



# Saint Ignatius' College, Adelaide Foundation Board Constitution

May 2022

## **SAINT IGNATIUS' COLLEGE FOUNDATION INC. CONSTITUTION**

### **NAME**

1. The name of the Foundation shall be "SAINT IGNATIUS' COLLEGE FOUNDATION INC."

### **DEFINITIONS**

2. (a) In this Constitution unless the context otherwise requires:
  - "Act" means the *Associations Incorporation Act*;
  - "Approved Fund" means any fund with DGR status established for a specified charitable purpose of benefiting the College approved as an Approved Fund by resolution of the Board, the Principal and Rector;
  - "bequest" means a legacy or a devise or any other benefit passing under a testamentary document;
  - "Board" means the Board of Management the governing body of the Foundation;
  - "Chair" means the person holding that office pursuant to clause 13;
  - "College" means Saint Ignatius' College, of 2 Manresa Court, Athelstone in the State of South Australia;
  - "College Board" means the board that is responsible for the local governance and management of the College;
  - "DGR" means a fund endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997* or its predecessor or successor legislation;
  - "Executive Officer" means any person appointed to perform the duties of Executive Officer of the Foundation and includes an Honorary Executive Officer;
  - "Foundation" means Saint Ignatius' College Foundation Inc;
  - "gift" means a gift of cash or a gift of an asset made or transferred during the donor's lifetime;
  - "member" means any member of any classification of membership of the Foundation;
  - "Principal" means the Principal of the College;
  - "Provincial" means the Provincial of the Australian Province of the Society of Jesus;
  - "Rector" means the Rector of the College;
  - "Regulations" means regulations made under the Act;
  - "Seal" means the common seal of the Foundation;
  - "State" means the State of South Australia.
- (b) 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.
- (c) Where herein used and where the context shall so admit words importing the singular number or plural number shall include the plural number or the singular number respectively and words importing any gender shall include all other genders.
- (d) Words importing persons shall unless the contrary intention appears be construed as including companies, corporations, institutions, organisations, and public bodies.

- (e) Reference to a statute shall include any statutory enactment amending the same or substituted therefore and for the time being in force, and all regulations made thereunder, and a reference to any portion of a statute or regulations thereunder shall mean and include any statutory enactment or regulation amending such portion or substituted therefore and for the time being in force.

### **OFFICE**

- 3. The office of the Foundation will be situated at Saint Ignatius' College, 2 Manresa Court, Athelstone in the State of South Australia, or at such other place as the Board may determine.

### **OBJECTS**

- 4. The object of the Foundation is to pursue charitable purposes only and to apply the income and property of the Foundation solely to promote those purposes.  
The objects of the Foundation are:
  - (a) to assist the Principal and Rector to preserve, develop and maintain the standards and facilities of the College;
  - (b) to create opportunities for the College to attract and retain the continuing interest and financial support of past students, parents of students and friends of the College;
  - (c) to solicit donations and gifts to, or for the benefit of, the College or any of its funds or accounts from its past students, parents of students and friends and from any other source deemed appropriate to the promotion of the objects of the Foundation;
  - (d) to raise finance for the acquisition of land or construction of buildings or other facilities and for structural alterations or improvements and maintenance to existing buildings or facilities;
  - (e) to raise finance for educational research projects, scholarships and bursaries and for the acquisition of library books, works of art, educational material plant and equipment of all kinds and for any other purposes of the College;
  - (f) to attract and encourage bequests, legacies and all forms of deferred gifts;
  - (g) to admit to membership of the Foundation individuals, bodies being companies, institutions and other organisations whether incorporate or unincorporated and groups of people;
  - (h) to recommend to the Principal and Rector the production of publications and the issue thereof to members of the Foundation and others;
  - (i) to act as Trustee of trusts and trust funds established for the benefit of the College;
  - (j) to establish, support and maintain or aid in the establishment of a fund for providing maintenance for the relief of persons in necessitous circumstances or for the direct provision of relief to such persons; and
  - (k) to do all such things as are incidental or conducive to the attainment of the above objects or any of them.

### **MEMBERSHIP**

- 5.
  - (a) Any person wishing to become a member of the Foundation shall make application for membership to the Board. Applications from other than individual natural persons shall include the nomination (which may be altered from time to time by giving written notice to the Foundation) of an individual natural person to represent such applicant and that person alone shall be able to represent, act and exercise the membership rights of such member.
  - (b) The Board may decline to accept any application for membership or any gift without assigning any reason therefore.
  - (c) When an applicant has been accepted for membership the Executive Officer shall forthwith send to the applicant written notice of acceptance.
  - (d) Membership of the Foundation, in the case of individual persons, shall be for life (save as hereinafter provided) and shall be extended to all such individuals who qualify for membership in accordance with the provision of this Constitution.
  - (e) Membership of the Foundation, in the case of bodies being companies, institutions and other organisations, or groups of people, shall be extended, upon qualification for

membership in accordance with this Constitution and shall be subject to such terms and conditions and for such period of time as the Board shall determine and impose from time to time.

6. (a) A person is eligible to be admitted to membership of the Foundation or to represent a member of the Foundation if:
    - (i) in the case of a natural person, that person:
      - (A) would be regarded as a “fit and proper person” under section 13 of the *Education and Care Services National Law* (as amended from time to time);
      - (B) is not a “prohibited person” under the *Child Safety (Prohibited Persons) Act 2016* (SA);
      - (C) is not an undischarged bankrupt; and
      - (D) possesses a current Working with Children Check (or such other like assessment as may be required for determining whether a person poses an unacceptable risk to children); or
    - (ii) in the case of a company, it is not insolvent and no receiver or trustee has been appointed over any part of the assets of the company and no such appointment has been threatened.
  - (b) The rights and privileges of every member are personal to each member and are not transferable by the member’s own act or, to the extent permitted by law, by operation of law.
  - (c) There shall be no entrance fee, annual fee or subscription payable by any member to the Foundation.
  - (d) An applicant will become a member of the Foundation upon entry into the register of members.
7. A register of members must be kept at 2 Manresa Court, Athelstone SA 5076 containing the name and address of each member.

#### **CESSATION OF MEMBERSHIP**

8. Any member may resign from membership of the Foundation by giving notice in writing delivered to the registered office of the Foundation and such member shall thereupon cease to be a member.
9. Unless the Board shall otherwise determine a member of the Foundation shall cease to be a member if:
  - (a) the member becomes, in the absolute discretion of the Board, an untraceable member because the person has ceased to reside at, attend at or otherwise communicate with the member’s registered address for a period exceeding six months;
  - (b) a special majority of three quarters of the Board present and voting at a meeting of the Board by resolution terminate the membership of the member, provided that the views of the Principal and Rector shall be sought prior to the vote being taken:
    - (i) whose conduct in their opinion:
      - (A) renders it undesirable that the member continued to a member of the Foundation; or
      - (B) is or has been derogatory or prejudicial to the interests of the Foundation; and
    - (ii) who has been given at least 21 days’ notice of the Resolution and has had the opportunity to be heard at the meeting at which the Resolution proposed; or
  - (c) the member dies; or
  - (d) the member becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (e) the member ceases to meet the requirement for eligibility for membership set out in clause 6(a).
10. All gifts made to the College or the Foundation or an Approved Fund by a member prior to the cessation of their membership shall remain the absolute property of the relevant recipient.

#### **BOARD OF MANAGEMENT**

11. (a) (i) The Board shall comprise:
  - (A) the Rector and the Principal; and
  - (B) not more than nine persons who are members of the Foundation and who are elected by other members of the Foundation as hereinafter provided.

- (ii) Persons elected pursuant to clause 11(a)(i)(B) shall be elected at the Annual General Meeting of the Foundation in each year and (unless such office shall be previously vacated by reason of the death of any such person 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 without re-nomination.
  - (b) The election of members of the Board referred to in clause 11(a)(i)(B) shall take place in the following manner:
    - (i) any two members of the Foundation shall be at liberty to nominate any other member of the Foundation to serve as a member of the Board;
    - (ii) the nomination which shall be in writing and signed by the member and the member's proposer and seconder shall be lodged with the Executive Officer before the Annual General Meeting of the Foundation at which the election is to take place;
    - (iii) a list of candidates' names (also showing the nominators' names) shall be available at the registered address of the Foundation before the Annual General Meeting; and
    - (iv) if the number of candidates standing for election exceeds the number of vacancies balloting lists shall be prepared containing the names of the candidates and each member present at the Annual General Meeting shall be entitled to vote for the number of such candidates equal to the number of vacancies.
  - (c) The Board may at any time, and from time to time, appoint any member of the Foundation to fill a casual vacancy or as an addition to the Board. Any person so appointed as an addition to the Board shall be deemed to be a member of the Board for the purposes of clause 11(a)(i)(B). Any person so appointed to fill a casual vacancy or as an addition to the Board shall hold office until the next ensuing Annual General Meeting when the member shall retire from office but shall be eligible for re-election without nomination.
- 12.** Notwithstanding anything to the contrary contained in this Constitution, a member of the Board shall cease to be a member thereof if they:
- (a) cease to be a member of the Foundation by virtue of any of the circumstances set out in clause 9;
  - (b) resign office by notice in writing to the Foundation;
  - (c) for more than three months are absent without permission of the Board from meetings of the Board held during that period;
  - (d) are the subject of a resolution by the members of the Foundation that they no longer be a member of the board, provided that the views of the Principal and Rector shall be sought prior to the resolution being made;
  - (e) are the subject of a resolution by a three-quarters majority of the Board that they no longer be a member of the Board, provided that the views of the Principal and Rector shall be sought prior to the resolution being made;
  - (f) are directly or indirectly interested in any contract or proposed contract with the Foundation provided however that a member shall not vacate their office if they shall, as soon as they became aware of their interest, have disclosed the nature and extent of their interest in the contract at the next Annual General Meeting of the Foundation, and does not take part in any decision of the Board with respect to that contract provided always they may, subject to complying with the remaining provisions of this paragraph, take part in any deliberations with respect to that contract, provided always that nothing in this Rule shall affect the operation of clause 47 of this Constitution.

### **OFFICERS**

- 13. (a)** The Board shall from amongst its members elect a Chair and a Deputy Chair each of whom shall hold office until such time as their successor has been appointed. In the event of a vacancy occurring in either such office the Board shall fill the vacancy as soon as practicable.
- (b)** If the Chair or Deputy Chair shall cease to be a member of the Board, they shall thereupon cease to be the Chair or the Deputy Chair (as the case maybe).
- (c)** The Board shall from amongst its members appoint a public officer and any public officer so appointed may be removed by the Board.

## **PROCEEDINGS AND POWERS OF THE BOARD OF MANAGEMENT**

14. The Board shall meet together for the despatch of business, adjourn and otherwise regulate its meetings and proceedings, as it sees fit. Until the Board shall otherwise determine, a quorum shall be three members of the Board. Questions arising at any meeting shall be determined by a majority of votes. The Chair of the meeting shall have a second or casting vote. The Chair, the Deputy Chair or any two other members of the Board may at any time summon a meeting of the Board.
15. Control, management and conduct of the Foundation shall be vested in the Board who may exercise all powers necessary to achieve the objects set out in this constitution or by section 25 of the Act.
16. (a) If each member of the Board who is eligible to vote on a resolution has signed a document stating that such member is in favour of or opposed to or abstains with respect to a resolution in terms set out in the document and a majority of the members of the Board state that they are in favour of that resolution, then a resolution in those terms is taken to have been duly passed at a meeting of the Board held on the day on which the document was last signed by a member of the Board.
- (b) For the purposes of clause 16(a), two or more identical documents, each of which is signed by one or more Board members, together constitute one document signed by those Board member on the days on which they signed the separate documents.
- (c) Any document referred to in this clause may be in the form of a facsimile or email transmission.
17. The continuing members of the Board may act notwithstanding any vacancy in the Board but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board the continuing member or members 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.
18. (a) (i) The Board may delegate any of its powers to a committee or committees.  
(ii) A committee must include at least one Board member who shall be the Chair of that committee.  
(iii) A member of a committee need not otherwise be a member of the Foundation.
- (b) A committee must exercise its powers in accordance with any directions of the Board.
- (c) A committee shall meet as determined by its Chair.
- (d) Meetings of a committee will be governed by the provisions of this Constitution which deal with Board meetings as far as they are applicable and consistent with any directions of the Board.

## **FINANCIAL YEAR**

19. The first financial year of the Foundation shall be the period ending on 31 December, 1989, and thereafter shall be a period of 12 months ending on the 31st day of December in each year.

## **GENERAL MEETING**

20. (a) Annual General Meetings shall be held within five months of the end of each calendar year and at such time and place as the Board may determine.
- (b) All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
- (c) The Board shall, on the requisition in writing of members who are together entitled to not less than five per cent of the total voting rights of all members having at the date of the deposit of the requisition a right to vote at General Meetings forthwith convene a General Meeting of the Foundation to be held as soon as practicable but, in any case, not later than two months after the date of the deposit of the requisition.

- (d) A requisition shall state the object of the meeting and shall be signed by the requisitioning members and deposited at the registered address of the Foundation and may consist of several documents in like form each signed by one or more of the requisitioning members.
  - (e) If the Board does not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitioning members or any of them representing more than fifty per cent of the total voting rights of all of them may, in the same manner as possible as that in which meetings are to be convened by the Board convene a meeting.
  - (f) A meeting convened by requisitioning members in accordance with paragraph (e) of this clause shall be held not more than three months after the date of the deposit of the requisition.
- 21.
- (a) Subject to paragraphs (b) and (c) of this clause, a meeting of the Foundation shall be convened by giving 21 clear days' written notice specifying the place the day and the hour of the meeting and in the case of special business the general nature of that business.
  - (b) Subject to paragraph (c) of this clause, a meeting of the Foundation, at which a special resolution is to be proposed, shall be convened by giving at least 21 clear days' written notice specifying the place, the day and the hour of the meeting and the nature of the business to be transacted at the meeting.
  - (c) A meeting of the Foundation, at which a special resolution of members is proposed regarding the application or disbursement of contributions to the Approved Fund as per clause 40, shall be convened by giving at least 120 clear days' written notice specifying the place, the day and the hour of the meeting and the specific nature of the business to be transacted at the meeting.
  - (d) A meeting, other than a meeting at which a special resolution is to be proposed shall, notwithstanding that it is convened by notice shorter than is required by paragraph (a) of this clause be deemed to duly convened if it is so agreed:
    - (i) in the case of a meeting convened as the Annual General Meeting - by all the members entitled to attend and vote at the meeting; or
    - (ii) in the case of any other meeting - by a majority in number of the members having a right to attend and vote at the meeting, being a majority that are together entitled to not less than 95% of the total voting rights of all the members having the right to attend and vote at the meeting.
  - (e) Notice of every meeting shall be served on every member having a right to attend and vote at the meeting in the manner in which notices are required to be served by clause 45.
22. For the purpose of clause 21 all business shall be special that is transacted at an Extraordinary General Meeting and also all that is transacted at an Annual General Meeting with the exception of the consideration of the Balance Sheet and Profit and Loss Account of the Foundation and the reports of the Board and the Auditors the election of the members of the Board in the place of those retiring and the appointment of the Auditors.

#### **PROCEEDINGS AT GENERAL MEETINGS**

23. The business of Annual General Meetings shall be to receive and consider the Balance Sheet and Profit and Loss Account of the Foundation and the report of the Board and the report of the Auditors, elect the members of the Board, and appoint and fix the remuneration of the Auditors.
24. 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 seven members present in person shall be a quorum. For the purpose of this clause - "member" includes a person attending as a proxy or representative of a member.
25. 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 five shall be a quorum.

26. The Chair of the Board shall preside as Chair at every General Meeting of the Foundation or, if there is no Chair of the Board or the Chair is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Deputy Chair of the Board shall be the Chair, or the Deputy Chair is not so present or is unwilling to act, then the members present shall elect one of their number to be Chair of the meeting.

27. The Chair 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 days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as previously mentioned it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

28. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hand unless a poll is (before or on the declaration of the result of the show of hands) demanded:

(a) by the Chair; or

(b) by at least three members present in person or by proxy or by representative.

Unless a poll is so demanded, a declaration by the Chair that a resolution has on a show of hands been carried unanimously or by a particular majority or lost, 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.

29. If a poll is demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair 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 Chair or on a question of adjournment shall be taken forthwith.

30. In the case of equality of votes whether on a show of hands or on a poll the Chair of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

31. Every member present in person or by proxy duly appointed in writing shall have one vote.

32. The instrument appointing a proxy shall be in writing under the hand of the appointor or their attorney duly authorised in writing. A proxy need not be a member of the Foundation. An appointment of a proxy may be revoked by the appointor at any time.

33. The instrument appointing a proxy or representative may be in the following form or any other form which the Board may approve:

**SAINT IGNATIUS' COLLEGE FOUNDATION INC.**

\*I/We

of .....  
being a member of Saint Ignatius' College Foundation Inc. hereby appoint

.....

of .....

as \*my/our proxy to vote for \*me/us at the General Meeting of the Foundation to be held on .....

and at any adjournment thereof and at any subsequent meeting until due notice of revocation of such appointment is given.

SIGNED this ..... day of .....

In the presence of:

\* Delete as appropriate.

**MINUTES**

34. The Board shall cause to be kept and recorded minutes of all resolutions and proceedings of General Meetings of the Foundation and all meetings of the Board and shall cause such minutes to be signed by the Chair of the meeting or of the next meeting. Copies of all such minutes shall be sent forthwith to the members of the Board.

### **ACCOUNTS**

35. The Board shall cause:
- (a) proper accounts to be kept with respect to all Approved Funds administered by the Foundation and all sums of money received and expended by the Foundation and the matter in respect of which the receipt and expenditure takes place and the assets and liabilities of the Foundation and all Approved Funds administered by it; and
  - (b) to be prepared a Balance Sheet and a Statement of Income and Expenditure drawn up at 31 December each year in respect of the Foundation and all Approved Funds administered by it.
36. 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 all members of the Board not less than seven days prior to the date of the Annual General Meeting at which the annual accounts are to be presented.
37. The accounts shall be kept at the office of the Foundation or at such other place or places as the Board thinks fit from time to time and shall be open for inspection during normal business hours by any member of the Board and by the duly appointed agent or agents of the Principal.

### **MONEY RECEIVED BY THE FOUNDATION**

38. All moneys received by, or on behalf of, or as a result of the activities of the Foundation shall, after consultation with the Principal and the Rector and after meeting normal management operation and collection costs, be applied for the promotion of the objects of the Foundation subject to the paragraph below.
39. All contributions to an Approved Fund shall be separately invested and shall be applied to a specified object of the Foundation in accordance with any resolution of the Board and this Constitution subject to the paragraph below.
40. The capital contributions to the Approved Fund shall not be applied or in any way disbursed without the prior written approval from the Principal, the Rector, the College Board and the Provincial and without approval given by way of special resolution of the Board, and by way of special resolution of the members as stipulated in clause 20(c).

### **AUDIT**

41. A qualified Auditor or Auditors shall be appointed and shall report to the Board on the particulars of the income and expenditure of the Foundation and the assets and liabilities of the Foundation contained in the statement required to be laid before the Foundation at the Annual General Meeting each year and on the Foundation's accounting records and other records relating to those particulars.

### **EXECUTIVE OFFICER**

42. The Executive Officer shall be appointed by the Board and for such term at such remuneration and upon such conditions as it thinks fit and any Executive Officer so appointed may be removed by the Board. Nothing herein shall prevent the Board from appointing a member of the Foundation as Honorary Executive Officer in satisfaction of its obligation to appoint an Executive Officer.

### **SEAL**

43. The Board shall provide for the safe custody of the Seal, which shall be used only by the authority of the Board and every instrument to which the Seal is affixed shall be signed by two members of the Board or by any one such member and the Executive Officer.



The following form shall be the form of attestation to be used by the Foundation on affixing the seal:

THE COMMON SEAL OF SAINT )  
IGNATIUS' COLLEGE FOUNDATION )  
INC. was hereunto duly affixed by )  
authority of the Board of Management )  
in the presence of: )

..... )  
..... )

**NOTICE**

44. A notice may be given by the Foundation to any member personally, by email or by sending it by post to a registered address or (if no registered address within the Commonwealth of Australia) to the address, if any, within the Commonwealth of Australia supplied to the Foundation for the giving of notices. 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 meeting on the day after the day of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post. A certificate in writing signed by the Executive Officer or by any member of the Board that the letter containing the notice was so addressed, prepaid and posted shall be conclusive evidence thereof.

45. Notices of every General Meeting shall be given to the Auditor or Auditors for the time being of the Foundation and in any manner hereinbefore authorised to every member of the Foundation and those members who (having nor registered address within the Commonwealth of Australia) have not supplied to the Foundation an address within the Commonwealth of Australia for the giving of notices to them. No other person shall be entitled to receive notices of General Meetings.

**MEMBERS NOT TO OBTAIN BENEFIT**

46. The income and property of the Foundation shall be applied solely towards the promotion of the objects of the Foundation as set forth in this Constitution, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the Foundation PROVIDED THAT nothing herein contained shall prevent the payment in good faith of:

- (a) reasonable and proper remuneration to any officers or servants of the Foundation or to any member of the Foundation in return for any services actually rendered to the Foundation or for goods supplied in the ordinary and usual way of business;
- (b) interest at a rate not exceeding the rate for the time being fixed for the purposes of this clause by the Board on money borrowed from any member of the Foundation; or
- (c) reasonable and proper rent for premises demised or let by any member to the Foundation;

BUT SO THAT no member of the Board 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 paid or given by the Foundation to any member of the Board except for repayment of out-of-pocket expenses and interest at the rate aforesaid in paragraph (b) of this clause on money lent to the Foundation and reasonable and proper rent for premises demised or let to the Foundation.

**LIABILITY OF MEMBERS**

- 47. (a) The liability of the members of the Foundation is limited.
- (b) Each member of the Foundation undertakes to contribute to the assets of the Foundation in the event of the same being wound up while a member, or within one year after ceasing to be a member, for payment of the debts and liabilities of the Foundation contracted before ceasing 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 five dollars (\$5).

#### **ALTERATIONS ADDITIONS AND AMENDMENTS**

48. No addition, alteration or amendment shall be made to or in this Constitution for the time being in force unless the same shall have been passed by not less than three quarters of the members present at a General Meeting of the Foundation called and held in accordance with this Constitution and unless the same shall have been previously submitted to and approved in writing by the Rector.

#### **WINDING UP**

49. (a) The Foundation shall be wound up if a special resolution to that effect shall have been passed by not less than three quarters of the members present at a General Meeting of the Foundation called and held in accordance with this Constitution.
- (b) If upon the winding up or dissolution of the Foundation there remains, after satisfaction of all debts and liabilities, any property whatsoever, the same shall not be paid to or distributed amongst members of the Foundation but shall be given or transferred to the Rector to be used for the benefit of the College or if the College shall have ceased to exist then shall be given or transferred to the Provincial for the benefit of the Society of Jesus.

#### **INDEMNITY**

50. (a) In this clause the expression "to the relevant extent" means:
- (i) to the extent the Foundation is not precluded by law from doing so; and
  - (ii) to the extent and for the amount that the Board member is not otherwise entitled to be indemnified and is not otherwise actually indemnified, including an indemnity under any insurance policy or contract.
- (b) Each present and former Board member shall be indemnified out of the assets of the Foundation and the Approved Funds to the relevant extent against any liability incurred by that Board member as such in the discharge of the duties of the Board member to each of the Foundation and the Approved Funds unless:
- (i) the liability arises out of conduct involving a lack of good faith; or
  - (ii) the liability is to the Foundation.
- (c) Each present and former Board member shall be indemnified out of the assets of the Foundation and the Approved Funds to the relevant extent against any liability for costs and expenses incurred by that Board member as such in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the Board member or in which the Board member is acquitted, or in connection with any application in relation to those proceedings in which the court grants relief to that Board member.
- (d) Nothing in this clause shall prevent the Foundation and the Approved Funds from indemnifying a present or former Executive Officer, public officer or employee of the Foundation against any liability incurred by that person in the discharge of the duties of that person to each of the Foundation and Approved Funds to the extent that any of the Foundation and the Approved Funds is not precluded by law from doing so and otherwise upon such terms and conditions as the Board deems fit.
- (e) To the extent that the Foundation is not precluded by law from doing so, the Foundation may effect and maintain and pay premiums in respect of an insurance policy or contract which, inter alia, insures a present or former Board member, Executive Officer, public officer or employee of the Foundation against liability incurred by that person in the discharge of the duties of that person to each of the foundation and the Approved Funds.
- (f) This clause is to apply notwithstanding anything to the contrary contained elsewhere in this Constitution.

#### **BY-LAWS**

51. (a) The Board may with the prior approval in writing of the Rector determine By-Laws for the operation of the Foundation and its Committees not otherwise provided for in this Constitution.
- (b) The Foundation is inaugurated as and from the 1st day of December 1988.

52.

**DISPUTE RESOLUTION**

- (a) The dispute resolution procedure set out in this clause applies to disputes between:
  - (i) a member and another member; or
  - (ii) a member and the Foundation.
- (b) The parties to the dispute must meet and discuss the matter in dispute and use best endeavours to resolve the dispute within 14 days after the dispute comes to the attention of all of the parties. If the parties are unable to resolve the dispute at the meeting, the dispute must be referred to the Rector to attempt to facilitate a resolution of the dispute within 14 days after the dispute is referred to the Rector.
- (c) If the parties are unable to resolve the dispute at the meetings referred to in clause 52(b) above, the dispute must be referred to a mediator agreed on by the disputants. If the disputants are unable to agree on a mediator, either disputant may request that the Board contact the then President of the Law Society of South Australia to appoint an independent mediator.
- (d) The role of the mediator is to assist in negotiating a resolution of the dispute. Each disputant will bear its own costs of complying with this clause and the must equally bear the costs of any mediator engaged.
- (e) No disputant may commence any court proceedings in relation to the dispute unless it has firstly complied with the procedure set out in this clause 52.