

Corporations Act 2001
Company Limited by Guarantee

CONSTITUTION
of
ABBOTSLEIGH FOUNDATION

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Effective from 16/06/2004

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Company Limited by Guarantee**

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ABBOTSLEIGH FOUNDATION**

1. INTERPRETATION

1.1 In this Constitution:

“**Abbotsleigh**” means the school known as Abbotsleigh conducted in accordance with the Abbotsleigh Ordinance 1924;

“**Abbotsleigh Old Girls’ Union**” means the Abbotsleigh Old Girls Union Incorporated being a body incorporated under the Associations Incorporation Act 1984 Number Y11718-38 and its successors and permitted assigns;

“**Act**” means the Corporations Act 2001 including amendments and regulations;

“**Adoption Date**” means the date of the adoption of this Constitution by the members in general meeting on 16 June 2004;

“**Approved Fund**” means any fund (other than the Building Fund and the Welfare Fund) established for the benefit of the School provided that such fund shall be approved by the Board and the Council;

“**Articles of Association**” means the articles of association of the Abbotsleigh Foundation repealed by this Constitution;

“**Board**” means the Board of the Foundation;

“**Building Fund**” means the Abbotsleigh Foundation Building Fund;

“**Council**” means the body corporate by the name of the Council of Abbotsleigh constituted by the *Church of England (Bodies Corporate) Act 1938*, as amended;

“**Foundation**” means Abbotsleigh Foundation;

“**gift**” means a gift of cash or asset made or transferred during the donor's lifetime;

“**law**” means any federal, state, governmental or semi-governmental statute, regulation or ordinance;

“**Library Fund**” means the Abbotsleigh Foundation Library Fund;

“**Life Membership**” means membership of the Foundation for so long as the member, being a natural person, is living and in the case of any other entity, being an unincorporated association or an

incorporated person, for so long as the unincorporated association or incorporated person is, in accordance with the law, in existence;

“Membership” means the act of being a member of the Foundation under the terms of this Constitution;

“Memorandum of Association” means the memorandum of association of the Abbotsleigh Foundation repealed by this Constitution;

“persons” includes natural persons, corporations and unincorporated associations;

“School” means Abbotsleigh;

“seal” means the common seal of the Foundation;

“Secretary” means any person appointed to perform the duties of a secretary of the Foundation and includes an honorary secretary;

“State” means the State of New South Wales;

“Welfare Fund” means the Abbotsleigh Foundation Welfare Fund.

1.2 Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing lithography photography and other modes of representing or reproducing words in a visible form.

1.3 Words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the *Interpretation Act 1987* and of the Act as in force at the date at which these regulations become binding on the Foundation.

1.4 The Foundation is established for the purposes set out in this Constitution.

1.5 The name of the company is “Abbotsleigh Foundation”(“the Foundation”).

2. OBJECTS OF THE FOUNDATION

2.1 The objects for which the Foundation is established are:

- (a) to promote the interests of and to aid, support and assist financially and otherwise the school known as “Abbotsleigh” or any funds, associations, clubs, auxiliaries and other organisations established or to be established for the purposes of or in connection therewith or any other association or body whether educational, charitable, benevolent or otherwise and to establish and support or aid in the establishment and support of associations, institutions, funds or trusts calculated to benefit Abbotsleigh or any of the pupils or past pupils of Abbotsleigh or the dependents or connections of such persons;
- (b) without in any way limiting the generality of paragraph (a) hereof-
 - (i) to establish, support and maintain or aid in the establishment, support and maintenance of a fund for providing money for the acquisition, construction or maintenance of school buildings used or to be used as such by Abbotsleigh;
 - (ii) to establish, support and maintain or aid in the establishment, support and maintenance of a fund for providing scholarships and bursaries tenable at Abbotsleigh, for providing scholarships and bursaries to ex-pupils tenable at any University in New South Wales or at any other technical or tertiary educational institution in New South Wales and generally for providing financial assistance to pupils and past pupils of Abbotsleigh and their parents in difficult circumstances and requiring financial aid to enable such pupils and past pupils to

undertake and complete their education at Abbotsleigh or at such other educational institution;

- (iii) to establish, support and maintain or aid in the establishment, support and maintenance of a fund for providing prizes to pupils of Abbotsleigh for scholastic, religious or sporting achievement or endeavour or otherwise;
 - (iv) to establish, support and maintain or aid in the establishment, support and maintenance of a fund for providing educational equipment and aids for Abbotsleigh including, but without limiting the generality thereof furniture, library books and equipment, laboratory equipment, sporting goods and equipment, musical and drama equipment as well as equipment and aids in connection with any course of instruction, being mental, spiritual or physical, given at Abbotsleigh;
 - (v) to establish, support and maintain or aid in the establishment, support and maintenance of a fund for providing assistance to Abbotsleigh either alone or in conjunction with any tertiary educational institution in undertaking educational and scientific research;
 - (vi) to establish, support and maintain or aid in the maintenance, support and establishment of funds for religious, scientific or public educational purposes in New South Wales including the promotion of education in New South Wales and funds for making donations, gifts, contributions or subsidies or giving assistance to any religious, scientific, public benevolent or public educational institution in New South Wales for any or all of the objects or purposes of such institutions in New South Wales; and
 - (vii) to establish, support and maintain or aid in the maintenance, support and establishment of such other funds whose purpose or purposes are consistent with or incidental to the principal object for which the Foundation has been established as set out in paragraph (a) hereof;
- (c) to act as nominee or trustee for or on behalf of Abbotsleigh and any funds, associations or other organisations established or to be established for the purposes of or in connection with Abbotsleigh or any activities or objects associated with Abbotsleigh;
 - (d) to subscribe to, become a member of and cooperate with any other institution, association or organisation, whether incorporated or not whose objects are altogether or in part similar to those of the Foundation, provided that the Foundation shall not subscribe to or support with its funds any institution, association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Foundation under or by virtue of Clause 14 of this Constitution;
 - (e) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Foundation. Provided that in case the Foundation shall take or hold any property which may be subject to any trusts the Foundation shall only deal with the same in such manner as is allowed by law having regard to such trusts;
 - (f) to enter into any arrangement with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Foundation's objects or any of them and to obtain from any such Government or authority any rights, privileges and concessions which the Foundation may think it desirable to obtain and to carry out exercise and comply with any such arrangements, rights, privileges and concessions;
 - (g) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Foundation;

- (h) to establish and support and aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit pupils or past pupils of Abbotsleigh or the dependents or connections of any such persons and to grant pensions and allowances and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (i) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance Abbotsleigh interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereto;
- (j) to invest and deal with the money of the Foundation not immediately required in such manner as may from time to time be thought fit subject always to the requirement that a proportion of such moneys being a proportion determined from time to time by the Board of the Foundation shall be invested in those investments permitted by law for the investment of trust funds;
- (k) to borrow or raise or secure the payment of moneys in such manner as the Foundation may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Foundation in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Foundation's property (both present and future), and to purchase, redeem or pay off any such securities subject to the provisions of this Constitution;
- (l) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (m) in furtherance of the objects of the Foundation to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Foundation;
- (n) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Foundation's property of whatsoever kind sold by the Foundation, or any money due to the Foundation from purchasers and others;
- (o) to take and accept any gift of money or other property whether subject to any special trust or not, for any one or more of the objects of the Foundation but subject always to the proviso in paragraph (e) of this Clause 2;
- (p) to take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Foundation, in the shape of donations, annual subscriptions or otherwise;
- (q) to print and publish any newspapers, periodicals, books or leaflets that the Foundation may think desirable for the promotion of its objects;
- (r) in furtherance of the objects of the Foundation to amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Foundation and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Foundation under or by virtue of Clause 14 of this Constitution;
- (s) in furtherance of the objects of the Foundation to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Foundation is authorised to amalgamate;
- (t) in furtherance of the objects of the Foundation to transfer all or any part of the property, assets, liabilities and engagements of the Foundation to any one or more of the companies,

institutions, societies or associations with which the Foundation is authorised to amalgamate;

- (u) to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Foundation;

PROVIDED THAT nothing in this Constitution shall authorise or empower the Foundation to provide charitable assistance to the members of the Foundation or to the dependents of the members.

3. MEMBERSHIP

3.1 The number of members with which the Foundation proposes to be registered is five hundred but the Board may from time to time register an increase of members.

3.2 (a) The members of the Foundation are:

- (i) the current members of the Foundation as at the Adoption Date; and
- (ii) such other person or persons as shall be admitted to membership in accordance with this Constitution.

(b) Membership of the Foundation for natural persons shall, subject to this Constitution, continue:

- (i) in the case of parents, for a period of five years from 31st December in the year in which their last daughter left Abbotsleigh;
- (ii) in the case of staff, for a period five years from the date of leaving the employment of Abbotsleigh;
- (iii) for any other person who is a member as at the Adoption Date, five years from the Adoption Date; and
- (iv) for any other person, for a period of five years from the date of becoming a member.

Membership for corporations and unincorporated associations shall continue for a period of five years from the date of becoming a member.

A member may elect to continue to be a member for a period longer than a period referred to in this Clause 3.2(b) by applying to the Board to do so and by paying the fees or charges (if any) to be determined from time to time by the Board applying to any such extension. The determination of the Board whether or not to accept the member's application is final.

(c) The Board shall be empowered to grant Life Membership to members of the Foundation as a consequence of their meritorious service to Abbotsleigh. Any person granted Life Membership shall not be subject to the Clause 3.2(b).

(d) A member being a corporation or an unincorporated association shall by written notice to the Foundation nominate (and may from time to time alter such nomination by giving written notice to the Foundation) a natural person to represent the corporation or association and that person alone shall be able to represent, act as and exercise the rights of the corporation or association as a member.

3.3 (a) Qualification for membership shall be a gift of not less than \$500 or such other amount as determined by the Board from time to time to the Building Fund, the Welfare Fund, the Foundation, the Library Fund or any Approved Fund.

(b) Gifts may be in cash or in kind, and where in kind, the Board shall determine the value of the gifts for the purpose of granting membership of the Foundation. In appropriate cases, as

determined by the Board, the Board may take account of past contributions or gifts in calculating gifts for the purpose of granting membership of the Foundation.

- (c) Each application for membership shall be in writing and shall be in such form as shall be prescribed by the Board from time to time. The Board may decline to accept any such application without assigning any reason for doing so.
- 3.4 From the Adoption Date there shall be one class of membership of the Abbotsleigh Foundation.
- 3.5 Despite there being only one class of membership, the Board may determine different levels of recognition for each member. Such recognition does not divide the membership into different classes. For this purpose the Board, if it thinks appropriate, may use such designations as Members, Fellows, Governors, Benefactors, Trustees or such other terms as the Board thinks fit. The Board may require members to make contributions to the Building Fund, the Welfare Fund, the Foundation, the Library Fund or an Approved Fund before any such recognition takes effect. Contributions may be in cash or in kind, and where in kind, the Board shall determine the value of the contributions for the purpose of granting any such recognition. In appropriate cases, as determined by the Board, the Board may take account of past contributions or gifts in calculating contributions for the purpose of granting any such recognition.
- 3.6 In the event that any of the provisions of this Constitution specifying any amount of money shall be amended, any such amendment shall apply only to applications for membership thereafter and shall not affect the qualification of any person who is a member at the time of the amendment.
- 3.7 A person may make a gift in accordance with this Constitution and by giving written notice to the Foundation allocate all, or part, of that gift as a contribution in respect of an application for membership by another person or persons whose application shall be subject to Clause 3.3(c) of this Constitution.
- 3.8 The names and addresses and descriptions of the subscribers to the Constitution shall upon incorporation of the Foundation be entered in the Register of Members ("Register") to be kept pursuant to the Act together with the names and addresses and descriptions of the persons referred to in Clause 3.2(a)(i) and the names and addresses and descriptions of the persons referred to in Clause 3.2(a)(ii) in this Constitution shall on becoming members be entered in the Register.
- 3.9 Every member of the Foundation undertakes to contribute to the assets of the Foundation, in the event of the same being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the Foundation contracted before he ceases 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 fifty dollars (\$50).
- 3.10 Any membership granted or bestowed under the terms of the Memorandum and Articles of Association:
 - (a) will continue under, and in accordance with, the terms of this Constitution;
 - (b) the person holding it will become a member of the class referred to in Clause 3.4; and
 - (c) the person holding it will be entitled to use the same titles of recognition as applied to them under the former Memorandum and Articles of Association but will not have any of the benefits or entitlements that such titles bestowed on them under the Memorandum and Articles of Association.
- 3.11 The liability of the members is limited to the amount determined under Clause 3.9 of this Constitution.

4. CESSATION OF MEMBERSHIP

- 4.1 (a) A member shall cease to be a member:
 - (i) if the Foundation passes a special resolution that they be expelled as a member provided that at least twenty-one (21) days before the general meeting at which

such resolution is passed the member shall have had notice of such meeting, of the intended resolution and of the reasons for its proposal and that they shall at such general meeting and before the passing of such resolution as a special resolution have had an opportunity of giving orally or in writing any statement that they may think fit; or

- (ii) if they resign their membership by notice in writing to the Foundation; or
- (iii) on the death, bankruptcy, lunacy or unsoundness of mind of that member; or
- (iv) in the case of a member referred to in clause 3.2(b) hereof on the expiration of any period of time pursuant thereto.

(b) All gifts made to the Building Fund, the Welfare Fund, the Foundation, the Library Fund or an Approved Fund by a member before the cessation of their membership shall remain the absolute property of the relevant Fund or the Foundation as the case may be.

5. GENERAL MEETINGS

- 5.1 An annual general meeting of the Foundation shall be held in accordance with the provisions of the Act.
- 5.2 The Board may, whenever it thinks fit, convene a general meeting, and general meetings shall be convened on such requisition or in default may be convened by such requisitions as provided by the Act.
- 5.3 Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, unless specified elsewhere in this Constitution for certain specified reasons, twenty one (21) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in the case of special business the general nature of that business, shall be given to such persons as are entitled to receive such notices from the Foundation.
- 5.4 All business shall be special that is transacted at a general meeting, and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance-sheets, the report of the Board and Auditors, and the appointment of the Auditors.

6. PROCEEDINGS AT GENERAL MEETINGS

- 6.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, five (5) members present in person shall be a quorum. For the purpose of Clause 6 "member" includes a person attending as a proxy or a representative of a corporation which is a member.
- 6.2 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than three (3)) shall be a quorum.
- 6.3 The Chairman of the Foundation shall preside as Chairman at every general meeting of the Foundation, or if there is no Chairman of the Foundation, or if he is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the nominee of the Chairman or of the previous Chairman of the Foundation shall be the Chairman or if that nominee is not present or is unwilling to act then the members present shall elect one (1) of their number to be Chairman of the meeting.
- 6.4 The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the

meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting otherwise it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

6.5 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands):

- (a) by the Chairman; or
- (b) by at least three (3) members present in person or by proxy.

Unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Foundation shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

The demand for a poll may be withdrawn.

6.6 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately.

6.7 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.

6.8 A member may vote in person or by proxy or by attorney, and on a show of hands every person present who is a member or a representative of a member shall have one (1) vote and on a poll every member present in person or by proxy or by attorney or other duly authorised representative shall have one (1) vote.

6.9 A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health, or who has a financial manager appointed under the Protected Estates Act 1983, or who lacks capacity and has previously appointed an attorney under an enduring power of attorney (“enduring attorney”) may vote, whether on a show of hands or on a poll, by their Committee or by their trustee, financial manager or enduring attorney or by such other person as properly has the management of their estate, and any such Committee, trustee, financial manager or enduring attorney or other person may vote by proxy or attorney.

6.10 The instrument appointing a proxy shall be in writing under the hand of the appointor or of their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct their proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as they think fit.

6.11 The instrument appointing a proxy may be in the following form or in a common or usual form.

Abbotsleigh Foundation

I,ofbeing a member of
Abbotsleigh Foundation appoint.....of

.....or failing them.....of
.....as my proxy to vote for me on my behalf at
the *annual general/ *general meeting of the Foundation;.....
to be held on theday of.....20.....and at any adjournment thereof.

My proxy is authorised to vote *in favour of/*against the following resolutions:

Signed thisday of.....20.....

Note 1: In the event of the member desiring to vote for or against any resolution, they shall instruct their proxy accordingly. Unless otherwise instructed, the proxy may vote as they think fit.

* Strike out whichever is not desired.

6.12 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the Foundation, or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

6.13 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid despite the previous death, or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Foundation at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

7. BOARD

7.1 Those persons who, at the Adoption Date, held office on the Board of the Foundation will remain on the Board until the first annual general meeting of the Foundation following the adoption of this Constitution, subject to any casual vacancies occurring before that meeting and the same being filled in accordance with this Constitution. If this Constitution is adopted at an annual general meeting, the members of the Board elected at that meeting or ex officio as at the date of that meeting shall be the first Board of the Foundation as from the Adoption Date.

7.2 At the first annual general meeting of the Foundation following the adoption of this Constitution:

- (a) those persons who are members of the Board other than those referred to in Clause 7.3(a) will cease to hold that office; and
- (b) a new Board will be constituted in accordance with Clause 7.3.

7.3 The Board of the Foundation shall comprise:

- (a) four (4) individuals being the Chairman of the Council for the time being, the Treasurer of the Council for the time being or a nominee of the Council, the Headmistress of the School for the time being and a nominee appointed from time to time of the Abbotsleigh Old Girls' Union all of whom shall be ex officio members of the Board; and
- (b) five (5) members of the Foundation elected or re-elected by the members of the Foundation at the annual general meeting of the Foundation.

- 7.4 Members of the Board elected or re-elected under Clause 7.3(b) shall be elected at the annual general meeting of the Foundation to be held each year and (unless such office shall be previously vacated by reason of the death of any such member or otherwise as prescribed by this Constitution) shall hold office until the next ensuing annual general meeting when they shall retire from office but shall be eligible for re-election.
- 7.5 The election of members to the Board under Clause 7.3(b) shall take place in the following manner:
- (a) any two (2) members shall be at liberty to nominate any other member to serve as a member of the Board;
 - (b) the nomination which shall be in writing and signed by the member and their proposer and seconder shall be lodged with the Secretary at least fourteen (14) days before the annual general meeting of the Foundation at which the election is to take place;
 - (c) a list of candidates' names in alphabetical order with the proposers' and seconds' names shall be posted in a conspicuous place in the registered office of the Foundation at least seven (7) days immediately preceding the annual general meeting;
 - (d) a list for the purpose of any poll shall be prepared (if necessary) containing the names of the candidates only in alphabetical order;
 - (e) in case there shall not be a sufficient number of candidates nominated, the Board may fill the remaining vacancy or vacancies from the members; and
 - (f) the Board shall have power at any time, and from time to time, to appoint any member of the Foundation as a member of the Board to fill a casual vacancy amongst the members of the Board. Any member of the Board so appointed shall hold office only until the expiration of the period of office of the member of the Board whose vacancy they have filled.
- 7.6 A member of the Board shall cease to be a member of the Board if that member:
- (a) ceases to be a member by virtue of the provisions relating to directors under the Act;
 - (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
 - (c) becomes prohibited from being a director of a company by reason of any order made under the Act;
 - (d) becomes of unsound mind or ceases to have mental capacity or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, or has a financial manager appointed under the Protected Estates Act 1983;
 - (e) resigns their office by notice in writing to the Foundation;
 - (f) for more than six (6) months is absent without permission of the Board from meetings of the Board held during that period;
 - (g) holds any office for profit under the Foundation;
 - (h) ceases to be a member of the Foundation;
 - (i) is directly or indirectly interested in any contract or proposed contract with the Foundation provided, however, that any member of the Board shall not vacate their office by reason of them being a member of any corporation, society or association which has entered or proposes to enter into a contract with the Foundation if such corporation, society or association is among the class of companies referred to in the proviso of Clause 14 of the Foundation and they shall have declared the nature of their interest in a manner required by the Act;

- (j) being a member of the Board elected under Clause 7.3(b) is removed by an ordinary resolution of members at a general meeting. Under these circumstances the place of the removed member of the Board may be filled without such removal constituting a casual vacancy provided an ordinary resolution of members at that general meeting is passed appointing a new Board member;
- (k) being the Chairman of the Council for the time being, ipso facto on their ceasing to be the Chairman of the Council;
- (l) being the Treasurer of the Council for the time being, ipso facto on their ceasing to be the Treasurer of the Council;
- (m) being a nominee who has been nominated by Council under Clause 7.3(a) and is removed by the Council by notice to the Secretary;
- (n) being the Headmistress of the School for the time being, ipso facto on her ceasing to be the Headmistress of the School;
- (o) being a nominee who has been appointed by the Abbotsleigh Old Girls' Union under Clause 7.3(a) and is removed by the Abbotsleigh Old Girls' Union by notice to the Secretary;

PROVIDED ALWAYS that nothing in the Constitution shall affect the operation of Clause 14 of the Constitution of the Foundation.

8. POWERS AND DUTIES OF THE BOARD

- 8.1 The business of the Foundation shall be managed by the Board who may pay all expenses incurred in promoting and registering the Foundation, and may exercise all such powers of the Foundation as are not, by the Act or by this Constitution, required to be exercised by the Foundation in general meeting, provided that any rule regulation or by-law of the Foundation made by the Board may be disallowed by the Foundation in general meeting and provided further that no resolution of or regulation made by the Foundation in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.
- 8.2 The Board may exercise all the powers of the Foundation to borrow money and to mortgage or charge its property, or any part of its property, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Foundation. Any such exercise of this power requires prior Council approval.
- 8.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Foundation, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) members of the Board or in such other manner as the Board from time to time determines.
- 8.4 The Board shall cause minutes to be made-
 - (a) of all appointments of officers and servants;
 - (b) of names of the members of the Board present at all meetings of the Foundation and of the Board; and
 - (c) of all proceedings at all meetings of the Foundation and of the Board.

Such minutes shall be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting. Copies of all such minutes shall be sent immediately to the members of the Board and to the Council.

9. PROCEEDINGS OF THE BOARD

- 9.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A member of the Board may at any time and the Secretary shall, on the requisition of a member of the Board, summon a meeting of the Board.
- 9.2 Subject to these regulations questions arising at any meeting of the Board shall be decided by a majority of the votes and a determination by a majority of the Board shall for all purposes be deemed a determination of the Board. In case of an equality of votes the Chairman of the meeting shall have a second or casting vote.
- 9.3 A member of the Board shall not vote in respect of any contract or proposed contract with the Foundation in which they are interested, or any matter related to such an interest, and if they do so vote their vote shall not be counted.
- 9.4 The quorum necessary for the transaction of the business of the Board shall be five (5) or such greater number as may be fixed by the Board.
- 9.5 The continuing members of the Board may act despite any vacancy in the Board but if and so long as their number is reduced below the number fixed by or pursuant to these regulations as the necessary quorum of the Board, the continuing members of the Board may act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Foundation, but for no other purpose.
- 9.6 The Council shall from time to time nominate one of the members of the Board, who is also a member of the Foundation, to preside as Chairman of the Foundation at every meeting of the Board. If the Council should fail to nominate a Chairman of the Foundation or the Chairman so nominated to be Chairman is not present within ten minutes of the time appointed for the holding of the meeting the members of the Board present at such meeting may choose one of the number to be Chairman of that meeting.
- 9.7 The members of the Board may delegate any of the powers and/or functions of the Board to one or more committees consisting of not less than three (3) persons at least one (1) of whom must be both a member of the Board and appointed the Chairman of the committee. Any committee so formed shall conform to any regulations or qualifications (as regards the committee's powers, mandate or scope and number of members of that committee) that may be imposed or determined by the Board and subject thereto shall have the power to co-opt any other person as it thinks appropriate. Each committee shall be appointed by the Board annually. Each committee shall meet as may be determined by its Chairman.
- 9.8 In addition to any other committee formed in pursuance of Clause 9.7, there shall be a Finance Committee. The Finance Committee shall consist of not less than three (3) persons who shall comprise the committee's Chairman and two (2) others all of whom shall be members of the Board. The Chairman of the Foundation shall be a member of the Finance Committee ex officio.
- 9.9 The Finance Committee shall be responsible for giving consideration to projects submitted by the Council for sponsorship by the Foundation, advise the Board on the investment policy of the Foundation and respond to any requests by the Council or the Board for advice on the possible allocation of funds available to the School or the Foundation.
- 9.10 A committee may elect a Chairman of its meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within ten (10) minutes after the time appointed for holding the meeting, the committee members present may choose one (1) of their number to be Chairman of the meeting.
- 9.11 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the committee members present, and in the case of an equality of votes the Chairman of the committee shall have a second or casting vote. Co-opted members of committees do not have a vote. Decisions of committees comprising one voting member only must be ratified by the Board.

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

9.13 A resolution in writing signed by all members of the Board for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the members of the Board.

10. SECRETARY

10.1 The Secretary shall in accordance with the Act be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit, and any secretary so appointed may be removed by it. Nothing in this Constitution shall prevent the Board from appointing a member of the Foundation as Honorary Secretary. The Secretary is subject to the provisions of Clause 14 of this Constitution.

10.2 The Secretary is entitled to attend all meetings of the Board and of any committee established under Clauses 9.7 and 9.8.

11. SEAL

11.1 The Board shall provide for the safe custody of the seal, which shall be used by the authority of the Board or of a committee of the Board authorised by the Board in that behalf, and every instrument to which the seal is affixed shall be signed by a member of the Board and shall be countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for the purpose.

12. ACCOUNTS

12.1 True accounts shall be kept of the sums of money received and expended by the Foundation, and the manner in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Foundation; and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Foundation for the time being in force, shall be open to the inspection of the members. Once at least in every year, the accounts of the Foundation shall be examined by one or more properly qualified Auditor or Auditors who shall report to the members in accordance with the provisions of the Act.

12.2 The Board shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance-sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Act, provided, however, that the Board shall cause to be made out and laid before each annual general meeting a balance-sheet and profit and loss account made up to date not more than five (5) months before the date of the meeting. A copy of the balance sheet and profit and loss account shall be forwarded each year to the Council for approval not less than twenty-one (21) days prior to the date of the meeting at which the accounts are to be presented.

12.3 The Board shall from time to time determine in accordance with Clause 12.1 of the Constitution at what times and places and under what conditions or regulations the accounting and other records of the Foundation shall be open to the inspection of members, not being the members of the Board, and no member (not being a member of the Board) shall have the right of inspecting any account or book or paper of the Foundation except as conferred by statute or by this Constitution.

12.4 Prior to the commencement of each accounting year the Foundation shall submit to the Council for approval a statement of the proposed application of the Foundation's funds for the ensuing year. Approval shall be obtained prior to the application of any funds provided however that the Foundation may continue to incur day to day expenses.

- 12.5 All moneys or property received by the Foundation and any of its Funds or accounts shall, after meeting normal management and operating costs, be applied (subject to the prior agreement in writing of the Council) for the promotion of the Foundation's objects or for the purpose for which the relevant Fund or account was established.

13. AUDIT

- 13.1 A properly qualified auditor or auditors shall be appointed and the remuneration of the auditor or auditors fixed and duties regulated in accordance with Part 2M.4 of the Act and Clause 12.1 of this Constitution.

14. INCOME & PROPERTY OF THE FOUNDATION

- 14.1 The income and property of the Foundation, however derived, shall be applied solely towards the promotion of the objects of the Foundation as set forth in this Constitution, and no portion shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the members of the Foundation. Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Foundation, or to any member of the Foundation, in return for any services actually rendered to the Foundation, nor prevent the payment of interest at a rate not exceeding interest at the rate for the time being charged by bankers in Sydney for overdrawn accounts on money lent, or reasonable and proper rent for premises demised or let by any member to the Foundation; but so that no member of the governing body of the Foundation shall be appointed to any salaried office of the Foundation, or any office of the Foundation paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Foundation to any member of such governing body except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Foundation. Provided that the provision last aforesaid shall not apply to any payment to any company of which a member of the governing body may be a member and in which such member shall not hold more than one-hundredth part of the capital, and such member shall not be bound to account for any share of profits he may receive in respect of such payment.

15. NOTICE TO MEMBERS

- 15.1 Any notice required by law under the Act or in accordance with this Constitution to be given to any member shall be given either personally, by sending it by electronic communication to them at their nominated electronic address or by sending it by post to them at their registered address, or (if they have no registered address within the State) to the address, if any, within the State supplied by them to the Foundation for the giving of notices to them.
- 15.2 Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected when the electronic communication enters the information system of the nominated electronic address, and to have been effected in the case of a notice of a meeting on the day after the electronic communication enters the information system of the nominated electronic address.
- 15.3 Where a notice is sent by post, service of the notice shall 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 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.
- 15.4 Notice of every general meeting shall be given in any manner herein before authorised to-
- (a) every member except those members who (having no registered address within the State) have not supplied to the Foundation an address within the State for the giving of notices to them; and
 - (b) the Auditor or Auditors for the time being of the Foundation.
- 15.5 No other person shall be entitled to receive notices of general meetings.

16. WINDING UP

16.1 If upon the winding-up or dissolution of the Foundation there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the Foundation but shall be given or transferred to Abbotsleigh or if Abbotsleigh is at that time no longer in existence to the Synod of the Diocese of Sydney of the Anglican Church of Australia.

17. INDEMNITY

17.1 Every member of the Board, Auditor, Secretary and other officer for the time being of the Foundation shall be indemnified out of the assets of the Foundation against any liability arising out of the execution of the duties of their office which is incurred by them in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which they are acquitted or in connection with any application under the Act in which relief is granted to them by the Court in respect of any negligence, default, breach of duty or breach of trust.

18. ALTERATION OF CONSTITUTION

18.1 No addition alteration or amendment shall be made to or in this Constitution except as provided by Clause 18.2 of the Constitution.

18.2 No addition, alteration or amendment shall be made to or in the Constitution for the time being in force, unless the same shall have been previously submitted to and approved or passed by, and in the following order:

- (a) firstly the Council in writing;
- (b) secondly a special resolution of the members in general meeting; and
- (c) thirdly the Australian Securities and Investments Commission.

