

S 9.5 CONSTITUTION OF SCOTCH COLLEGE

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Preamble to the Constitution

- i.** In keeping with its Basis of Union, the Uniting Church in Australia understands its call as being to serve God's passion for a better world.
- ii.** The shared educational purpose of the Uniting Church in Australia with Scotch College is founded in the love of God. God creates the world in love and enables fullness of life in every person. Education is the purposeful activity of love whereby people are raised up to the unique fullness of their being: emotional, intellectual, social, physical and spiritual. All who participate in education embrace that love to enhance the completeness and peace of the world.
- iii.** Scotch College was established in 1897 as the first Presbyterian school for boys in Western Australia. It moved to its current site in Swanbourne in 1905. Scotch College has been at the forefront of education since its foundation and throughout its long history has upheld a tradition of excellence that is reflected in a wide and progressive curriculum. Scotch College symbolically maintains its historical Scottish association. Tartan ties for individual School Houses and an internationally recognized Pipe Band all contribute to a unique sense of history and community at the College. These elements give Scotch College a special distinctiveness as a college and help define our student community.
- iv.** Scotch College and the members of its Council will at all times conduct the affairs of Scotch-College so as to address and act in accordance with the matters specified in the Uniting Church in Australia National Education Charter (2002) and as revised.
- v.** It is the responsibility of the governing body as a whole, and in particular the Chair, the Headmaster and the Moderator as "Visitor", to ensure that Scotch College remains faithful to this call, purpose, tradition and objectives.
- vi.** In enacting this constitution it is the understanding of the Synod that good contemporary governance of the schools of the Uniting Church in Western Australia is best served by a council comprised of members with a suitable mix of skills and experience each one of whom is supportive of and accountable to the shared purposes of Synod and schools and underpinned by a close relationship between the senior officers of the Synod and Scotch College.

SCOTCH COLLEGE CONSTITUTION

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1. Name

The name of the instrumentality is 'SCOTCH COLLEGE', a body corporate, incorporated under the provisions of the Uniting Church in Australia Act 1976 of Western Australia.

2. Aims and Objectives

The aims and objectives of the College are:

- a) to continue to carry on in the manner and for the purposes mentioned in this Constitution at Swanbourne Western Australia and elsewhere as the Council may decide, the College which for many years has been carried on under the name of Scotch College and to extend the College from time to time in accordance with this Constitution as may be thought fit;
- b) to provide a sound general education, to provide basic preparation for a vocation, to prepare students for tertiary education, to advance their moral well-being, to provide a Christian environment in which the Christian faith may be fostered and nurtured and to serve the children in its care;
- c) at the discretion of the Council to establish or contribute to the support of scholarships or bursaries at the College and to prescribe or join in prescribing the terms and conditions of any scholarship or bursary; and
- d) to carry on all business, commercial and investment operations necessary and prudent to ensure the continuing operation of the College in accordance with its aims and objectives, including the conduct of a boarding establishment;
- e) to pursue such outcomes consistent with the above aims and objectives as the Council, in its discretion, determines from time to time.

3. Interpretation

In this Constitution unless the context requires otherwise - **Act** means the Uniting Church in Australia Act 1976(W.A.).

Chair means the chair of Council appointed in accordance with the provisions of clause 4.1(a)(i)

Church means the Uniting Church in Australia. **clause** means a clause of this Constitution.

College means Scotch College in existence at the date of coming into operation of this Constitution.

Council means the Council of the College referred to in clause 4.

General Council means the governing body of the Synod.

Headmaster means the headmaster of the College appointed in accordance with clause 16.

Moderator means the Moderator as appointed by the Synod.

National Education Charter means the charter issued by the Uniting Church in Australia **Secretary** means the Secretary for the time being of the Council appointed under clause 14 **Schedule** means a schedule to this Constitution.

Synod means the Synod of the Uniting Church in Western Australia and includes the Standing Committee of the Synod empowered pursuant to the Constitution of the Church to act on behalf of the Synod between its meetings.

A reference to an **Act of Parliament** or to a section of an Act of Parliament includes any amendment to it or re-enactment of it for the time being in force and all by-laws and regulations made under it for the time being in force.

Headings of clauses are for reference only and do not affect the interpretation of this Constitution.

4. Council

4.1 Membership

- (a) The management of the business and affairs of the College shall be vested in the Council consisting of:
 - (i) the Chair, who as a matter of preference is a confirmed member of the Church but if not is a member of another Christian denomination, elected by Council resolution subject to the rights of Synod hereunder;
 - (ii) not more than fifteen (15) members elected by Council resolution subject to the rights of Synod hereunder, including at least two former students of the College nominated by the old boys association, and at least one current parent.
- (b) Each member of Council shall have the expertise, qualifications and experience appropriate to the needs of the College and the management of the business and affairs of the College and shall substantially satisfy the skills, competencies and any other eligibility requirements set out in Council policy.
- (c) At least one member of Council shall be a confirmed member of the Church who is able to be elected by the Council to membership of the Synod.
- (d) Each member of Council must comply with this Constitution and uphold the aims and objectives of the College.
- (e) Each member of Council must conform with any Council policy, governance rules and codes of conduct as developed by the Council from time to time.

4.2 Term of office subject to clause 4.3

- (a) The Chair shall hold office for a term of four (4) years, commencing on the date of appointment, and is eligible, with the approval of Synod on the recommendation of the Council, to extend the term for a further period of up to four (4) years.

- (b) The persons mentioned in Clause 4.1(a)(ii) shall hold office for four (4) years and be eligible, with the approval of Synod on the recommendation of the Council, for reappointment. The term of office shall commence on the 1st of January in the year next following the appointment.

4.3 Vacation of office and vacancies

- (a) The Chair and a Council member shall vacate his or her office:
 - (i) by written notice of resignation to Council and the Synod;
 - (ii) if the person dies;
 - (iii) if the person becomes bankrupt or is convicted of an indictable offence;
 - (iv) if the person fails to attend three consecutive meetings of the Council without leave of the Council or fails to attend at least 50% of the meetings in any calendar year without leave of the Council;
 - (v) if removed from office by a resolution of Synod, it being expressly declared that Synod shall not be required to state any reason for such resolution; or
 - (vi) if that person no longer satisfies the eligibility requirements set out in Council policy.
- (b) Subject to Clauses 4.1(b) and 4.1(c), Council may fill any casual vacancy caused by operation of Clause 4.3(a), but so that the member so appointed shall hold office until (and including) 31st of December in the year of the appointment by Council,

4.4 A teacher or other employee of the College is not eligible to be elected or appointed as Chair or a member of the Council.

4.5 In managing the business and affairs of the College the Council shall not knowingly do any act or thing which is contrary to the law of the Church known to the Council at the time of its doing the act or thing, but with respect to any dealing with any of the real or personal property of the College a person or corporation being a purchaser, vendor, borrower, lender, lessor, lessee or otherwise dealing with the Council or the College is not concerned to see the observance of the provisions of this sub-clause or affected by notice of non-observance thereof.

4.6 Every member of the Council shall ensure that he or she is aware of their obligations to the College, the Council and the Church and shall not knowingly participate in any meeting of the Council where there is a conflict of interest on the part of that member or a reasonable apprehension of pre-disposition or bias in relation to a matter before the Council.

4.7 Where a member is aware of a conflict of interest or has a pre-disposition or bias in relation to any matter before the Council, that member shall declare that interest, pre-disposition or bias to the Chair and shall not take part in any deliberations of the Council nor any voting by the Council with respect to that matter.

5. Powers

The Council shall have the power to do all things which are necessary or considered by Council to be desirable to pursue and give effect to the aims and objectives set out in this Constitution.

6. Moderator

The Moderator shall be the official visitor to the college, may as such attend and participate in any meeting of the Council, and shall in relation to the college fulfil the duties and responsibilities of both the Moderator and the official Visitor as defined in the Regulations of the Uniting Church in Australia.

7. Proceedings of Council

7.1 The Council shall meet at the time and place determined from time to time by its own resolution but so that there is at least one meeting of the Council during each school term.

7.2 The Chair may at any time and shall whenever requested in writing so to do by not less than three (3) Council members (which notice shall specify the purpose for which the meeting is to be convened) convene, or authorise the Secretary to convene, a special meeting of the Council.

7.3 At least three (3) days' written notice of every Council meeting shall be given to all members of the Council, but if the Chair considers an emergency exists then a special Council meeting may be convened on shorter notice.

7.4 The non receipt by a Council member of a notice of meeting does not invalidate a meeting.

7.5 The Chair shall preside at all meetings of the Council but if for any reason the Chair is absent from a meeting the Council members present at that meeting shall, unless a Deputy Chair has been appointed under clause 7.6 or having been appointed is also absent from the meeting, elect one of their number to be acting chair during the absence of the Chair.

7.6 The Council may elect a member of the Council to be Deputy Chair to act as Chair of the Council whenever the Chair is absent or is unable for any reason to carry out the duties or exercise the powers of the office of Chair.

7.7 A Council member appointed Deputy Chair shall hold that office until the 31st day of December in the calendar year of appointment, unless before that date his or her office as a member of the Council becomes vacant pursuant to clause but, if re-elected or reappointed to the Council, is eligible for re-appointment as Deputy Chair.

7.8 Council meetings may take place:

- (a) where members of Council are physically present together; or
- (b) using any technology consented to by a majority of the members of Council present, in such circumstances as permitted by the Chair from time to time. A member of Council who participates in a Council meeting as set out in this clause 7.8(b) is deemed to be present at the Council meeting; and continues to be present at the Council meeting for the purposes of establishing a quorum, until the

member of Council notifies the other Council members that they are no longer taking part in the Council meeting.

8. Quorum

A quorum for a Council meeting is not less than five (5) members present and the Chair may be included in that number.

9. Voting

- 9.1 Each Council member has and may exercise one vote and in the case of an equality of votes the Chair has and may exercise a second or casting vote.
- 9.2 Except where otherwise expressly provided in this Constitution questions arising at a Council meeting shall be decided by a majority of votes of those persons present.

10. Circular Resolutions

- 10.1 A resolution in writing passed by all of the members of Council entitled to receive notice of a Council meeting and vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Council duly convened and held.
- 10.2 Any resolution passed under clause 10.1 may consist of several documents in the same form each signed by one or more member of Council.
- 10.3 If the documents referred to under clause 10.2 are signed on different days, the meeting will be taken to have been held on the day on which a document was last signed by a member of Council unless the document, by its terms, is said to take effect from an earlier date.
- 10.4 For the purpose of clause 10.3 facsimile transmission or other document produced by electronic means under the name of a member of Council, with the member of Council's authority, will be considered to be a document in writing signed by the member of Council.

11. Minutes

The Secretary shall keep minutes of all meetings of the Council in a minute book provided for that purpose and the minutes shall be confirmed by the next succeeding meeting of the Council and shall be signed by the Chair of that succeeding meeting.

12. Committees

- 12.1 The Council may from time to time delegate all or any of its powers or authorities to a committee of its members or to a sub-committee appointed under sub-clause 12.5 and may:
- (a) determine the manner in which a committee or sub-committee shall conduct its proceedings;
 - (b) suspend or withdraw the authority of a committee or sub-committee as the Council thinks fit; or

(c) remove from office any member (including a co-opted member) of a committee or sub-committee.

- 12.2** The Chair shall be ex officio a member of all committees and sub-committees.
- 12.3** The Council shall appoint a Finance and Planning Board consisting of not less than two (2) members of the Council (in addition to the Chair as an ex officio member). The Finance and Planning Board shall be a committee for the purposes of this clause 12.
- 12.4** The Finance and Planning Board shall meet at least once in each month, other than December and January, and shall submit a report to each ordinary meeting of the Council on matters relating to the financial affairs of the College.
- 12.5** A committee may from time to time -
- (a) co-opt a member of the teaching staff or other employee of the College or other person;
 - (b) appoint a sub-committee of its members or of its members and other persons and, with the consent of the Council, delegate all or any of the committee's powers or authorities to the sub-committee.
- 12.6** The Council may fix the quorum for meetings of a committee or sub-committee, but in default of so doing a quorum is the number equal to one half of the total number of members of the committee or sub-committee if that number is an even number or the integer nearest to but greater than one half of the total number if it is an odd number, as the case may be.

13. Rescission of Resolutions

A resolution passed at a meeting of the Council shall not be rescinded at a subsequent meeting unless seven (7) days' notice of the intention to propose the rescission has been given in the notice convening the meeting and unless the rescission is agreed to by two-thirds of the votes cast. A resolution given partial or complete effect cannot be rescinded except in the case of a resolution that has been given partial effect to, in respect of that part which has not been given effect to.

14. Secretary

- 14.1** The Council by resolution shall appoint and may remunerate out of the funds of the College the Secretary, who may be a member of the Council, upon the terms and conditions the Council thinks fit and may terminate an appointment.
- 14.2** The duties of the Secretary are those defined from time to time by resolution of the Council.
- 14.3** The Secretary is under the control of and answerable to the Council.
- 14.4** Without limiting the rights of the Council under this clause 14.1, 14.2 and 14.3 it is the duty of the Secretary to prepare and submit to each meeting of Council in the form it desires a financial management report of the College and once a year to submit to the Council an audited balance sheet and accounts of the College in a form approved by the Council.

15. Life Governors

The Council by resolution may declare a person who has rendered outstanding service to or on behalf of the College to be a Life Governor. This is an honorary position and carries no responsibilities, privileges or powers.

16. Headmaster

- 16.1** The Council shall appoint the Headmaster who shall be a confirmed member of the Church or a confirmed member of another Christian denomination who is willing to participate in the life of the Church.
- 16.2** The Headmaster's appointment shall be for the period determined by the Council.
- 16.3** The Headmaster's appointment is terminable at any time by the Council in the event of the serious illness or incapacity of the Headmaster or for good cause and in accordance with any service agreement between the College and the Headmaster.
- 16.4** No termination of appointment by the Council is effective unless notice of the motion of termination is given in the notice convening the meeting at which it is intended to move the motion and unless the motion is passed by two-thirds of the votes cast on the motion at that meeting.

17. Staff

- 17.1** The Headmaster has, under the general control of the Council:
- (a) the duty of selection of the staff;
 - (b) the full direction of the teaching and learning programme and organisation of the College;
 - (c) the supervision of every boarding establishment associated with the College; and
 - (d) the duty to determine the course of instruction at the College.
- 17.2** As far as practicable Christian persons shall be selected for teaching positions.
- 17.3** The Headmaster may delegate such roles and responsibilities for the management of the College as the Headmaster sees fit, subject to the general control of Council and any Council policy.
- 17.4** The appointment of all teachers other than the Headmaster shall be terminable at any time by notice prescribed by any contract, award or industrial agreement for the time being in force regulating the employment.
- 17.5** The Headmaster may for good cause suspend or terminate any employee. In the event of such action the Headmaster shall prior to doing so, notify and consult with the Chair of Council. Nothing in this clause shall prevent the Headmaster from immediately suspending an employee in the event of serious misconduct.

18. Headmaster's Reports

- 18.1** The Headmaster shall submit to each ordinary meeting of the Council a report on the activities of the College.
- 18.2** The Headmaster may attend all meetings of the Council but does not have the right to vote.

19. Suspension and Expulsion of Pupils

- 19.1** The Headmaster may suspend a pupil of the College for good cause but if possible he shall first obtain the concurrence of the Chair.
- 19.2** The power of expulsion of a pupil rests with the Council.

20. Chaplain

- 20.1** The College may have a chaplain who shall be appointed by the Headmaster after consultation with the Council and Synod.
- 20.2** Where possible the chaplain(s) shall be a minister of the Church or, in consultation with Synod in any specific case, a minister of another Christian denomination or a suitably qualified lay person willing to participate in the life of the Church and may be appointed and/or placed full time or part time in accordance with the Regulations.
- 20.3** A full time chaplain who is an ordained minister of the Church shall be settled in accordance with the Regulations of the Church for the time being in force.
- 20.4** A chaplain may be dismissed by the Headmaster after consultation with Council and Synod.

21. Auditor

- 21.1** The Council shall appoint and remunerate an auditor annually.
- 21.2** The auditor shall audit the accounts of the College and present to the Council a report on the audit and on the accounts and records examined by the auditor.
- 21.3** The Council shall present to the Synod annually a signed copy of the auditor's report together with the Council's Annual Report to the Synod referred to in clause 22
- 21.4** A member of the Council (except the Secretary) of the College or an employee of a member of the Council (except the Secretary) is eligible to act as auditor.

22. Annual Reports to Synod

- 22.1** It is the duty of the Council to present annually to the Synod in time for consideration at the Annual Synod:
- (a) a report by the Council on the activities and affairs of the College during the year together with any recommendations which it desires to submit for consideration of the Synod including the appointment of the Chair and of the Council members referred to in clause 4.1;

- (b) an audited balance sheet of the College and all usual accounts in support of it; and
- (c) the signed copy of the auditor's report referred to in clause 21.

22.2 The documents referred to in clause 22.1(b) and (c) shall be received and treated by the Synod as confidential documents.

23. Holding of Real and Personal Property

23.1 The Council shall be responsible for the management and administration of the College's real and personal property.

23.2 Without in any way prejudicing, limiting or affecting the provisions of clause 23.1 or any power contained in the Act, any moneys of the College requiring investment may be invested in the name of the College in any real or personal property or in a form of investment the Council from time to time considers to be in the interests of the College, with power to the Council from time to time by resolution to vary any investment.

24. Indemnity

Any person acting under the express or implied authority of the College (including, without limitation, members of the Council, the Headmaster and any employee of the College) shall be indemnified against all liability for any matter or thing done or liability incurred except in the case of fraud, criminal act, negligence or wilful misconduct. The Council, in addition to the general powers conferred upon it by this constitution, may effect policies of insurance to ensure that the indemnity given by this clause is effective.

25. Common Seal

25.1 The common seal of the College shall be held by the Secretary and shall only be affixed to a deed, document or writing after a resolution to that effect has been passed by the Council and every such deed, document or writing shall be signed by the Chair and the Secretary.

25.2 If the Chair is absent from a meeting the Acting Chair may sign.

25.3 If necessary, an Acting Secretary may sign in the place of the Secretary.

26. Exercise of Rights of the Synod

Except where this Constitution requires a matter to be dealt with by a particular type of meeting of the Synod, the rights and duties of the Synod under this Constitution may be dealt with by a meeting of the Synod which, by the terms of the notice convening the meeting or otherwise, is competent and authorised to deal with the matter.

27. Alterations to Constitution

27.1 No alteration to this Constitution shall be made except by resolution of the Synod pursuant to and in accordance with a recommendation of a duly constituted meeting of the Council or pursuant to and in accordance with a recommendation of the Synod after consultation with and the agreement of the Council in respect of any change in the following respects:

- (a) the name of the College;
- (b) alteration, variation, rescission or addition of or to the aims and objectives for which the College is constituted, but the power to make a change under this paragraph is subject to all necessary conditions required to be observed under the Act; or
- (c) alteration, variation or rescission of this Constitution or the substitution of a new Constitution.

27.2 A certificate purporting to be signed by the secretary for the time being to the Synod is conclusive evidence that a resolution of the Synod has been passed pursuant to sub-clause 27.1 in the manner certified in the certificate.

28. Charitable status

The College shall be and shall continue to be a charitable institution and no part of its property or income from time to time shall be paid by way of distribution or dividend to any person, provided that nothing in this clause shall prevent the payment of wages, salaries, emoluments and gratuities nor the awarding of scholarships and bursaries in a manner consistent with the aims and objectives of the College.

29. Termination

Where the incorporation of the College under the Act is terminated and is not concurrently continued under the provisions of any other statute, the College shall cease to be a body corporate and all land and other property held by or belonging to or vested in it, whether in its name or otherwise, shall without conveyance vest in the Trust as specified in the Act and shall be held in the Trust for the purposes of the College if it has not then dissolved and is still functioning, but otherwise for those purposes and upon those trusts as the Synod shall direct.

8 November 2012