting or that he or she or any of the them was disqualified. The acts will be valid as if every such person had been duly appointed and was qualified to be a Director, or member of the committee.

## **10.9 Meetings conducted through technology**

A Directors' meeting may be called or held using any technology consented to by all members of the Board of Directors.

# **11. Principal**

## **11.1 Appointment**

The Board of Directors may from time to time appoint a Principal for such period and on such terms as the Board of Directors thinks fit and may revoke any such appointment.

## **11.2 Powers**

The Board of Directors may entrust to and confer upon the Principal any of the powers exercisable by the Board of Directors upon such terms and conditions and with such restrictions as they think fit.

## **11.3 Responsibility**

Without limiting the generality of clause 11.2, the Principal will be responsible to the Board of Directors for:

- (a) the internal regulation and management of the College; and
- (b) such other responsibilities conferred upon him or her from time to time by the Board of Directors.

## **12. Bank accounts**

The banking account of the College will be kept at such bank or banks as may from time to time be decided upon by the Board of Directors and all cheques drawn on such accounts will be signed by at least 2 persons appointed by the Board of Directors.

## **13. Business Manager and Secretary**

### **13.1 Business Manager**

- (a) The Business Manager will be appointed jointly by the Principal and the Board of Directors.
- (b) The Business Manager will report to the Principal.
- (c) The Business Manager will be the Chief Operating Officer of the College and will, by the delegated authority of the Principal and the Board of Directors, transact all of the duties required of a Chief Operating Officer. These duties will include, inter alia, the regular presentation to the Board of Directors of financial statements and budgets and the preparation for audit of the financial statements required by law for inclusion in each annual return of the College.

### **13.2 Company Secretary**

The Business Manager may be appointed Company Secretary by the Board of Directors and the Company Secretary will perform those duties which he or she is legally bound to perform in this capacity, together with other duties as may be required by the Board of Directors from time to time.

## **14. General meetings**

### **14.1 Annual general meetings**

- (a) The College must hold an annual general meeting at least once each calendar year and within 5 months of the end of the Financial Year of the College.
- (b) An annual general meeting of the College must be held in accordance with the provisions of the Law.

## **14.2 Extraordinary general meetings**

All general meetings of the College other than the annual general meeting will be called extraordinary general meetings.

## **14.3 Board of Directors may call a meeting of Members**

The Board of Directors may whenever it thinks fit convene a general meeting of Members of the College.

## **14.4 Calling of general meetings pursuant to a Member's request**

The Directors must call and arrange to hold a general meeting on the request of 5% of the votes that may be cast at a general meeting. The members' request must be in writing, state any resolution to be proposed at the meeting, be signed by the members making the request and otherwise comply with the Law.

## **14.5 Calling of meetings by Members where Directors do not consent**

- (a) Members with more than 50% of the votes of all the Members who made a request under clause 14.4 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the College. The meeting must be called in the same way, as far as is possible, in which general meetings of the College may be called. Such a meeting must be held no later than 3 months after the request is given to the College.
- (b) In calling such a general meeting the Members may ask the College for a copy of the Register. The College must give the Members a copy of the Register free of charge.
- (c) If such a general meeting is called the College must pay the reasonable expenses incurred by the Members resulting from the Directors' failure to call and arrange to hold the meeting.

## **14.6 Calling of general meetings by Members**

Members with at least 5% of the votes that may be cast at a general meeting may call and arrange to hold a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting. The meeting must be called in the same way - as far as possible - in which general meetings of the College may be called and the process must otherwise comply with the law.

## **14.7 Notice**

- (a) Subject to the provisions of the Law and this Constitution, all general meetings require at least 21 days' notice (exclusive of the day on which the notice is served or deemed to be served and exclusive of the day for which notice is given) to be given individually to such members entitled to vote at the meeting and to each Director. The notice must specify the place, date and time of the meeting and the general nature of the meeting's business, and must be sent by post or otherwise served to such people.

- (b) The College may call on shorter notice:
- (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
  - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand,
- except that the College cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting at which a resolution will be moved to remove or appoint a Director or remove an auditor under section 329 of the Law.
- (c) The accidental omission to give notice of any meeting to or the non-receipt of any such notice by any person will not invalidate any resolution passed at any such meeting.

Every notice convening a meeting will contain a brief description of all special business to be conducted at the meeting.

## **15. Proceedings at general meetings**

### **15.1 Time and place for meetings of Members**

A meeting of the College's Members must be held at a reasonable time and place.

### **15.2 Use of technology**

- (a) A general meeting may be held at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate in advance.
- (b) If technology is used and fails part way through the general meeting, the general meeting or that part of the general meeting affected by the technology failure will be valid unless a Member did not have a reasonable opportunity to participate and a majority of the Members attending agree to invalidate the meeting by a written declaration to that effect.

### **15.3 Special business**

All business transacted at a general meeting will be considered as special with the exception of the following:

- (a) the consideration of the balance sheet and profit and loss account;
- (b) the reports of the Directors and auditors;
- (c) the election of Directors (if any are to be elected); and
- (d) the appointment of the auditors.

### **15.4 Quorum**

Five percent of the Members when present in person or by proxy or Representative will constitute a quorum for a general meeting whether for the

transaction of special business or otherwise and no business can be transacted at a meeting unless the requisite quorum is present at the time the meeting proceeds to deal with such business.

### **15.5 No quorum present**

In the event that a quorum is not present 30 minutes after the time appointed for a meeting, where it was convened upon a request made by Members, the meeting will be dissolved; in any other case it will stand adjourned to the same day in the next week at the same time and place, or to such other day (not being more than 14 days after such meeting), time and place as the Chair of the meeting may by notice to the people entitled to receive such notice appoint. If at such an adjourned meeting a quorum is not present within 30 minutes after the time for the meeting, those Members who are present and entitled to vote, with a minimum of 2, in accordance with the Law, will constitute a quorum and may transact the business of the meeting for which the same was called.

### **15.6 Chairing meeting of Members**

- (a) The Chair of the Board of Directors is entitled to take the Chair at every general meeting of the College.
- (b) If there is no Chair of the Board of Directors or if at any general meeting he or she is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act as Chair, the members present and entitled to vote can before proceeding to business appoint a Chair from the Vice Chairs or from one of the members of the Board of Directors if there be no Vice Chair present or willing to take the Chair or from one of the members present if there be no Director present or willing to take the Chair.
- (c) The Chair at any general meeting will be entitled to a deliberative vote and in the case of an equality of votes, whether on a show of hands or on a poll, the Chair of a general meeting will be entitled to a second or casting vote.

### **15.7 Adjournment of meetings**

- (a) The Chair of a general meeting must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct the Chair to do so.
- (b) No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for more than 14 days' notice of the adjourned meeting must be given as in the case of an original meeting.

### **15.8 Voting**

Subject to this Constitution and to any rights or restrictions attached to any class or classes of membership:

- (a) A Member may vote in person or by proxy, attorney or Representative.

- (b) On a show of hands and a poll every Member entitled to vote who is present in person or by proxy, attorney or Representative will have one vote.

### **15.9 Voting procedure**

- (a) Every question submitted to a meeting will be decided in the first instance by a show of hands unless a poll is demanded by at least 10% of Members present or the Chair of the meeting otherwise thinks fit.
- (b) On a show of hands, a declaration by the Chair that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book of the proceedings of the College will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The Chair is under no obligation to make such a declaration if he or she considers it desirable that the question be decided on a poll and in such case the Chair must direct a poll to be taken. In a contested election for Directors, a poll must be taken.

### **15.10 Poll**

- (a) A poll may be demanded on any resolution in accordance with the provisions of the Law.
- (b) If a poll is demanded or directed on a matter other than the election of a chair or the question of an adjournment, it must be taken in such manner and at such time and place as the Chair of the meeting directs and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote the Chair must determine the same and such determination made in good faith will be final and conclusive.
- (c) Any poll demanded on the election of a Chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (d) The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

### **15.11 Appointment of proxy**

A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

### **15.12 Procedure for appointing a proxy**

- (a) The instrument appointing a proxy must be in writing by the appointor or by his or her attorney duly authorised in writing or if the appointor is a corporation by an officer or attorney duly authorised.
- (b) The instrument appointing a proxy will be nearly as practicable in the following form and the wording shall be identical:

**ELTHAM COLLEGE  
ACN 004 992 750**

**APPOINTMENT OF PROXY**

I, \_\_\_\_\_ of \_\_\_\_\_ being a Member of **ELTHAM COLLEGE** and entitled to vote at the general meeting hereof, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ being a member of the College or in his/her absence \_\_\_\_\_ of \_\_\_\_\_ being a Member of the College as my proxy to vote for me on my behalf at the (annual) general meeting of the College, to be held on \_\_\_\_\_ and at any adjournment of the meeting. My proxy is authorised to vote +in favour of +against the following resolutions.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

NOTE: If the Member wishes to vote for or against any resolution it must instruct its proxy accordingly. Unless otherwise instructed, the proxy may vote as he or she thinks fit.

+ Delete whichever is not desired.

### 15.13 Proxy documents

- (a) In order for an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the College (at the Registered Office) at least 48 hours before the meeting:
- (i) the instrument appointing a proxy; and
  - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment of a proxy and any authority under which it is signed which is received by the College at least 48 hours before the resumption of the meeting will be effective for the resumed part of the meeting.

### 15.14 Validity of proxy

Unless the College has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if before the proxy or attorney votes:

- (a) the appointing Member dies;
- (b) the Member revokes the proxy's appointment; or
- (c) the Member revokes the authority under which the proxy was appointed by a third party.



## **16. Execution of documents**

### **16.1 Execution of documents without using a Seal**

The College may execute any document (including a deed or a negotiable instrument) without using a Seal if the document is signed by:

- (a) 2 Directors; or
- (b) a Director and a Secretary.

### **16.2 Execution of documents using a seal**

The College may execute any document (including a deed or negotiable instrument) by using a Seal if the Seal is fixed to the document and the fixing of the Seal is witnessed by:

- (a) 2 Directors; or
- (b) a Director and a Secretary,

except that the Principal and Business Manager may not sign together under seal.

### **16.3 Safe custody**

The Directors must provide for the safe custody of the Seal (if any).

## **17. Company register**

Notwithstanding anything to the contrary in this Constitution, the College is only required to maintain the registers required by the Law.

## **18. Accounts**

18.1 True accounts will be kept of the sums of money received and expenses incurred by the College and the matters in respect of which such receipt or expenditure takes place and of the property, credits and liabilities of the College.

18.2 The Board of Directors must cause proper accounting and other records to be kept and must distribute to the Members copies of the financial reports for the year and the Directors' report for the year (including every document required by the Law to be attached to them) accompanied by a copy of the auditor's report as required by the Law.

18.3 Books of account will be kept at the Registered Office or at such place or places as the Board of Directors thinks fit.

18.4 The accounts of the College will be closed annually on such date as may be prescribed in general meeting and until any other date is so prescribed then that date will be the thirty-first day of December in each year. A profit and loss account and balance sheet together with a statement of cash flow for the preceding financial year of the College will be submitted to the annual general meeting.

- 18.5 The Board of Directors must cause to be made out and laid before each annual general meeting the financial report, the Directors' report and the auditor's report as required by the Law.
- 18.6 Where the College's auditor or its representative is at the meeting, the Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their/its representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## **19. Inspection of records**

- 19.1 A Member may only inspect those books of the College as permitted by Corporations Law.
- 19.2 A Member (who is not a Director) is not entitled to require or receive any information concerning the business trading or customers of the College or any trade secret or secret process of or used by the College.
- 19.3 The accounts of the College will upon the written request of the Attorney-General be made available for inspection by him or her or by anyone authorised in writing by him or her for that purpose.

## **20. Audit**

- 20.1 At the annual general meeting of the College a person or persons or a firm (who will not be a Member or Director) will be appointed as auditor or auditors of the College. Any casual vacancy occurring in the office of auditor of the College will if there is no surviving or continuing auditor of the College be filled by the Board of Directors within one month of such occurrence.
- 20.2 Once at least in every year the accounts of the College will be examined by one or more properly qualified auditor or auditors.
- 20.3 Every account of the Board of Directors or any sub-committee of the Board of Directors when audited and approved by a general meeting will be conclusive except as regards any material error discovered within 3 months after the approval of those accounts. Whenever an error is discovered within that period the account will forthwith be provisionally corrected and will be submitted for verification at the next general meeting and once verified it will be conclusive.
- 20.4 The auditor will have access to and power at all times to examine all the books, accounts, vouchers, documents and memoranda of the College including inter alia bank passbooks, account books, accounts and vouchers and will report on them to the Board of Directors. The auditor will audit all accounts prior to presentation to the annual general meeting of the College and will carry out all further duties of an auditor as prescribed by the Law.

## **21. Notices**

### **21.1 Notice by post**

- (a) A notice may be given by the College to any Member either personally or by sending it by post to the Member at his or her Registered Address, or (if he or she has no Registered Address within the State) to an alternative address within the State nominated by the Member.
- (b) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the business day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

### **21.2 Notice by fax or other electronic means**

- (a) A notice may be given by the College to any Member either personally or by sending it by fax or via other electronic means to the Member's fax number or nominated electronic address (if any).
- (b) Where a notice is sent by fax or via other electronic means, service of the notice will be deemed to have been effected on the business day after it is sent.

### **21.3 Notice to College**

Any notice or other document required to be served upon the College may be served by leaving it with the Secretary or by forwarding it through the post in a pre-paid letter addressed to the College at its Registered Office or by facsimile transmission or other electronic means to the Secretary.

## **22. Limited liability**

The liability of the Members is limited.

## **23. Amendments**

23.1 The College may modify or repeal the Constitution, or a provision of the Constitution, only by special resolution of the College in a general meeting.

23.2 A **special resolution** means a resolution:

- (a) of which proper notice setting out an intention to propose the special resolution and stating the resolution, has been given; and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

## 24. Winding up

- 24.1 Every Member of the College undertakes to contribute to the property of the College in the event of the College being wound up while he or she is a Member, or within one year after he or she ceases to be a Member, for payment of the debts and liabilities of the College (contracted before he or she ceased to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding \$20.
- 24.2 If upon the winding up or dissolution of the College there remains, after satisfaction of all its debts and liabilities, any property, the property will firstly be applied towards repayment to the Commonwealth of Australia and the Government of Victoria of an amount equal to any grant or subsidy received from those sources to assist in establishing the College. Any residue remaining after that application will not be paid to or distributed among the Members of the College, but will be given or transferred to some other institution or institutions referred to in any of the subparagraphs of Division 50 of the *Income Tax Assessment Act 1997*, having objects similar to the objects of the College and whose memorandum of association or constitution prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the College under or by virtue of clauses 3 and 24 of this Constitution. The institution or institutions are to be determined by the Members of the College at or before the time of dissolution, and in default of such determination, by such Judge of the Supreme Court of Victoria as may have or acquire jurisdiction in the matter.

## 25. Indemnity and insurance

### 25.1 Indemnity for Directors and Officers

- (a) To the extent permitted by law and subject to the restrictions in section 199A of the Law the College indemnifies every person who is or has been a Director or Officer of the College against:
- (i) Any liability (other than for legal costs) incurred by that person as a director or officer of the College (including liabilities incurred by the director or officer as an officer of a subsidiary of the College where the College requested the director or officer to accept that appointment); or
  - (ii) Reasonable legal costs incurred in defending an action for liability incurred by that person as a director or officer of the College (including legal costs incurred by the director or officer as a director or officer of a subsidiary of the College where the College requested the director or officer to accept that appointment).
- (b) The amount of any indemnity payable under clauses 25.1(a)(i) or 25.1(a)(ii) will include an additional amount (**GST Amount**) equal to any GST payable by the director or officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is

conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

## 25.2 Insurance premiums

To the extent permitted by law and subject to the restrictions in section 199B of the Law, the College may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is a Director or Officer of the College against a liability incurred by the person as such a Director or Officer, or as a director or officer of a related body corporate. The liability insured against may not include that which the Law prohibits. Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration approved by Members under this Constitution.

## 25.3 Reporting

Subject to any exception provided for in the Law, full particulars of the College's indemnities and insurance premiums in relation to the Officers must be included each year in the Directors' Report.

## 25.4 Further indemnity

To the extent permitted by the law, nothing in this Constitution precludes the College from indemnifying employees (other than Officers) and consultants or sub-contractors where the Directors consider it is necessary or appropriate in the exercise of their powers to manage the College.

## 26. Document Version Control and Amendments

Version	Date	Amendment	Author
1		First Version	Iain Cowan
2	June 2016	Second Version	David Nicholson