

# Presbyterian Ladies' College

# Constitution



*Presbyterian Ladies' College*

MELBOURNE

# Constitution

Presbyterian Ladies' College

ACN: 005 650 386

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## Preamble

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Presbyterian Ladies' College was founded by the Presbyterian Church of Victoria in 1875 as a school for girls, and in 1994 the College established an Early Learning Centre.

### 1. Name

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The name of the Company is Presbyterian Ladies' College (the **College**).

### 2. Principal Purpose and Powers

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- (a) The College is a not-for-profit public company limited by guarantee which is established in connection with the Presbyterian Church of Victoria as a Charity with educational purposes.
- (b) The Principal Purpose for which the College is established is to provide for the students of the College an education of a humane, scientific and general nature, consistent with the teachings of Christianity, including religious instruction and education in the Holy Scriptures of the Old and New Testaments interpreted not inconsistently with the Westminster Confession of Faith, the 39 Articles of Religion of the Church of England and the Basis of Union of The Uniting Church in Australia in 1971.
- (c) The College pursues its Principal Purpose by operating a School and Early Learning Centre that:
  - (i) encourages each student to achieve the highest standard of which she is capable in all her activities and the full development of the personality and sense of responsibility of each student and respect for others and capacity to work with them so as to promote the development of Christian ideals of citizenship, personal character and a spirit of reverence in the entire life and work of the College;
  - (ii) provides regular opportunities for religious observance and worship for the students consistent in form with the usages of the Presbyterian Church of Victoria from time to time; and
  - (iii) provides such board, lodgings and attendance as the Council deems fit.
- (d) Solely to carry out the Principal Purpose, the College may exercise all of the powers of an individual and a company under the Act.

### 3. Not-For-Profit

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- (a) Income and property received by the School (or by the College on behalf of the School) must be applied as follows:
  - (i) Government Funding must be applied solely towards the conduct of the School;
  - (ii) all other income and property must be applied solely towards the Principal Purpose.
- (b) The College and the School must not enter into a Prohibited Agreement or Arrangement with each other or with any other person or entity.
- (c) No part of the income or property of the College may be paid or transferred directly or indirectly to Members or Council Members by way of dividend, bonus or other profit distribution in their capacity as Members or Council Members.
- (d) Members or Council Members must not be employees of the College.
- (e) Clause 3(a) does not stop the College from making a payment (provided it is not a Prohibited Agreement or Arrangement):
  - (i) to a Member for goods or services provided or expenses properly incurred at fair and reasonable rates or rates more favourable to the College;
  - (ii) to a Member in carrying out the College's Principal Purpose;
  - (iii) of premiums for insurance indemnifying Council Members to the extent allowed for by law and this Constitution; or
  - (iv) with the prior approval of the Council, to a Council Member for:
    - (A) services (other than as a Council Member) or goods provided; or
    - (B) expenses properly incurred in performing a duty as Council Member;at fair and reasonable rates or rates more favourable to the College.

## 4. Marriage and Sacraments

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- (a) The ceremony of marriage must not be conducted on the premises of the College.
- (b) Any Sacrament or any act of public worship (that is, an act of worship at which there are present a significant number of persons who are not students, staff of the College or, in the case of acts of worship other than Sabbath services, parents of such students) conducted on the premises of the College or at the behest of the College, must be conducted in accordance with the ordinances of the Presbyterian Church of Victoria or such other manner as is authorised by the Moderator of the General Assembly of the Presbyterian Church of Victoria or his delegate or such other appropriate authority of the Presbyterian Church of Victoria as is authorised for that purpose.

## 5. Badge and Motto

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The Badge and Motto used by the school immediately before the date of incorporation of the College and the colours of that school (namely, blue, black and gold) must be used by the College and must not be altered without the consent of the Presbyterian Church of Victoria.

## 6. Membership

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### 6.1 General

- (a) The Members are the Council Members.
- (b) The rights of any Member are not transferable.
- (c) Members agree to comply with this Constitution and support the Principal Purpose of the College.
- (d) A person is admitted as a Member of the College when the person is appointed as a Council Member pursuant to clause 7.3.
- (e) A person immediately ceases to be a Member if that person ceases to be a Council Member.

### 6.2 Register

- (a) The Company Secretary must maintain the Register.
- (b) The Register must contain:
  - (i) the name, address and date of admission to Membership – for each current Member; and
  - (ii) the name, date of admission to Membership and date on which a person stopped being a Member – for each person who ceased to be Member in the past seven years.

### 6.3 Liability of Members

The liability of a Member is limited to the Guaranteed Amount, being \$50.

## 7. Council

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### 7.1 Number and composition of Council

- (a) The College will be governed by a Council comprising seventeen Council Members, as follows:
  - (i) five group A Council Members appointed pursuant to clause 7.3(a);
  - (ii) five Group B Council Members appointed pursuant to clause 7.3(b); and
  - (iii) seven Group C Council Members appointed pursuant to clause 7.3(c).
- (b) The Principal, Company Secretary and Business Manager must attend Council meetings but must not vote.

### 7.2 Eligibility

- (a) Any natural person is eligible to be appointed or elected as a Council Member provided the person:
  - (i) meets all legal and regulatory requirements for a Council Member of a Victorian school;
  - (ii) has consented in writing to be a Council Member and Member;
  - (iii) has suitable qualifications, skills and experience to discharge the functions of a Council

Member; and

- (iv) is not ineligible to be a Council Member under:
  - (A) the Act; or
  - (B) the ACNC Legislation.
- (b) Rule 7.2(a)(iv)(B) will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.

### **7.3 Appointment of Council Members**

Council Members must be appointed as follows:

#### **(a) Group A Council Members**

The General Assembly must appoint five persons annually to be Group A Council Members for the twelve month period beginning 1st November in that year and give notice of that appointment to the Company Secretary.

#### **(b) Group B Council Members**

- (i) The Selection Committee must select five persons annually for nomination as Group B Council Members for the twelve month period beginning 1st November in that year. As soon as practicable after selection and during the month of September in that year, the Selection Committee must nominate those persons for appointment by giving notice of the names of those nominees to the Clerk of the General Assembly.
- (ii) The General Assembly is not entitled to reject any of such nominations.
- (iii) Within sixty days of the Selection Committee giving notice in accordance with clause 7.3(b)(i), but not later than 31st October, the General Assembly must appoint the persons nominated by the Selection Committee to be Group B Council Members for the said twelve month period and give notice of their appointment to the Company Secretary.
- (iv) If any nominee is not appointed to the Council by the General Assembly within sixty days of the Selection Committee giving notice in accordance with clause 7.3(b)(i), they will nevertheless be deemed to have been duly appointed as a Group B Council Member.

#### **(c) Group C Council Members**

- (i) The members of the Council must select seven persons for nomination as Group C Council Members for the twelve month period beginning 1st November in that year. As soon as practicable after selection but not later than 1st September in that year the members of the Council must give notice of the names of the nominees to the Clerk of the General Assembly.
- (ii) Within thirty days of the Council giving notice in accordance with clause 7.3(c)(i) the General Assembly may either approve the persons nominated or reject the nomination of any one or more of them by giving notice to the Company Secretary stating which of the nominations are approved and which are rejected.
- (iii) If the General Assembly rejects a nomination made by the Council then, within thirty days of the General Assembly giving notice of rejection, the Council must give notice to the Clerk of the General Assembly of a further nominee. Within thirty days after Council giving notice to the General Assembly of a further nominee, the General Assembly must give notice to the Company Secretary stating whether that further person has been approved as a Group C Council Member or their nomination rejected.
- (iv) If any nominee dies or otherwise ceases to be a candidate for approval by the General Assembly after the date of their nomination and before the date of any rejection by the General Assembly or, after the date of approval by the General Assembly but before the date of his appointment to the Council, the Council must nominate another person in place of the nominee.
- (v) If a nominee is not rejected by the General Assembly within thirty days of their nomination being received by the Clerk of the General Assembly, that person must be deemed to have been approved by the General Assembly.
- (vi) The General Assembly may reject Group C Council Member nominations made pursuant to this clause to the places of Group C Council Members falling vacant in any

year on more than one occasion but must not reject nominations falling vacant in any year on more than two occasions unless:

- (A) the nominee or nominees rejected is or are not reasonably suitable to act; and
  - (B) the particular grounds of rejection are stated in writing by the General Assembly and notified to the Company Secretary (who must inform the Council of those grounds).
- (vii) Nominees approved by the General Assembly must be appointed as soon as practicable. Any approved Group C Council Members not yet appointed within thirty days after approval of all Group C Council Members will be deemed to have been appointed.
- (d) Failure to comply with the provisions as to time specified in clause 7.3(b)(i) or 7.3(c)(i) will not invalidate compliance with the provisions of such clauses made out of time.

#### **7.4 Group B Selection Committee**

- (a) The Selection Committee for Group B Council Members must comprise:
- (i) one Council Member nominated by the Council, who will chair the Selection Committee;
  - (ii) three individuals (who must not be Council Members) nominated by the Old Collegians' Association; and
  - (iii) three individuals (who must not be Council Members) nominated by the Parents Association.
- (b) Selection Committee members will remain in office until they are removed by their nominator (which may occur at any time) or replacement appointments are made (whichever occurs sooner).
- (c) The Selection Committee may regulate its own proceedings, provided that:
- (i) the Selection Committee chair may call meetings at any time and must call meetings at the request of any two Selection Committee members; and
  - (ii) the Selection Committee must decide matters by simple majority vote. The Selection Committee chair has no deliberative vote but has a casting vote.

#### **7.5 Term of office**

- (a) The term of office of a Council Member:
- (i) commences on the later of:
    - (A) 1 November in the calendar year of their appointment; or
    - (B) the date of their appointment; and
  - (ii) expires on the later of:
    - (A) the following 31 October; or
    - (B) when all the members of the Council Member's Group have been appointed for the succeeding term of office.
- (b) The term of office of a Council Member appointed to fill a casual vacancy:
- (i) commences on the date of their appointment; and
  - (ii) expires on the later of:
    - (A) the following 31 October; or
    - (B) when all the members of the Council Member's Group have been appointed for the succeeding term of office.
- (c) A Council Member may be appointed for more than one term of office.

#### **7.6 Ceasing to be a Council Member**

A person stops being a Council Member, and a casual vacancy is created, if they:

- (a) resign by written notice to the College (in which case the resignation will be effective immediately after the notice is given or on the date, if any, specified in the notice, whichever is later);



- (b) are removed under the Act;
- (c) are a Group A Council Member and the Council receives written notice of a General Assembly resolution to remove them;
- (d) are a Group B Council Member and the Council receives written notice of a Selection Committee resolution to remove them;
- (e) are a Group C Council Member and the Council receives written notice of both a General Assembly resolution and a Selection Committee resolution to remove them;
- (f) are convicted of an offence punishable by imprisonment;
- (g) are absent without leave of the Council, from three consecutive Council meetings;
- (h) die, or become subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
- (i) are directly or indirectly interested in any contract or proposed contract with the College and knowingly fail to declare the nature of the interest as required by the Act;
- (j) become ineligible to be a Council Member under the Act or the ACNC Legislation; or
- (k) no longer meet all legal and regulatory requirements for a Council Member of a Victorian school.

#### **7.7 Effect of casual vacancy**

- (a) Council may continue to act notwithstanding any casual vacancy.
- (b) A casual vacancy must be filled as soon as practicable with a new Council Member from the same Group as follows:
  - (i) if the casual vacancy is that of a Group A Council Member - by the General Assembly appointing a person to fill the vacancy and the Clerk of the General Assembly notifying the Council of the name of the appointed Group A Council Member;
  - (ii) if the casual vacancy is that of a Group B Council Member - by the Selection Committee appointing a person to fill the vacancy and the Selection Committee notifying the Council of the name of the Group B Council Member; and
  - (iii) if the casual vacancy is that of a Group C Council Member - by the General Assembly appointing a person nominated by the Council and approved by the General Assembly and by the Clerk of the General Assembly notifying the Council accordingly of the appointment.
  - (iv) Nominations, approval and appointments made in accordance with clause 7.7(b)(iii) must be governed (with any necessary changes) by the provision of clause 7.3(c).

#### **7.8 Defects in appointment of Council Members**

An act done by, or with the participation of, a person acting as a Council Member or committee member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting or taking the relevant step.

### **8. Decision Making and Meetings**

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#### **8.1 Council meetings**

The Council must meet together at least three times a year. The Council may adjourn and otherwise regulate its meetings as it thinks fit in accordance with this clause 8.

#### **8.2 General Meetings**

The Council may convene a General Meeting of Members at a time and place it thinks fit and in accordance with this clause 8, with the following modifications:

- (a) An Annual General Meeting must be held at least once every calendar year (being not more than fifteen months after the previous Annual General Meeting).
- (b) The Members can pass a resolution without meeting in accordance with clause 8.12, unless the Act requires a meeting for that resolution.

### **8.3 Annual General Meeting**

- (a) The Council must hold an Annual General Meeting at least once in every calendar year.
- (b) The business of an Annual General Meeting must include the following (even if not stated in the notice of meeting):
  - (i) the annual financial statements, including a balance sheet and profit and loss account for the twelve month period no more than six months before the date of the meeting;
  - (ii) any auditor's report;
  - (iii) any Council's report; and
  - (iv) the appointment and remuneration of any auditor.
  - (v) All other business (whether considered at the Annual General Meeting or any other General Meeting) is special business.
- (c) At each Annual General Meeting the Chair (or if the Chair is absent, the Deputy Chair) must submit to the Members a report summarising the activities of the College for the period.

### **8.4 Convening meetings**

The Chair, Deputy Chair or any five Council Members may convene a meeting at any time by requiring the Company Secretary to provide notice of the meeting in accordance with this clause 8.

### **8.5 Adjournment of meetings**

- (a) The chairperson may (and must if directed by a majority of the individuals present and entitled to vote) adjourn the meeting or any business, motion, or discussion being considered or remaining to be considered.
- (b) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (c) It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.
- (d) A meeting adjourned under this clause is adjourned to the day, time and place determined by the Council or (if no determination is made by the Council), to the same day, time and place in the following week (unless that day is a public holiday, in which case it will be adjourned to the next business day following the public holiday).

### **8.6 Notice of meetings**

- (a) Notice of Council meetings must be given to every Council Member.
- (b) A notice of a Council meeting:
  - (i) must specify the place, day and time of the meeting;
  - (ii) must provide details of any technology that will be used to facilitate the meeting; and
  - (iii) does not need to specify the nature of the business to be transacted at the meeting.
- (c) Notice of General Meetings must be given to every Member.
- (d) A notice of a General Meeting must:
  - (i) specify the place, day and time of the meeting;
  - (ii) provide details of any technology that will be used to facilitate the meeting;
  - (iii) state the general nature of the business to be transacted at the meeting; and
  - (iv) if a Special Resolution is to be proposed at the meeting – set out the wording of the resolution and state that it is proposed as a Special Resolution.

### **8.7 Timing of notice of meetings**

- (a) At least seven days' written notice must be given of Council meetings to all Council Members (unless the Council unanimously waives this requirement).
- (b) At least 21 days' notice must be given for all General Meetings.
- (c) The Members may unanimously waive the requirement to give 21 days' notice of a General Meeting, unless the Act requires 21 days' notice for the meeting.

**8.8 Quorum for meetings**

- (a) No business may be transacted at any meeting unless a quorum is present.
- (b) A quorum for meetings is ten Council Members or Members (as the case may be).
- (c) If a quorum is not present within fifteen minutes of the time appointed for a meeting:
  - (i) the meeting will be adjourned to the same day, time and place in the following week (unless that day is a public holiday, in which case it will be adjourned to the next business day following the public holiday); and
  - (ii) if a quorum is not present within fifteen minutes of the time appointed for the adjourned meeting, the meeting will be deemed to be abandoned.

**8.9 Use of technology in meetings**

- (a) Meetings may be held using any technology that is agreed to by the Council.
- (b) The Council's agreement may be a standing one.
- (c) A Council Member or Member who attends by technology is deemed to be present in person at the meeting.

**8.10 Chairperson of meetings**

- (a) The Chair will preside as chairperson at Council meetings and General Meetings.
- (b) If the Chair is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting then:
  - (i) if there is a Deputy Chair, the Deputy Chair will be the chairperson; and
  - (ii) if the Deputy Chair is not present within 15 minutes after the commencement time or is not willing and able to be the chairperson during all or part of the meeting, the Council Members present may elect a Council Member to be chairperson of the meeting or part of it.

**8.11 Voting at meetings**

- (a) A question arising at a Council meeting is to be decided by a majority of votes of Council Members present and entitled to vote.
- (b) A question arising at a General Meeting (other than a Special Resolution) is to be decided by a majority of votes of Members present and entitled to vote.
- (c) Every person present and entitled to vote at a meeting has one vote on a show of hands or on a poll.
- (d) Voting will be by show of hands or any other method determined by the chairperson, unless a poll is demanded by the chairperson or:
  - (i) in the case of a Council Meeting, five Council Members present and entitled to vote;
  - (ii) in the case of a General Meeting, five Members present and entitled to vote.
- (e) A poll may be demanded before or after a vote by show of hands takes place.
- (f) The chairperson will determine the manner in which a poll is taken and whether it must be taken immediately or following a brief adjournment.
- (g) No poll may be demanded on the election of a chairperson or on a question of adjournment.
- (h) A declaration by the chairperson that a resolution has been carried or carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (i) The chairperson has a deliberative vote. If the votes cast on a motion are equal, the chairperson will not have a "casting" vote and the motion will be lost.
- (j) Proxy voting is not permitted.

**8.12 Resolutions without meetings**

- (a) A resolution of the Council or Members may be passed without a meeting if all the Council Members or Members (as the case may be) entitled to vote on the resolution sign a notice stating that they are in favour of the resolution.

- (b) The resolution is passed at the time when the last Council Member or Member in favour signs.
- (c) For the purpose of this clause:
  - (i) the notice must include the wording of the resolution;
  - (ii) the notice may be distributed by any means;
  - (iii) separate copies of the notice may be signed; and
  - (iv) the resolution fails if it has not achieved unanimous consent within 72 hours after the notice was given.
- (d) This clause does not apply to a Special Resolution, a Members' resolution to remove a Council Member or a Members' resolution to appoint or remove an auditor.

## **9. Powers and Duties of the Council**

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### **9.1 Powers of the Council**

- (a) The Council Members are responsible for managing the business of the College and furthering the Principal Purpose.
- (b) In their capacity as Council Members, the Council Members may exercise all the powers of the College that are not, by the Act or by this Constitution, required to be exercised by the Members, the Principal or the Company Secretary.
- (c) The Council, in their capacity as Council Members, cannot remove a Council Member.
- (d) The Council may delegate any of its powers to one or more Council Members, the Principal or a committee.
- (e) The Council may specify terms of the delegation (including the power to further delegate) and revoke a delegation.
- (f) The powers of the Council include all the powers of the directors of a company, including the power to co-operate with the Principal to provide for the education of the students of the College and without prejudice to the generality of the foregoing to provide for religious instruction, the teaching of Holy Scripture and the development of Christian ideals of citizenship and of personal character and to promote a spirit of reverence in the entire life and work of the College.

### **9.2 Duties of Council Members**

Council Members must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.

### **9.3 Reporting to the General Assembly**

Council must report annually in writing to the General Assembly on the life and work of the College, including providing a copy of the last audited accounts of the College.

### **9.4 Establishment of committees**

- (a) The Council may establish committees. For the avoidance of doubt, the Selection Committee is not a committee for the purposes of clause 9.4.
- (b) The Council may appoint individuals who are not Council Members to a committee, provided that a majority of committee members are Council Members at all times.
- (c) The quorum of a committee must be three if there are five or more committee members. Otherwise, the quorum must be two.
- (d) The Council will appoint the committee chair. If a committee chair is not present within fifteen minutes after the commencement time, the committee members may choose a chair for the meeting from among themselves.
- (e) Questions arising at a meeting will be determined by a majority of votes of the committee members present.
- (f) The committee chair has a deliberative but not a casting vote.
- (g) Committees must provide a report of their activities (together with any recommendations) to each regular Council meeting.
- (h) The meetings and proceedings of committees are subject to any terms of reference

### 9.5 By-laws

- (a) The Council may make regulations or by-laws for the general conduct and management of the College and the business of the Council.
- (b) The Council may revoke and alter by-laws or regulations as it sees fit.

## 10. Council Members' Interests

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### 10.1 Conflicts of interest

- (a) A Council Member must disclose the nature and extent of any perceived or actual material conflict of interest to the other Council Members (or the Members if the other Council Members share that conflict).
- (b) A Council Member who has a material personal interest in a matter that is being considered by the Council:
  - (i) must not be present while the matter is being considered at a Council meeting; or
  - (ii) vote on the matter;
 unless permitted by clause 10.1(c).
- (c) Provided the Council approves and it is permitted by law and is not a Prohibited Agreement or Arrangement, a Council Member may be present or vote if:
  - (i) the interest arises because the Council Member is a Member and the other Members have the same interest;
  - (ii) the interest relates to an insurance contract that insures, or would insure, the Council Member against liabilities that the Council Member incurs as an officer of the College;
  - (iii) the interest relates to any payment by the College under clause 11.5 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity; or
  - (iv) the Australian Securities and Investments Commission makes an order allowing the Council Member to vote on the matter; or
  - (v) the interest relates to a contract the College is proposing to enter into that:
    - (A) is subject to approval by the Members; and
    - (B) will not impose any obligation on the College if it is not approved by the Members;
  - (vi) the Council Members who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Council Member, the nature and extent of the Council Member's interest in the matter and how it relates to the affairs of the College, and
    - (B) states that those Council Members are satisfied that the interest should not stop the Council Member from voting or being present; or
  - (vii) the interest arises merely because the Council Member has a right of subrogation in relation to a guarantee or indemnity referred to in clause 13.

### 10.2 Permissible conduct

Provided a Council Member complies with clause 10.1, and the following does not constitute a Prohibited Arrangement or Agreement, a Council Member may:

- (a) enter into a contract or arrangement with the College;
- (b) participate in any association for past or present employees, alumni, parent and grandparents;
- (c) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the College, except as auditor;
- (d) sign or participate in the execution of a document by or on behalf of the College; and
- (e) do any of the above despite the fiduciary relationship of the Council Member's office:
  - (i) without any liability to account to the College for any direct or indirect benefit accruing to the Council Member; and
  - (ii) without affecting the validity of any contract or arrangement.

## **11. Office Bearers and Principal**

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### **11.1 Appointment of Office Bearers**

- (a) The Council must appoint a Chair and a Deputy Chair on 1 November each year from among the Council.
- (b) Office Bearers of the College hold office until the 31<sup>st</sup> of October each year.
- (c) An Office Bearer may be elected for more than one successive term.
- (d) The Council may remove or suspend a person from holding any Office Bearer position by resolution passed at a Council meeting provided:
  - (i) the resolution is passed by not less than two-thirds of the Council Members present; and
  - (ii) at least 21 days' notice in writing of the resolution has been given to the Company Secretary and to the person who is the subject of the resolution.

### **11.2 Company Secretary**

- (a) The Council Members must appoint at least one Company Secretary, who may also be the College Business Manager or any other person.
- (b) The Company Secretary is to be appointed on such terms and conditions as the Council deems fit.
- (c) A person must not be appointed as Company Secretary unless the person:
  - (i) consents in writing to being appointed as Company Secretary;
  - (ii) is at least 18 years of age; and
  - (iii) is resident in Australia.
- (d) The Council may suspend or remove a Company Secretary.

### **11.3 Business Manager**

- (a) There must be a Business Manager employed by the College.
- (b) The Business Manager is appointed by the Principal on such terms and conditions as the Principal deems fit.
- (c) Subject to any contract between the College and the Business Manager, the Principal may remove the Business Manager at any time.
- (d) The Business Manager is responsible to the Principal for the financial and business administration of the College. The Business Manager must comply with any reasonable direction given by the Principal in the performance of his duties.
- (e) The Business Manager is not a Council Member.
- (f) The Business Manager must attend, but not vote, at all meetings of the Council and General Meetings (but must not be present during the consideration of any matter concerning the Business Manager or the Principal personally).
- (g) The Business Manager must pay all cash received on behalf of the College promptly into the College bank account.

### **11.4 Chaplain**

- (a) There may be a Chaplain employed by the College.
- (b) The Chaplain is appointed by the Principal.
- (c) The Chaplain must be an ordained Minister of the Presbyterian Church of Victoria.
- (d) The Chaplain will have the duties and responsibilities given to them by the Principal.

### **11.5 Principal**

- (a) The Council must appoint a Principal for a term, at the remuneration and on the conditions that it deems fit.
- (b) A resolution to appoint a Principal may only be made by a majority vote of the whole membership of Council.

- (c) A resolution to dismiss a Principal may only be made by a two thirds majority vote of the whole membership of Council at two successive meetings at least 14 days apart.
- (d) Subject to any contract between the College and the Principal, the Council may remove the Principal at any time.
- (e) The Principal:
  - (i) must be a communicant member of the Presbyterian Church of Victoria or communicant or confirmed member of some other Protestant Church;
  - (ii) must not be a Council Member; and
  - (iii) must meet all legal and regulatory requirements for a Principal of a Victorian school.
- (f) The Principal must attend, but must not vote, at all meetings of the Council, any committees and General Meetings (but must not be present during the consideration of any matter concerning the Principal personally).
- (g) The Principal:
  - (i) is the Chief Executive Officer of the College and responsible to the Council;
  - (ii) has (subject to this Constitution) the supervision and control of:
    - (A) the organisation and management of the College and the employment and dismissal of staff (including the Business Manager and Chaplain);
    - (B) the courses of study provided by the College for students, discipline of students of the College and the conduct of student activities generally; and
    - (C) the enrolment and dismissal of students.
  - (iii) must take measures to promote a spirit of reverence in the entire life and work of the College. In particular, the Principal must take steps to provide for students of the College religious instruction including the teaching of Holy Scripture and regular opportunities for religious observance and worship;
  - (iv) must take steps to provide opportunities for regular Sunday worship by students of the College who are boarders and decide the place or places of worship to be attended by those boarders; and
  - (v) may, at the express request of the parent or guardian of any student of the College, arrange for that student special classes of religious instruction with a view to her becoming a communicant member of the Presbyterian Church of Victoria or if some other Church is nominated by her parent or guardian, of that other Church.
- (h) The Principal must notify Council at the following Council meeting of the engagement of any College employee.

## 12. **Dispute Resolution**

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- (a) The Council will determine the procedure to be followed to determine any dispute arising between:
  - (i) a Member and another Member;
  - (ii) a Member and the Council;
  - (iii) a Council Member and another Council Member;
  - (iv) a Member and the College; and
  - (v) a Council Member and the College.
- (b) The Council will be subject to the following:
  - (i) a Member may appoint any person to act on behalf of the Member in the dispute resolution procedure;
  - (ii) each party to the dispute has been given an opportunity to be heard on the matter which is the subject of the dispute; and
  - (iii) the outcome of the dispute must not be determined by a biased decision-maker.

### 13. Indemnities and Insurance

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- (a) The College indemnifies every Officer of the College to the full extent permitted by law against all losses and liabilities incurred as a result of the execution of the duties of the Officer, unless the loss or liability was incurred by the Officer through their own dishonesty, negligence, lack of good faith or breach of duty.
- (b) This indemnity:
  - (i) is a continuing obligation and is enforceable even if the person has ceased to be an Officer of the College;
  - (ii) is not subject to any requirement to first incur an expense or make a payment; and
  - (iii) operates only to the extent that the relevant loss or liability is not covered by insurance.
- (c) The College may, to the relevant extent, pay or agree to pay, a premium in respect of a contract insuring its Officers.
- (d) Nothing in this clause 13 limits the College's ability to indemnify or pay for insurance for any person not expressly covered by this clause.
- (e) The College may, where the Council considers it appropriate to do so, indemnify a present or past Officer against a loss or liability incurred as a result of their position as an Officer of the College that is not otherwise covered by clause 13(a).
- (f) In this clause:
 

**"Officer"** means:

  - (i) a Council Member, Company Secretary, Principal or Business Manager; or
  - (ii) a person appointed as a trustee by, or acting as a trustee at the express request of the College and,
  - (iii) includes a former Officer;

**"duties of the Officer"** includes duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer of the College to any other corporation;

**"To the relevant extent"** means:

  - (iv) to the extent that the College is not precluded by law from doing so;
  - (v) to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under an insurance policy); and
  - (vi) where the liability in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and

**"Liability"** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any Court, Tribunal, government authority or otherwise.

### 14. Administration

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#### 14.1 Minutes and records

- (a) The Council must ensure that:
  - (i) minutes of all General Meetings, Council meetings and committee meetings; and
  - (ii) records of resolutions passed by Members, Council Members and committees without a meeting;

are recorded and kept with the College's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).
- (b) The College must ensure that minutes of a Council or General Meeting are signed within a reasonable time by the chairperson of the meeting or of the next meeting.



**14.2 Members' access to College records**

The College must give Members access to College records as required by the Act.

**14.3 Common seal**

The College does not have a common seal.

**14.4 Execution of documents**

The College may execute documents by the signature of:

- (a) two Council Members;
- (b) one Council Member and the Company Secretary; or
- (c) such other persons appointed by the Council in writing for that purpose.

**14.5 Accounts and other records of the College**

- (a) The Council must:
  - (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements; and
  - (ii) ensure that records of its operations are kept; and
  - (iii) take reasonable steps to ensure that the College's records are kept safe.
- (b) The College must retain its records for at least seven years.

**14.6 Payments**

- (a) Any cheque payments or electronic funds transfer payments made by the College must be signed or authorised by at least two individuals nominated for that purpose by the Council.
- (b) Payments may only be made with the authority of the Council (which authority may be delegated).

**14.7 Audit**

- (a) The College must appoint and remunerate a properly qualified auditor, who must examine the accounts of the College annually and report to the Members.
- (b) Any auditor is entitled to attend any General Meeting and to be heard by the Members on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The College may give any auditor all communications relating to the General Meeting that the Members of the College are entitled to receive.

**14.8 Financial year**

The financial year will begin on 1 January and end on 31 December, unless the Council passes a resolution to change the financial year.

**15. Amending This Constitution**

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- (a) The College may only alter or replace this Constitution by Special Resolution in accordance with the Act.
- (b) Prior to proposing any resolution to alter or replace this Constitution, the College must consult with the Presbyterian Church of Victoria, the Old Collegians' Association and the Parents' Association.
- (c) A Special Resolution to alter or replace this Constitution will have no effect unless the resolution to adopt the proposed new Constitution is approved by at least 85% of the whole Membership.
- (d) The Members must not alter or replace this Constitution in a manner that causes the College to no longer be a Charity.

**16. Notices**

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- (a) All notices under this Constitution to Members or Council Members must be served in accordance with this clause.
- (b) Notices can be served on Members or Council Members personally, by post, email or other electronic means.

- (c) Notices are taken to be served:
  - (i) in the case of a properly addressed and posted notice, five Business Days after the date of posting; and
  - (ii) in the case of a notice sent by email or other electronic means, at the time of sending.
- (d) The non-receipt of notice or a failure to give notice, does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) the individual waives notice before or after the meeting (including by attending the meeting); or
  - (iii) the individual notifies the College of their agreement to that thing or resolution before or after the meeting.
- (e) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

## 17. Closure or Winding up

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### 17.1 Contribution of a Member on winding up

If required, each Member must contribute an amount (not more than the Guaranteed Amount) to the assets of the College if it is wound up while they are a Member, or within one year of the Member ceasing to be a Member, for the:

- (a) payment of the debts and liabilities of the College incurred before they ceased to be a Member; and/or
- (b) costs, charges and expenses of winding up.

### 17.2 Distribution of assets on closure or winding up

- (a) If on the closure of the School there is a surplus of School assets remaining after satisfying all the School's liabilities and expenses, the surplus must:
  - (i) not be paid or distributed to a Member in their capacity as a Member; and
  - (ii) be used by the College to provide education services to school-age children in Victoria; or
  - (iii) be given to a Charity or Charities which:
    - (A) provides educational services to school-age children in Victoria; or
    - (B) has similar charitable purposes to the Principal Purpose.
- (b) If on the winding up, deregistration or dissolution of the College, there is a surplus of College assets remaining after satisfying all the College's liabilities and expenses, the surplus must be distributed in the same manner as specified in 17.2(a)(iii).
- (c) The recipient Charity or Charities under 17.2(a) or 17.2(b) must be nominated by the Presbyterian Church of Victoria on or before any closure, winding up, deregistration or dissolution. If the Members fail to decide, the identity of the recipient Charity or Charities must be determined by the Supreme Court in the State of Victoria.

## 18. Interpretation

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### 18.1 Definitions

In this Constitution:

**"ACNC"** means the Australian Charities and Not-for-profits Commission.

**"ACNC Legislation"** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

**"Act"** means the *Corporations Act 2001* (Cth).

**"auditor"** may mean a reviewer, if permitted by the Act or ACNC Legislation.

**"Business Manager"** means the person holding the position of business manager of the College from time to time whether known by that name, or bursar or any other name signifying that position.

**"chairperson"** means the person chairing a meeting.

**"Chair"** means the person appointed to the position of Chair under clause 11.

**"Charity"** means a charity registered under the ACNC Legislation.

**"College"** means Presbyterian Ladies' College, the proprietor of the School and Early Learning Centre.

**"Company Secretary"** means the Company Secretary of the College.

**"Council"** means the Presbyterian Ladies' College Council established by clause 7.1.

**"Council Members"** means the members of the Presbyterian Ladies' College Council established by clause 7.1. The Council Members are the directors of the College.

**"day"** means calendar day except public holidays.

**"Deductible Gift Recipient"** means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

**"DGR Gifts"** means:

- (a) gifts of money or property for the Principal Purpose received during any time that the College is endorsed as a Deductible Gift Recipient;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the College is endorsed as a Deductible Gift Recipient; and
- (c) money received by the College because of such gifts or contributions during any time that the College is endorsed as a Deductible Gift Recipient.

**"Early Learning Centre"** means:

- (a) a not-for-profit approved education and care service (within the meaning of the *Education and Care Services National Law Act 2010* (Vic));
- (b) which provides education and care to children, including a three or four year old kindergarten program; and
- (c) that operates as a feeder for enrolments to the School.

**"ETRR 2017"** means the Education and Training Reform Regulations 2017 (Vic).

**"General Assembly"** means the General Assembly of the Presbyterian Church of Victoria.

**"General Meeting"** means a meeting of Members (including an Annual General Meeting).

**"Government Funding"** means money provided for the conduct of the School under an agreement or arrangement with the State of Victoria or the Commonwealth of Australia.

**"Guaranteed Amount"** means \$50.

**"ITAA 97"** means the *Income Tax Assessment Act 1997* (Cth).

**"Member"** means a person whose name is entered in the Register as a Member of the College in accordance with clause 6.2 and **"Membership"** has the corresponding meaning.

**"Office Bearer"** means Chair and Deputy Chair.

**"Old Collegians' Association"** means the association of the former students of the College.

**"Parents Association"** means the association of parents of students of the College.

**"person"** includes a natural person and a corporation within the meaning of s 57A of the Act.

**"Principal Purpose"** means the purpose set out in clause 2.

**"Prohibited Agreement or Arrangement"** has the meaning given to that term under the ETRR 2017.

**"Register"** means the register of Members under the Act.

**"School"** means the primary and secondary school operated by the College.

**"Selection Committee"** means the Selection Committee established under clause 7.4

**"Special Resolution"** means a resolution passed at a General Meeting:

- (a) of which 21 days' notice specifying the intention to propose the resolution as a Special Resolution has been given pursuant to this Constitution and the Act; and
- (b) by not less than 75% of the votes cast.

## **18.2 Interpretation**

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.
- (b) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (c) Headings are for convenience only and do not affect the construction of this Constitution.
- (d) Words importing the singular include the plural and vice versa.
- (e) If any act is required or permitted to be done by:
  - (i) the Old Collegians' Association - that means an act done by majority vote of the Committee of the Old Collegians' Association at a properly convened Committee meeting; and
  - (ii) the Parents Association - that means an act done by majority vote of the Committee of the Parents Association at a properly convened Committee meeting; and
  - (iii) the General Assembly - that means an act done either by the General Assembly itself or by any Commission appointed by and acting with the authority of the Assembly, by majority vote at a properly convened meeting.

## **18.3 Exclusion of replaceable rules**

- (a) The replaceable rules contained in the Act do not apply to the College.
- (b) If at any time, the College is not a Charity, the Act (unless it is a replaceable rule) overrides any part of this Constitution or policy of the College to the extent of any inconsistency.

## **19. Transitional Provisions**

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The following clauses apply notwithstanding anything to the contrary in this Constitution.

### **19.1 Members**

The Members immediately following the adoption of this Constitution will be those Members listed on the Register at the time of adoption.

### **19.2 Council Members**

- (a) The Council Members immediately following the adoption of this Constitution will be those in office at the time of adoption.
- (b) Council Members appointed prior to the adoption of this Constitution may complete their term of office under the previous Constitution.



*Presbyterian Ladies' College*

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