



Constitution for the Prince Alfred College Foundation Inc

2018

1. NAME

The name of the Foundation is “PRINCE ALFRED COLLEGE FOUNDATION INCORPORATED”.

2. OFFICE

The office of the Foundation will be situated at Prince Alfred College, South Australia.

3. DEFINITIONS

In this constitution unless the contrary intention appears:

- 3.1 **“Act”** means the *Associations Incorporation Act 1985 (SA)* (as amended or replaced);
- 3.2 **“Annual General Meeting”** means an annual general meeting of the Foundation as required by Section 39 of the Act;
- 3.3 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in Adelaide;
- 3.4 **“By-Laws”** means the by-laws specified by the Foundation Board in accordance with this constitution;
- 3.5 **“College”** means the body incorporated and known as Prince Alfred College Incorporated;
- 3.6 **“College Council”** means the Council of the College;
- 3.7 **“Foundation”** means the Prince Alfred College Foundation Incorporated governed by this constitution;
- 3.8 **“Foundation Board”** means the Board of the Foundation;
- 3.9 **“Fund”** and **“Funds”** mean any one or more tax deductible gift funds operated by the Foundation and approved by the Australian Taxation Office including the fund set out in clause 17;
- 3.10 **“General Meeting”** means a general meeting of Members convened by the Foundation Board as permitted by this constitution and the Act including an Annual General Meeting;

- 3.11 **“Headmaster”** means the Headmaster of the College and including any acting Headmaster or nominee;
- 3.12 **“ITAA97”** means the *Income Tax Assessment Act 1997* (Cth);
- 3.13 **“Member”** means a member of the Foundation;
- 3.14 **“Month”** means calendar month;
- 3.15 **“Philanthropic”** means an act of donating money, goods, services, time and/or effort to support a socially beneficial cause with a defined objective and with no financial or material reward to the donor;
- 3.16 **“Public Officer”** means the public officer of the Foundation;
- 3.17 **“Qualifying Gift”** means a gift or gifts (in cash or other goods and services), or a bequest or bequests, of a value (or in excess of a value) specified in the By-Laws from time to time to one or a combination of the following:
- 3.17.1 the Foundation; or
- 3.17.2 any other Fund or Funds of the Foundation acceptable to the College Council or of the College approved by the Foundation Board;
- 3.18 **“Quorum”** means, in relation to:
- 3.18.1 a Foundation Board meeting – at least four members elected or appointed to the Foundation Board; and
- 3.18.2 a General Meeting – at least eight Members including proxies and appointed attorneys; and
- 3.19 **“Responsible Person”** means an individual who because of their tenure of some public office or their position in the community has a degree of responsibility to the community as a whole. Examples of such persons include persons who:
- 3.19.1 perform a significant public function;
- 3.19.2 are members of a professional body having a code of ethics or rules of conduct;
- 3.19.3 are officially charged with spiritual functions by a religious institution;
- 3.19.4 have received formal recognition from government for

- services to the community; or
- 3.19.5 are approved as a responsible person by the Commissioner of Taxation.

4. PURPOSE AND VISION

- 4.1 The Foundation aims to be recognised as a fundraising entity that integrates and involves the entire school community to support the College as a world class school for boys.
- 4.2 The Foundation exists to be a not-for-profit organisation that supports and enables the ongoing development of the College, its students, staff and alumni, through significant Philanthropic income generation with a specific focus on planned giving and endowment.
- 4.3 The Foundation builds community and Philanthropic engagement to inspire excellence and maximise potential within the College.

5. OBJECTS

The objects for which the Foundation is established are to assist the College Council to preserve, maintain, develop and enhance the standards, facilities and position of the College and in particular to:

- 5.1 undertake activities to establish and enhance the awareness of, support for and interest in the Foundation within the College community and beyond;
- 5.2 establish, implement, maintain and advance integrated fundraising and Philanthropic stewardship programs to maximise opportunities for giving by the community to assist with projects for the benefit of the College, its students and alumni and to achieve sustainability for future generations at the College;
- 5.3 solicit gifts and bequests across the College community for the benefit of the College;
- 5.4 provide financial assistance for the granting of scholarships, bursaries, endowments and educational allowances;
- 5.5 support the acquisition by the College of library books, works of art and educational plant and equipment;

- 5.6 establish and administer Funds and trusts for educational and other purposes;
- 5.7 raise finance for the acquisition of land or other facilities by the College or the acquisition or construction and maintenance of buildings used or to be used by the College;
- 5.8 produce an annual report and other such publications as are necessary and timely for the advancement of these objectives;
- 5.9 support and co-operate with any other persons or body or group who have the desire to assist the College in any of the matters set out in these objects; and
- 5.10 build and maintain a strong relationship with the College Council.

6. MEMBERSHIP

- 6.1 Any living person, married couple or persons in a de facto relationship as defined by the *Family Law Act 1975* (Cth), corporation or incorporated association who donates or bequests a Qualifying Gift at any time and who applies to become a Member, shall become a Member of the Foundation.
- 6.2 The Foundation Board shall be entitled from time to time to determine the criteria and rights of each classification of membership.
- 6.3 Existing Members as at the date of adoption of this constitution will continue as Members under their current classification of membership.
- 6.4 If a person or body enters into an undertaking to contribute a Qualifying Gift over a period of time and applies to become a Member then that person or body will be deemed to be a Member of the appropriate class in accordance with the By-Laws at the time of making the first payment.
- 6.5 Membership of the Foundation in the case of individuals shall be for life and non-transferable.
- 6.6 A Member may by notice in writing to the chair of the Foundation Board resign from the membership of the Foundation, effective from the date of such notice.

6.7 The Foundation shall keep a register of members. Recorded in the register shall be:

6.7.1 the name, address, telephone number and where possible the email address of each Member;

6.7.2 the occupation of each Member;

6.7.3 the date upon which each Member was admitted to membership of the Foundation; and

6.7.4 where applicable, the date of and reason for termination of membership.

6.8 Expulsion of Members

6.8.1 If a Member is charged with misconduct detrimental to the interests of the Foundation or College then that Member may consequently be expelled by a resolution of a three-quarter majority of either the:

(a) Foundation Board; or

(b) College Council.

6.8.2 The College Council must ratify a decision by the Foundation Board to expel a Member.

6.8.3 Particulars of the charge shall be communicated to the Member at least one Month before the meeting of the Foundation Board or College Council at which the matter will be determined. The Foundation Board or College Council shall provide the Member an opportunity to be heard or to make a written submission concerning the charge of misconduct.

6.8.4 The determination of the Foundation Board or College Council shall be communicated to the Member within 14 days of the date upon which the decision of the Foundation Board or College Council is made.

6.8.5 In the case of the Foundation Board deciding to expel a Member, that Member may appeal to the College Council against the expulsion. The intention to appeal must be communicated to the chair of the College Council within 14 days after the determination of the Foundation Board

has been communicated to the Member.

- 6.8.6 If the Member appeals to the College Council, the appeal shall be considered at the first meeting of the College Council to be held after not less than 14 days have passed from the date upon which the notice of appeal was received by the chair of the College Council.
- 6.8.7 There shall be no right of appeal from a decision of the College Council (whether the decision was made on appeal or on its own initiative).
- 6.8.8 In the event of a resolution being passed to expel a Member under clause 6.8.1 above, the Member's membership of the Foundation shall terminate either:
 - (a) 15 days after the determination of the Foundation Board or College Council has been communicated to the Member; or
 - (b) in the event of an appeal under clause 6.8.5, the date of the College Council meeting at which the original determination of the Foundation Board is upheld.
- 6.8.9 The Foundation Board or the College Council is entitled to reinstate any terminated or expelled Member on such membership terms as the Foundation Board or the College Council deems fit.

7. MANAGEMENT

- 7.1 The business of the Foundation is to be managed by, or under the direction of and vested in the Foundation Board, but the Foundation Board shall not take any action contrary to the requirements of the College Council as made known to the Foundation Board from time to time by the College Council.
- 7.2 Composition and appointment of the Foundation Board
 - 7.2.1 The Foundation Board shall comprise a total of seven (7) members of which four (4) shall be Members elected at the Annual General Meeting (**Elected Board Members**). The other three members of the Foundation Board shall include an appointed nominee of the College Council, the Headmaster (ex officio), and an appointed nominee of the

Prince Alfred Old Collegians' Association (**Nominee Board Members**).

- 7.2.2 The term of office for an Elected Board Member will be two years at the conclusion of which the board member is eligible for re-election.

Appointment and re-appointment of Elected Board Members

- 7.2.3 A person nominating for election to the Foundation Board for the first time must be nominated and seconded by two Members of the Foundation. Nominations must be in writing and deposited at the office of the Foundation before 5pm on the last Business Day in February.
- 7.2.4 A person nominating for re-election to the Foundation Board is not required to comply with clause 7.2.3, but must inform the chair of the Foundation in writing before 5pm on the last Business Day in February.
- 7.2.5 The Foundation Board must include the names of the persons nominated pursuant to clause 7.2.3 together with the names of any persons seeking re-election pursuant to clause 7.2.4 with the notice of Annual General Meeting.

Appointment and confirmation of Nominee Board Members

- 7.2.6 Each of the College Council and the Prince Alfred Old Collegians' Association may appoint, substitute or remove their respective Nominee Board Member from time to time by notice in writing to the office of the Foundation. The appointment and removal of the Headmaster as Nominee Board Member shall occur contemporaneously with his or her respective commencement and cessation as Headmaster of the College.
- 7.2.7 At each Annual General Meeting the Foundation in General Meeting shall confirm the appointments of each Nominee Board Member holding office as at the date of the Annual General Meeting.

General

- 7.2.8 The Foundation Board will elect a chair and a deputy chair.

- 7.2.9 The Foundation Board will appoint a treasurer and executive officer.
- 7.2.10 The Foundation Board may nominate a Member to fill any casual vacancy arising between Annual General Meetings.
- 7.2.11 A person shall cease to be a Foundation Board member where:
- (a) the person is an Elected Board Member and ceases to be a Member of the Foundation;
 - (b) the Act or another law or regulation affecting the management of the Association or the Foundation Building Fund referred to in clause 17 precludes the person from being a member of the Foundation Board;
 - (c) the person resigns by notice to the Foundation;
 - (d) the Foundation in General Meeting removes the person; or
 - (e) the person becomes mentally incapable and the member's estate or property has had a personal representative or trustee appointed to administer it.
- 7.2.12 In the case that all members of the Foundation Board have been removed from office, the College Council shall appoint caretaker Board members until elections can be held. For any interim period after the removal of all members of the Foundation Board and until the appointment of the caretaker Foundation Board, the College Council shall stand in the place of the Foundation Board with respect to the management and control of funds and other property of the Foundation.

7.3 Powers of the Foundation

The Foundation shall have all the powers conferred by section 25 of

the Act.

7.4 Proceedings and Powers of the Foundation Board

7.4.1 The Foundation Board shall meet together for the conduct and dispatch of business, adjourn and otherwise regulate their meetings and proceedings, as they see fit.

7.4.2 The Foundation Board may meet together in person or by telephone or any other form of instantaneous communication (provided that all persons participating in the meetings are able to hear and be heard by all other participants) for the dispatch of business.

7.4.3 A board member not present in person at any meeting but participating in the meeting by using some form of instantaneous communication will be deemed, for the purposes of this constitution, to be present at that meeting unless that person informs the chairperson that that person is disconnecting their communication device.

7.4.4 The Foundation Board shall cause to be kept and recorded minutes of all resolutions and proceedings of meetings of the Foundation Board and shall cause such minutes to be signed by the chair of the meeting or of the succeeding meeting. Copies of all such minutes shall be sent forthwith to the Foundation Board and to the College Council.

7.4.5 A resolution in writing signed by all members of the Foundation Board shall be valid and effectual as if it had been passed at a meeting of the Foundation Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more members of the Foundation Board.

7.4.6 Subject to the Act and this constitution, and to any resolution passed by the Foundation in General Meeting, the Foundation Board:

(a) is to control and manage the affairs of the Foundation;

(b) may exercise all such functions as may be exercised by the Foundation, other than those functions that are required by this constitution to be exercised by a General

Meeting of Members; and

- (c) has power to perform all such acts and do all such things as appear to the Foundation Board to be necessary or desirable for the proper management of the affairs of the Foundation.

7.4.7 Without affecting the generality of the foregoing the Foundation Board may:

- (a) borrow money on behalf of the Foundation and give security by mortgage charge or lien over all or any part of the property of the Foundation subject to approval of the College Council in each instance;
- (b) subject to the By-Laws, invest moneys of the Foundation in such a manner as the Foundation Board may determine without being restricted by any rules of law governing the investment of trust funds by trustees provided that if any contingent liability attaches to the investment, the prior approval of the College Council shall be obtained;
- (c) open and close any banking account and operate the same in the ordinary course of business;
- (d) exercise any other power conferred upon the Foundation pursuant to Section 25 of the Act;
- (e) execute any guarantee or guarantee and indemnity (and to give security by mortgage, charge or lien, in support of such guarantee or guarantee and indemnity) in favour of a third party in order that the Foundation may borrow funds to preserve, develop and maintain the standards and facilities of the College; and
- (f) appoint a member from amongst the Members to any other position the Foundation Board may deem fit to create and determine their responsibilities.

- 7.4.8 The members of the Foundation Board may act notwithstanding any vacancy of the Foundation Board but if and so long as their number is reduced below the number fixed as the necessary Quorum of the Foundation Board, the continuing members may only act for the purpose of increasing the number of members of the Foundation Board to that number pursuant to clause 7.2.
- 7.4.9 The Foundation Board may delegate any of its powers, functions and duties (to the extent permitted by the law) to the Headmaster or nominee or one or more committees consisting of such Members as the Foundation Board shall determine.
- 7.4.10 The Foundation Board may appoint subcommittees from time to time and these subcommittees shall be responsible to and shall report to the Foundation Board. Any subcommittee so formed shall conform to any regulation or resolution that may be imposed on it by the Foundation Board.
- 7.4.11 The chair of the College is entitled to attend every meeting of the Foundation Board and when present shall be entitled to speak but not to vote on any matter.

8. GENERAL MEETINGS

- 8.1 The Annual General Meeting
- 8.1.1 The Annual General Meeting of the Foundation shall be held by the end of May generally or otherwise within the calendar year.
- 8.1.2 The time and place of such meeting shall be determined by the Foundation Board and not less than 21 days' notice will be given.
- 8.1.3 The business of such meeting shall be:
- (a) to receive and consider the minutes of the previous Annual General Meeting and of any other General Meetings held since that meeting;
 - (b) to receive and consider the annual report of the Foundation Board;

- (c) to receive and consider the audited balance sheet and income expenditure account for the year;
- (d) the election of the membership of the Foundation Board; and
- (e) any other matters required by the Act or decided upon by the Foundation Board.

8.2 General Meetings

- 8.2.1 The Foundation Board may convene General Meetings to be held at any place the members of the Foundation Board determine on giving notice required by the Act or with a minimum of 48 hours' notice.
- 8.2.2 A General Meeting must be convened by the Foundation Board as soon as practicable following a written requisition of at least five (5) Members, where the written request specifies the agenda and issues to be determined at the meeting unless the Foundation Board by unanimous vote determine that the request is trivial, improper or is reasonably likely to significantly harm the reputation of the College.
- 8.2.3 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.
- 8.2.4 If a Quorum is not present within (thirty) 30 minutes after the time appointed for the General Meeting, any meeting convened on a requisition of a member of the Foundation Board will be dissolved but any other meeting will be adjourned to take place within (thirty) 30 days.
- 8.2.5 The chair of General Meetings shall normally be the chair of the Foundation or if absent the deputy chair and failing both of them any Foundation Board member elected by the meeting.
- 8.2.6 Every Member in attendance at any General Meeting of the Foundation shall be entitled to one vote. The form of voting shall be in accordance with the By-Laws.

8.2.7 The chair of a General Meeting shall, in the event of an equal vote of Members have a second and casting vote.

8.2.8 Proxies

(a) The instrument appointing a proxy must be in writing signed by the Member or by the Member's attorney properly authorised in writing, or, if the Member is a body corporate, under its common seal or signed in accordance with its constitution.

(b) The person appointed as a proxy must be a Member.

(c) The instrument appointing a proxy must be deposited at the office of the Foundation or at any other place specified two (2) days before the time for holding the meeting.

(d) An instrument appointing a proxy will only be valid twelve Months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any instrument may be used at any adjournment of the meeting for which it was originally intended.

(e) Every instrument of proxy must be as nearly as circumstances permit in the form set out below or as published in the By-Laws or to the following effect:

"I of being a Member of appoint of or failing him/her of as my proxy to vote on my behalf at the General Meeting of the Foundation to be held on the day of 20 and at any adjournment."

Signed this day of 2 "

or in such other form as the Foundation Board may from time to time prescribe or accept.

(f) The instrument of proxy may be worded so that a proxy may be directed to vote whether for or against each of the

resolutions or special resolutions to be proposed. Any instrument of proxy deposited in accordance with this constitution in which the name of the appointee is not filled in will be deemed to be given in favour of the chair of the meeting to which it relates.

9. FINANCIAL REPORTING

- 9.1 The business year of the Foundation shall commence on 1 January and end on 31 December each year.
- 9.2 The Foundation Board shall:
- 9.2.1 cause proper accounts and records to be kept in respect of all sums of money received and expended by the Foundation, the matters in respect of which the receipt and expenditure takes place, and the assets and liabilities of the Foundation; and
 - 9.2.2 cause to be prepared a balance sheet and statement of income and expenditure as at 31 December of each year. The accounts shall be subject to audit and a duly audited copy of the balance sheet and statement of income and expenditure shall be furnished to the chair of the Foundation Board not less than fourteen days prior to the date set for the Annual General Meeting at which the annual accounts are to be presented.
- 9.3 In complying with clause 9.2, the Foundation Board must keep separate accounts for each Fund of the Foundation that has been endorsed with deductible gift recipient status under ITAA97. Proper records must be kept to:
- 9.3.1 identify any gifts and deductible contributions made to each Fund; and
 - 9.3.2 identify the use of the gifts and deductible contributions for the principal purpose of each Fund.
- 9.4 The accounts and records shall be kept at the office of the Foundation or at such other place or places as the Foundation Board deems fit and shall always be open to the inspection of any Member and by the College Council.
- 9.5 The auditor of the Foundation, unless directed otherwise by the

College Council, shall be the College's auditor.

10. MONEY RECEIVED BY THE FOUNDATION

All moneys received by or on behalf of or as a result of the activities of the Foundation shall after meeting normal management and collection costs of the Foundation be applied for the promotion of the objects of the Foundation by the Foundation Board subject to the agreement of the College Council.

11. NOTICE

11.1 A notice may be given by the Foundation to any Member either personally, by post, facsimile, or email to the address that the Member has notified the Foundation to be the address of the Member for notices or otherwise by any other method, including by advertisement as the Foundation Board reasonably determines.

11.2 Notice is deemed to be received when sent. If the notice is given by post, it is sufficient that the notice had affixed to it the required postage and was properly addressed and posted whether or not actually received. It is the responsibility of the Member to advise the Foundation of any change of address.

12. PROFITS NOT TO BE DISTRIBUTED TO MEMBERS

The income and property of the Foundation shall be applied towards the promotion of the objects of the Foundation and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or in any other form of distribution of profit to the Members or relatives of Members, provided that nothing in the constitution shall prevent the payment in good faith of remuneration to any officer or servant or consultant of the Foundation or to any Member in return for services actually rendered to the Foundation or reasonable and proper rental for premises let by any Member of the Foundation or to any interest payable on funds loaned on written terms by a Member of the Foundation.

13. BY-LAWS

The Foundation Board may at its discretion and with the approval of the College Council determine By-Laws for the operation of the Foundation or committees or officers of the Foundation.

14. WINDING UP

14.1 The Foundation shall be wound up:

14.1.1 if in the opinion of College Council the Foundation is not fulfilling its objectives; and

14.1.2 a Special Resolution (as that term is defined in the Act) for the winding-up of the Foundation is passed by the Members.

14.2 Should the resolutions for winding up be passed as in Clause 14.1 all appropriate steps shall be taken to carry this into effect in the manner directed by the College Council's solicitors.

14.3 Upon the winding up of the Foundation should there remain after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the Members but shall be given and transferred to the College Council for use in any manner the College Council may think fit for the benefit of the College. In considering such use or uses the College Council may in its sole discretion pay such regard as it considers appropriate to the purposes if known for which the remaining funds were raised or donated.

15. PUBLIC OFFICER

The Public Officer shall be appointed by the Foundation Board and must be a natural person of or above the age of eighteen (18) years who is resident in the State of South Australia.

16. AMENDMENT TO THIS CONSTITUTION

16.1 No repeal, amendment or addition to this constitution shall be made except by resolution of a General Meeting of the Members such resolution is to be passed by a majority of three quarters in number of the Members present and voting at the meeting. No resolution for the addition or repeal of a provision of this constitution or of the amendment to it shall be proposed unless the same has been approved by the College Council.

16.2 The Australian Taxation Office and where relevant any charity regulator must be notified of any changes to this constitution.

17. FOUNDATION BUILDING FUND (ABN 40 246 902 504)

- 17.1 The Foundation shall maintain a public fund called the "*Prince Alfred College Foundation Building Fund*" (**Foundation Building Fund**):
- 17.1.1 to which gifts of money or property for the sole purpose of providing money for the acquisition, construction or maintenance of buildings used, or to be used, as a school or college by the College are to be made;
 - 17.1.2 to which contributions described in item 7 or 8 of the table in section 30-15 of ITAA97 in relation to a fundraising event (within the meaning set out in section 40-165 of the *A New Tax System (Goods and Services Tax) Act 1999*) held for that purpose of are be made;
 - 17.1.3 to which any money received by the Foundation because of such gifts or contributions including interest accrued thereon is to be credited;
 - 17.1.4 to which amounts paid to reimburse the fund for costs associated with the non-school use of a school building are to be credited; and
 - 17.1.5 that does not receive any other money or property.
- 17.2 The Foundation Building Fund must be operated on a not-for-profit basis and moneys from the fund must not be distributed to the members of the Foundation Board to any other fund administrator or staff member except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or as proper and reasonable remuneration for administrative services.
- 17.3 The Foundation must use the following only for the purpose of the Foundation Building Fund set out in 17.1.1:
- 17.3.1 gifts made to the Foundation Building Fund; and
 - 17.3.2 any money received because of those gifts.
- 17.4 The Foundation must maintain a separate bank account for money donated to the Foundation Building Fund including interest thereon, and gifts to the Foundation Building Fund are

to be kept separate from other funds of the Foundation.

17.5 Receipts are to be issued for all gifts to the Foundation Building Fund and must state:

17.5.1 the name of the Foundation Building Fund;

17.5.2 the Australian Business Number applicable to the Foundation Building Fund; and

17.5.3 the fact that the receipt is for a gift.

17.6 Without limiting clause 9.3 proper accounting records and procedures are to be kept and used for the Foundation Building Fund.

17.7 Notwithstanding any other provision of this constitution, the Foundation Building Fund is to be solely managed by the Foundation Board. However if the Foundation Board is not comprised at any time of:

17.7.1 a majority of Responsible Persons; and

17.7.2 at least three persons,

it must appoint a committee comprised of not less than three persons a majority of whom are Responsible Persons to manage the Foundation Building Fund.

17.8 The public must be invited to contribute to the Foundation Building Fund.

17.9 Despite clause 14, if the Foundation Building Fund is wound up or its DGR endorsement is revoked, all surplus assets of the Foundation Building Fund are to be transferred to another fund, authority or institution having similar objects to the Foundation Building Fund and to which gifts can be deducted under Division 30 ITAA97.