

Constitution

Sydney College of Divinity Ltd

ACN 002 653 036

A Public Company Limited by Guarantee

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1 Definitions and interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

Academic Board means the committee established under clause 24.1(d)(ii).

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

Annual General Meeting has the same meaning as the term 'AGM' in the Corporations Act.

Appointed Director means a Director appointed under clause 10.9.

ASIC means the Australian Securities and Investments Commission.

Associate means an Institution, or an individual appointed by an unincorporated Institution, referred to in clause 6.9 and entered on the Register of the College as an Associate.

Audit Committee means the committee established under clause 24.1(d)(i).

College means Sydney College of Divinity Ltd being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 002 653 036.

Constitution means this constitution as amended from time to time.

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

Council means some or all of the Directors acting as a board of directors.

Deductible Contributions means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for that purpose.

Director means an individual holding office as director of the College.

Elected Director means a Director elected in accordance with clause 10.5.

External Director means a Director who is not, or has not in the previous 3 years been:

- (a) an employee (or involved in the day-to-day operations) of the College or a Member;
- (b) a material professional adviser, consultant or contractor to the College or a Member;
- (c) a material supplier to the College or a Member; or
- (d) otherwise in a material relationship with the College or a Member.

Fit and Proper has the same meaning as described in the HES Framework.

General Meeting means a meeting of the Members of the College and includes an Annual General Meeting.

Gifts means gifts of money or property for the principal purpose of the College.

Gift Fund means a management account established in accordance with clause 29.

HES Framework means the *Higher Education Standards Framework (Threshold Standards) 2015* (Cth).

Higher Education Provider means an institution that is a higher education provider within the meaning of the TEQSA Act and the Higher Education Support Act, from time to time.

Higher Education Support Act means the *Higher Education Support Act 2003* (Cth).

Insolvency Event occurs where:

- (a) an order is made or a resolution is passed by creditors for the winding up, dissolution or external administration of the Member;
- (b) the Member enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or
- (c) a controller, receiver, receiver and manager, official manager or other external administrator is appointed to the Member.

Institution means a body corporate, unincorporated association or such other body, which:

- (a) is governed by Fit and Proper persons; and
- (b) maintains a structure, teaching faculty and support staff, adequate facilities and resources, within which it delivers Christian theological education.

Member means a person entered on the Register of the College as a member, but does not include an Associate.

Object means the object of the College as set out in clause 2.

President means an individual appointed as President of the College in accordance with clause 10.3.

Principal means the academic head of an Institution, which is a Member of the College.

Register means the register of members under the Corporations Act and if appropriate includes a branch register.

Registered Office means the registered office for the time being of the College.

Representative means an individual appointed to represent a corporate Member at a General Meeting of the College in accordance with the Corporations Act, or an individual appointed by a Member to represent the Member at a General Meeting, in accordance with clause 6.8.

Rule means a rule or policy made by the Council in accordance with clause 15.

Schedule means a Schedule to this Constitution.

Secretary means an individual appointed as a secretary of the College in accordance with clause 16.

Special Resolution takes the meaning given by Section 9 of the Corporations Act.¹

¹ At the time of adoption of this Constitution, section 9 provides that a Special Resolution is a resolution:
(a) of which notice has been given to the Members in accordance with clause 8.3; and
(b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

Student means a member of the student body of the College or an Institution.

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

TEQSA Act means the *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 1.2(f);
- (h) a reference to a person being present includes an individual participating in a meeting in person or through an attorney or Representative;
- (i) a reference to a person includes a natural person, corporation or other body corporate;
- (j) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (k) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Council.

1.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;
- (b) "section" means a section of the Corporations Act; and

- (c) while the College is a registered charity under the ACNC Act:
 - (i) subject to clause 1.4(c)(ii), the provisions of the Corporations Act in Part 2G.2 (except for sections 249X – 250C) and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and
 - (ii) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the College.

1.5 Headings

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.6 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the College.

2 Object of the College

The College is established to advance religion and education, and will be a leading theological Higher Education Provider equipping people for effective professional and lay Christian ministry in a rapidly changing environment, including by:

- (a) operating as an ecumenical consortium and providing high quality, accredited courses in theology and related disciplines from undergraduate to postgraduate levels, including research degrees;
- (b) encouraging theological scholarship and training future theological scholars;
- (c) preparing leaders and ministers, both ordained and non-ordained, who are well-qualified to build up the Church;
- (d) promoting a theologically literate membership of the Church;
- (e) engaging with the wider community to enhance the community's quality of life, including through the promotion of lifelong learning and reflective practice, the display of mutual respect and affirmation of ecumenical unity, and pastoral concern for all people;
- (f) providing such facilities, services and assistance to people in pursuit of the Object;
- (g) acting as trustee and performing and discharging the duties and functions incidental thereto where this is incidental or conducive to the attainment of the Object; and
- (h) doing such other things as are incidental or conducive to the attainment of the Object.

3 Powers

The College has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

4 Application of income for Object only

4.1 Application of income and property

The income and the property of the College, however derived:

- (a) must be applied solely towards the promotion of the Object; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus, benefit or otherwise.

4.2 Payment in good faith

Clause 4.1 does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the College;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause 4.2(c) by the College in a General Meeting;
- (d) of reasonable rent for premises let by a Member; or
- (e) in furtherance of the Object.

5 Winding up

5.1 Guarantee by Members

- (a) Each Member undertakes to contribute to the College's property if the College is wound up while they are a Member, or within 1 year after they cease to be a Member.
- (b) This contribution is for:
 - (i) payment of the College's debts and liabilities contracted before they ceased to be a Member;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$50.

5.2 Application of property

- (a) If any property remains on the winding up or dissolution of the College and after satisfaction of all its debts and liabilities, then, subject always to clause 5.3, that property may not be paid to or distributed among the Members but must be transferred to one or more funds or institutions:
 - (i) that have charitable purposes similar to, or inclusive of, the Object; and
 - (ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to an extent at least as great as imposed on the College under this Constitution.

- (b) The funds or institutions will be determined by the Members at or before the time of dissolution.

5.3 Transfer of surplus assets – deductible gift recipients

- (a) Where the College:
 - (i) has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act; and
 - (ii) operates a Gift Fund;then where:
 - (iii) the College is wound up; or
 - (iv) the endorsement under Subdivision 30-BA of the Tax Act is revoked;any surplus assets of the Gift Fund remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 5.2 and are each deductible gift recipients.
- (b) Where the College operates more than one fund or institution for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Tax Act is revoked only in relation to one of those funds or institutions then it may transfer any surplus assets of that fund or institution remaining after payment of all liabilities to any other fund or institution for which it is endorsed as a deductible gift recipient.

6 Membership

6.1 Members

The Members of the College are:

- (a) the Member Institutions of the College as at the date of adoption of this Constitution; and
- (b) any person the Council admits to membership under clause 6.2.

6.2 Admission as a Member

The Council may admit any person as a Member if the person is eligible under clause 6.3 and makes an application in accordance with clause 6.4.

6.3 Membership criteria

To be eligible to be a Member, a person must:

- (a) be an Institution that delivers at least one accredited College award or higher education course, or an individual appointed by an unincorporated Institution that delivers at least one accredited College award or higher education course;
- (b) consent in writing to become a Member; and
- (c) agree to be bound by this Constitution.

6.4 Membership process

- (a) The application for membership must be made:
 - (i) in writing, signed by the applicant or an authorised representative of the applicant body;
 - (ii) in such form as the Council may from time to time prescribe;
 - (iii) accompanied by a signed memorandum of understanding with the College, with terms and conditions acceptable to the College; and
 - (iv) accompanied by the membership fee, if any, determined by the Council.
- (b) Each application for membership must be considered by the Council within a reasonable time after the application is made.
- (c) When an applicant has been accepted or rejected for membership the Secretary must notify the applicant of the decision of the Council within a reasonable period.

6.5 Council's discretion to admit or refuse admission as a Member

The Council has the discretion to refuse any person admission as a Member without giving any reason for refusing.

6.6 Registration as Member

If the Council accepts an application for membership, as soon as practicable, the Council must cause the name of the person to be entered in the Register.

6.7 Membership fees

The Members must pay such membership fees as prescribed from time to time by the Council.

6.8 Representative

- (a) A Member that is a body corporate may appoint an individual as its Representative. The appointment may be a standing one.
- (b) The appointment may set out restrictions on the Representative's powers.
- (c) The appointment may be made by reference to a position held within the body corporate, for example, the Principal.
- (d) A body corporate may appoint more than one Representative but only one Representative:
 - (i) may exercise the body's powers as Member at any one time; and
 - (ii) may be counted for the purposes of determining quorum at a General Meeting.
- (e) A Representative appointed under this clause may exercise, on the body corporate's behalf, any and all of the powers that the body could exercise as a Member, unless the appointment specifies otherwise.
- (f) The notice appointing the Representative is to be substantially in the form set out in Schedule 1 to this Constitution.

6.9 Associate

- (a) The Adjunct Member Institutions at the date of adoption of this Constitution and any person the Council admits as an Associate under this clause 6.9 are the Associates of the College.
- (b) To be eligible to be an Associate, a person must:
 - (i) be an Institution or an individual appointed by an unincorporated Institution;
 - (ii) consent in writing to become an Associate;
 - (iii) make an application to become an Associate in accordance with clause 6.9(c); and
 - (iv) not deliver an accredited College award or higher education course.
- (c) The application for admission as an Associate must be made:
 - (i) in writing, signed by the applicant or an authorised representative of the applicant body;
 - (ii) in such form as the Council may from time to time prescribe;
 - (iii) accompanied by a signed memorandum of understanding with the College, with terms and conditions acceptable to the College; and
 - (iv) accompanied by any fee prescribed by the Council.
- (d) Each application submitted under clause 6.9(c) must be considered by the Council within a reasonable time after the application is made.
- (e) When an applicant has been accepted or rejected as an Associate, the Secretary must notify the applicant of the decision of the Council within a reasonable period.
- (f) The Council has the discretion to refuse any person admission as an Associate without giving any reason for refusing.
- (g) If the Council accepts an application for admission as an Associate, as soon as practicable, the Council must cause the name of the person to be entered in the Register.
- (h) Associates may not attend, speak or vote at a General Meeting.

6.10 Register

- (a) The College must establish and maintain a Register. The Register must be kept by the Secretary and must contain:
 - (i) for each current Member and Associate:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member or Associate for the service of notice;
 - (D) the name and address of the Member's Representative (if applicable); and
 - (E) date the Member or Associate, and Representative (if applicable) was entered on to the Register.

- (ii) for each person who stopped being a Member or Associate in the last 7 years:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member or Associate for the service of notices;
 - (D) the name and address of the Member's Representative (if applicable); and
 - (E) date the membership and Representative's term started and ended.
- (b) The College must provide access to the Register in accordance with the Corporations Act.

7 Ceasing to be a Member or Associate

7.1 Cessation of membership

A Member ceases to be a Member, or an Associate ceases to be an Associate, on:

- (a) in the case of an individual, death or, in the case of a body corporate, its ceasing to exist;
- (b) the person ceasing to be eligible under clause 6.3 (for Members) or clause 6.9(b) (for Associates);
- (c) the person being in breach of any provision of the signed memorandum of understanding referred to in clause 6.4(a)(iii) (for Members) or clause 6.9(c)(iii) (for Associates);
- (d) in the case of a person appointed by an unincorporated Institution, where the Institution has notified the College that the appointment of the individual has been terminated or their period of appointment has ceased;
- (e) resignation by written notice to the College having immediate effect or with effect from a specified date occurring not more than 7 days after the service of the notice;
- (f) failing to pay any fee that may be prescribed by the Council from time to time within 12 months after the fee was due and payable;
- (g) in the case of an individual, becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health;
- (h) in the case of a body corporate, immediately before the Member becoming subject to an Insolvency Event;
- (i) in the case of an individual, becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally; or
- (j) the passing of a resolution by the Council or Members in General Meeting in accordance with clause 7.2.

7.2 Termination of membership

- (a) Subject to this Constitution, the Council or Members in General Meeting may at any time terminate the membership of a Member if the Member or the unincorporated Institution that has appointed that Member:
 - (i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Council;
 - (ii) engages in conduct which in the opinion of the Council is unbecoming of the Member (or Institution) or prejudicial to the interests of the College; or
 - (iii) fails to pay any debt due to the College within a period of 3 months after the date for payment (such debt not including a fee referred to in clause 7.1(f)).
- (b) For a decision of the Council or the Members in General Meeting under clause 7.2(a) to be effective, the general nature of the allegations made against the Member, or Institution as the case may be, must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.
- (c) If a dispute arises regarding the termination of a Member's membership under this clause 7.2, the dispute resolution procedure contained in clause 26 must be followed and, for the purposes of clause 26.1, written notification under clause 7.2(b) will be the notice of the dispute (as defined in clause 26.1).

7.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

8 General Meetings

8.1 Annual General Meetings

Annual General Meetings of the College are to be held in accordance with the Corporations Act.

8.2 Convening a General Meeting

The Council may convene and arrange to hold a General Meeting when it thinks fit and must do so if required to do so under the Corporations Act.

8.3 Notice of a General Meeting

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 32.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

8.4 Calculation of period of notice

In computing the period of notice under clauses 8.3 and 8.6(c), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.5 Cancellation or postponement of General Meeting

- (a) Where a General Meeting is convened by the Council it may by notice, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by it.
- (b) This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Council on the request of Members or to a meeting convened by a Court.

8.6 Notice of cancellation or postponement of a meeting

- (a) Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:
 - (i) to each Member individually; and
 - (ii) to each other person entitled to be given notice of a General Meeting under the Corporations Act.
- (b) A notice of postponement of a General Meeting must specify:
 - (i) the postponed date and time for the holding of the meeting;
 - (ii) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
 - (iii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.
- (c) The number of days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of days' notice of the General Meeting required to be given under clause 8.3.

8.7 Business at postponed meeting

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

8.8 Non-receipt of notice

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or the convening, cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the convening, cancellation or postponement of a meeting.

9 Proceedings at General Meetings

9.1 Number of a quorum

A majority of Members present are a quorum at a General Meeting.

9.2 Requirement for a quorum

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.

- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Member who is present) declares otherwise.

9.3 If quorum not present

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Council appoints by notice to the Members and others entitled to notice of the meeting.

9.4 Adjourned meeting

At a meeting adjourned under clause 9.3(b), 2 Members present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.5 President as chairperson of General Meeting

The President is to preside as chairperson at a General Meeting.

9.6 Absence of President at General Meeting

If a General Meeting is held and:

- (a) the office of President is vacant; or
- (b) the President is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following persons may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson if a Director has been so elected by the Council under clause 20.1; or
- (d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

9.7 Conduct of General Meetings

- (a) The chairperson of a General Meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.

- (b) A decision by the chairperson under this clause 9.7 is final.

9.8 Adjournment of General Meeting

- (a) The chairperson of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
- (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and
 - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person in respect of any adjournment.

9.9 Notice of adjourned meeting

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 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

9.10 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

9.11 Equality of votes – no casting vote for chairperson

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or attorney or Representative, and consequently the resolution fails.

9.12 Voting on show of hands

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands (or, where the meeting is being conducted by technology, such other similar method as determined by the chairperson) unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

9.13 Poll

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;

- (b) on the election of a chairperson or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.14 Votes of Members

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
 - (i) on a show of hands, each Member present in person has one vote; and
 - (ii) on a poll, each Member present in person has one vote.

9.15 Validity of vote in certain circumstances

Unless the College has received written notice of the matter before the start or resumption of the meeting at which a person votes as an attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member revokes the appointment or authority; or
- (c) the Member is mentally incapacitated.

9.16 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - (i) may not be raised except at that meeting or adjourned meeting; and
 - (ii) must be referred to the chairperson of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

10 Directors

10.1 Composition of the Council

- (a) The Council is to be comprised of:
 - (i) the President;
 - (ii) the Dean;
 - (iii) the Chairperson of the Academic Board;
 - (iv) 4 to 8 Directors, subject to clause 10.1(b), elected by the General Meeting in accordance with clause 10.5 (**Elected Directors**); and
 - (v) 2 to 4 Directors appointed by the Council in accordance with clause 10.9 (**Appointed Directors**).

- (b) The number of Elected Directors is to be determined by the Members. In the absence of any such determination, the number of Elected Directors will be 6.

10.2 Qualification of Directors

- (a) To be eligible for the office of Director a person must:
 - (i) be a Fit and Proper person; and
 - (ii) subject to clause 10.2(b), consent in writing to act as a Director.
- (b) Where a person is seeking election as an Elected Director at a General Meeting for the first time, the signed consent must be lodged at the Registered Office at least 28 days (or such other period as determined by the directors) before the date fixed for the holding of the General Meeting.
- (c) The Council may develop a Rule for the optimal composition for the Council (such as in relation to skills, experience, independence from the College, gender, denomination or other attributes) to guide the College in its appointment or election of Directors, including the President.
- (d) In the event that it is required under a law, regulation or guideline applicable to the College², the College must ensure that the requisite number of Directors are independent members.

10.3 President

- (a) Subject to clause 10.2(a) and this Constitution, the President will be:
 - (i) nominated by the Nominations Committee, a committee established in accordance with clause 24;
 - (ii) endorsed and recommended by the Council, in accordance with any Rule; and
 - (iii) appointed by ordinary resolution at a General Meeting.
- (b) The President:
 - (i) subject to clause 10.3(b)(ii), is appointed for a term of 3 years;
 - (ii) is entitled to be re-appointed as President on 3 occasions provided the President's period of cumulative service to the College does not exceed a period of 12 years, excluding any period of service as a Director, Dean or Chairperson of the Academic Board. A retiring President holds office until the conclusion of the meeting at which the President retires;
 - (iii) may, by ordinary resolution of the Members, have the period of time for which the President holds office under clause 10.3(b)(i) increased or decreased;
 - (iv) may, by ordinary resolution of the Members, be removed as President before the expiration of the President's period of office.

² Such as where the College is registered as a Higher Education Provider and this is a condition for such registration. At the adoption of this Constitution, 'independent members' has the same meaning as described in the HES Framework, specifically, Appendix A of the Tertiary Education Quality and Standards Agency's Guidance Note: Corporate Governance.

- (c) If the President is removed under clause 10.3(b)(iv), or if at any time a vacancy exists in the President's office, the Members may appoint, in accordance with clause 10.3(a), another person to fill the office of President.

10.4 Dean and Chairperson of the Academic Board

Subject to clause 10.2(a) and this Constitution, the Dean and the Chairperson of the Academic Board each hold the office as a Director by virtue of their office (an ex-officio Director).

10.5 Elected Directors elected at General Meeting

- (a) Subject to clause 10.5(b), the College may, at a General Meeting at which:
 - (i) an Elected Director retires or otherwise vacates office; or
 - (ii) an Elected Director vacancy exists by operation of clause 10.1 or otherwise,by resolution fill the vacated office by electing an individual to that office.
- (b) Persons elected as directors under clauses 41(d) or 41(e) of the Company's constitution immediately prior to the adoption of this Constitution (the **Previous Constitution**), and whose term in office as a director under the Previous Constitution would not be expiring at the conclusion of the AGM to be held in 2021, will, subject to their agreement, continue their term and consecutive years of service to the Company as Elected Directors on the adoption of this Constitution.

10.6 Terms of Elected Directors

- (a) Subject to clause 10.7, Elected Directors are elected for terms of 3 years.
- (b) At each Annual General Meeting, any Elected Director who has held office for 3 years or more since last being elected or appointed, must retire from office but subject to clause 10.7 is eligible for reappointment. A retiring Elected Director holds office until the conclusion of the meeting at which that Director retires.
- (c) The Members may by ordinary resolution increase or decrease the period of time for which an Elected Director holds office under clause 10.6(a).
- (d) The Members may by ordinary resolution remove any Elected Director before the expiration of that Director's period of office, and may by an ordinary resolution appoint another person in the place of that Elected Director.

10.7 Reappointment of Elected Directors

- (a) Elected Directors are entitled to seek reappointment as Elected Directors on 3 occasions provided that an Elected Director's period of cumulative service to the College does not exceed a period of 12 years, excluding any period of service under clause 10.8.
- (b) The Members may by ordinary resolution increase the period of cumulative service for which an Elected Director holds office under clause 10.7(a).

10.8 Casual vacancy or additional Elected Director

- (a) The Council may at any time appoint any person meeting the requirements of clause 10.2 to be an Elected Director, either to fill a casual vacancy or as an addition to the existing Elected Directors, provided the total number of Elected Directors does not exceed the number determined under clause 10.1(a)(iv).

- (b) A Director appointed under clause 10.8(a) holds office until the conclusion of the next Annual General Meeting of the College but is eligible for election at that meeting.

10.9 Appointed Directors

- (a) Subject to clause 10.9(b), the Council may from time to time appoint:
- (i) at least 1 and up to 3 Principals or Representatives; and
 - (ii) 1 Student,
- to act as a Director (**Appointed Director**).
- (b) Each Appointed Director who is a Principal or Representative:
- (i) must be eligible under clause 10.2(a);
 - (ii) must be nominated in accordance with a Rule;
 - (iii) is appointed:
 - (A) for a term of 3 years, for a Principal or Representative; or
 - (B) for a term of 1 year, for a Student; and
 - (iv) is eligible for reappointment as an Appointed Director provided that:
 - (A) an Appointed Director's period of consecutive service to the College does not exceed a period of:
 - (1) 6 years, for a Principal or Representative; or
 - (2) 2 years, for a Student; and
 - (B) for a Principal or Representative who has previously served as an Appointed Director that:
 - (1) a period of 3 years has elapsed since their previous appointment; and
 - (2) their period of cumulative service to the College does not exceed a period of 12 years.
- (c) Clause 10.9(b) only applies to periods of service as an Appointed Director from the date of adoption of this Constitution.
- (d) Any appointment, re-affirmation or removal of an Appointed Director must be in writing served on the College.
- (e) Persons elected as directors under clause 41(c) of the Previous Constitution must retire from office on the adoption of this Constitution, but, subject to meeting the eligibility requirements in this clause 10, are eligible to be elected or appointed as directors in accordance with this clause 10.

10.10 Appointment of officers

The Council is to appoint the other officers with such frequency as the Council from time to time determines.

11 Remuneration of Directors

The Council must not be paid any remuneration for their services as Directors.

12 Expenses of Directors

- (a) A Director is entitled to be reimbursed out of the funds of the College for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Council or a committee of Council or when otherwise engaged on the business of the College.
- (b) Any payment to a Director must be approved by the Council and made in accordance with any Rule, such as an Expenses Policy, established in accordance with clause 15.

13 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under clause 10.2(a);
- (b) resigns from the office by notice in writing to the College;
- (c) in the case of an Appointed Director, is removed from the office of Director by the Council or ceases to be a Principal, Representative or Student;
- (d) is not present at 3 successive meetings of the Council without leave of absence from the Council;
- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (f) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;
- (g) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator; or
- (h) dies.

14 Powers and duties of the Council

14.1 Council to manage the College

The Council is to manage the business of the College and may exercise all the powers of the College that are not, by the Corporations Act or by this Constitution, required to be exercised by the College in General Meeting, including but not limited to setting the strategy and direction, setting and monitoring performance targets, proactively identifying and mitigating risks, monitoring financial viability and sustainability, and influencing culture.

14.2 Specific powers of the Council

Without limiting the generality of clause 14.1, and subject to any trusts relating to the assets of the College, the Council may exercise all the powers of the College to:

- (a) borrow or raise money;
- (b) charge any property or business of the College; and

- (c) give any security for a debt, liability or obligation of the College or of any other person.

14.3 Compliance with duties

Each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act or the Corporations Act from time to time.

14.4 Delegation

- (a) The Council may resolve to delegate any of their powers to:
 - (i) a committee in accordance with clause 22;
 - (ii) a Director;
 - (iii) an employee of the College; or
 - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Council and the Council may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Council, and the exercise of the power by the delegate is as effective as if the Council had exercised it.
- (d) The Council may continue to exercise any power it has delegated.

15 Rules

Subject to this Constitution, the Council may from time to time by resolution make and rescind or alter Rules (or Council Policies) which are binding on Members for the management and conduct of the business of the College.

16 Dean, Secretary and Public Officer

16.1 Dean

- (a) The Council will appoint a Dean on such terms and conditions (including as to remuneration) as it thinks fit.
- (b) The Council may delegate any of their powers to the Dean:
 - (i) on the terms and subject to any restrictions it decides; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Council,and may revoke the delegation at any time.
- (c) Subject to any agreement between the Company and the Dean, the Council (excluding the Dean) may:
 - (i) dismiss the Dean;
 - (ii) vary the terms of employment of the Dean;
 - (iii) revoke or vary any power delegated to the Dean; and/or

- (iv) suspend the Dean or suspend the delegation of powers to the Dean for such period and on such terms as the Council may determine.
- (d) The Dean is a Director and:
 - (i) will cease to be a Director if the Dean is removed, dismissed for any reason or otherwise resigns as Dean pursuant to clause 16.1(c); and
 - (ii) is not entitled to attend, speak or vote as a Director at any meeting of the Council if the Dean is under suspension from office pursuant to clause 16.1(c)(iv).

16.2 Secretary

- (a) There must be at least one Secretary who is to be appointed by the Council.
- (b) The Council may suspend or remove a Secretary from that office.
- (c) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Council. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Council.

16.3 Public Officer

The Council must appoint a person as Public Officer of the College in accordance with the *Income Tax Assessment Act 1936* (Cth).

17 Appointment of attorney

- (a) By power of attorney, the Council may appoint any person to be an attorney of the College, with such powers, authorities and discretions of the Council as the Council thinks fit and for such purposes, period and conditions as determined by the Council.
- (b) A power of attorney granted under clause 17(a) may contain any provisions for the protection and convenience of the attorney and persons dealing with the attorney that the Council thinks fit.

18 Conflicts of interest

18.1 Disclosure of conflict of interest

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Council (or that is proposed in a circular resolution):

- (a) to the Council; or
- (b) if all of the Council have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

18.2 Disclosure recorded in minutes

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

18.3 Material personal interest

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Council (or that is proposed in a circular resolution) must not, except as provided under clause 18.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

18.4 Present and voting

A Director with a material personal interest in a matter may still be present and vote if:

- (a) their interest arises because they are a Member of the College and the other Members have the same interest;
- (b) their interest arises in relation to remuneration as a Director of the College;
- (c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the College (see clause 33.2);
- (d) their interest relates to a payment by the College under clause 33.1, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (e) ASIC makes an order allowing the Director to vote on the matter; or
- (f) the Directors who do not have material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the College; and
 - (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

19 Proceedings of Council

19.1 Council meetings

- (a) The Council may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Council.

19.2 Questions decided by majority

A question arising at a meeting of Council is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Council.

20 President and deputy chairperson of Council

20.1 President as chairperson and election of deputy chairperson

- (a) The President is to preside as chairperson of meetings of the Council.

- (b) The Council may elect from their number a deputy chairperson of their meetings and may also determine the period for which the person elected as deputy chairperson are to hold office.

20.2 Absence of President at a Council meeting

If a Council meeting is held and:

- (a) the office of President is vacant; or
- (b) the President is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 20.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

20.3 No casting vote for chairperson at Council meetings

In the event of an equality of votes cast for and against a resolution, the chairperson of the Council meeting does not have a second or casting vote, and consequently the resolution will not be passed.

21 Quorum for a Council meeting

- (a) At a meeting of Council, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Council, and, unless so determined, is a majority of Directors holding office and including at least one Director who is an External Director.
- (b) The Council may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clauses 10.1(a)(iv) or 10.1(a)(v), the Council may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

22 Circular resolutions

- (a) The Council may pass a resolution without a Council meeting being held in the manner set out in this clause.
- (b) A circular resolution is passed if at least 75% of Directors entitled to vote on the resolution:
 - (i) sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy; ors
 - (ii) send an email to the College confirming that they agree to the proposed resolution, and that email includes the text of the proposed resolution.
- (c) The resolution is passed when the last Director comprising at least 75% of the Directors entitled to vote on the resolution signs.

23 Validity of acts of the Council

All acts done at a meeting of the Council or of a committee of the Council, or by a person acting as a Director, are taken as valid as if the relevant person had been duly appointed

or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

24 Committees

24.1 Delegation to committees

- (a) The Council may delegate any of their powers, to a committee consisting of one or more Directors and such other persons as they think fit.
- (b) A committee to which any powers have been delegated under clause 24.1(a) must exercise those powers in accordance with any Rules or directions of the Council. A power so exercised is taken to have been exercised by the Council.
- (c) The Council must establish a Standing Committee of Council which will perform duties of the Council between scheduled meetings, and its actions will be reported to the next meeting of the Council. The Council must establish a Rule to govern the ambit of the Standing Committee of Council. The members of the Standing Committee of Council will be:
 - (i) the President of the College, or in the event that the President of the College is not available, the Deputy Chairperson of the Council;
 - (ii) the Chairperson of the Academic Board, or in the event that the Chairperson of the Academic Board is not available, a Director with competence and experience in higher education; and
 - (iii) the Chairperson of the Audit Committee, or in the event that the Chairperson of the Audit Committee is not available, another member of the Audit Committee who is also a Director.
- (d) The Council must establish the following committees:
 - (i) Audit Committee; and
 - (ii) Academic Board,in accordance with respective terms of reference, approved by the Council as a Rule from time to time.

24.2 Meetings of committees

Subject to any Rule, a committee may meet and adjourn as it thinks proper.

24.3 Chairperson of a committee

Subject to any Rule, the members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

24.4 Determination of questions

Subject to any Rule:

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting; and
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

25 Advisory Committee

The Council may establish such Advisory Committees as it thinks fit, including to serve as a forum for Members and such other persons as the Council may see fit to consult from time to time, to have their voices heard by the Council by providing information and feedback to the Council on the perspectives and priorities of the College's stakeholders, as may be relevant to the work and planning of the College.

26 Dispute resolution

26.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the College, whether arising out of the application of this Constitution, the Rules or otherwise (**Dispute**), then either party must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) the Member and the College must in the period of 14 days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;
- (b) if the College and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the College;
- (c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the Member or the College may request the President of the Law Society of New South Wales or President of the Chartered Accountants Australia and New Zealand to nominate a mediator to whom the Dispute will be referred;
- (d) the costs of the mediation must be shared equally between the Member and the College; and
- (e) where:
 - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 26.1(b);
 - (ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or
 - (iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

26.2 Urgent interlocutory relief

The procedure in clause 26.1 will not apply in respect of proceedings for urgent or interlocutory relief.

27 Execution of documents

Documents executed for and on behalf of the College must be executed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Council by resolution appoint from time to time.

28 Accounts

- (a) The Council must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the College or otherwise considered by the Council to be appropriate, cause the accounts of the College to be audited or reviewed accordingly.
- (b) The Council must distribute to the Members copies of the annual financial reports of the College accompanied by a copy of the report of the auditor or reviewer (as required) and report of the Council in accordance with the requirements of a relevant law, regulation or guideline.

29 Gift Fund

- (a) Without limiting clause 28, the College may maintain a Gift Fund:
 - (i) to identify and record Gifts and Deductible Contributions;
 - (ii) to identify and record any money received by the Company because of those Gifts and Deductible Contributions; and
 - (iii) that does not identify and record any other money or property.
- (b) The Council must use the Gift Fund only for purposes of receiving Gifts and Deductible Contributions for the objects of the College.
- (c) The Gift Fund forms part of the accounts of the College.

30 Seals

30.1 Safe custody of common seals

The Council must provide for the safe custody of any seal of the College.

30.2 Use of common seal

If the College has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Council, or of a committee authorised by the Council to authorise its use; and

- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Council to countersign that document or a class of documents in which that document is included.

31 Inspection of records

31.1 Inspection by Members

Subject to the Corporations Act, the Council may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the College or any of them will be open to inspection by the Members (other than Directors).

31.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the College except as provided by law or authorised by the Council or by the College in General Meeting.

32 Service of documents

32.1 Document includes notice

In this clause 32, a reference to a document includes a notice.

32.2 Methods of service

- (a) The College may give a document to a Member or Director:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member or Director in the Register or an alternative address nominated by the Member or Director; or
 - (iii) by sending it to an electronic address nominated by the Member or Director.
- (b) A Member or Director may give a document to the College:
 - (i) by serving it on the College at the Registered Office;
 - (ii) by sending it by post to the Registered Office; or
 - (iii) by sending it to the electronic address nominated by the College.
- (c) A document sent by post:
 - (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received on the 5th business day after the date of its posting; and
 - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the 7th business day after the date of its posting.

- (d) If a document is sent by electronic transmission, delivery of the document is taken:
 - (i) to be effected by properly addressing and transmitting the electronic transmission; and
 - (ii) to have been delivered on the day following its transmission.

32.3 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member or Director by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

33 Indemnity and insurance

33.1 Indemnity

- (a) The College must indemnify any current or former Director, Secretary or executive officer of the College out of the property of the College against:
 - (i) every liability incurred by the person in that capacity; and
 - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;except to the extent that:
 - (iii) the College is forbidden by law (including the Corporations Act) to indemnify the person against the liability or legal costs;
 - (iv) an indemnity by the College of the person against the liability or legal costs would, if given, be made void by any law; or
 - (v) the person is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).
- (b) The indemnity is a continuing obligation and is enforceable by a person even though they are no longer a Director, Secretary or executive officer of the College.

33.2 Insurance

The College may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the College against liability arising out of conduct by the person in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

- (a) the College is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or
- (b) the contract would, if the College paid the premium, be made void by any law (including the Corporations Act).

33.3 Contract

The College may enter into an agreement with a person referred to in clauses 33.1 and 33.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 33 may include provisions relating to rights of access to the books of the College conferred by the Corporations Act or otherwise by law.

34 Amendment to Constitution

- (a) Subject to clause 34(c), this Constitution may only be amended by Special Resolution of the Members of the College.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the College to no longer be a charity.
- (c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

Schedule 1

Appointment of Representative - (see clause 6.8)

**Sydney College of Divinity Ltd
ACN 002 653 036**

I, (name)
of (address)
being a member of the abovenamed College hereby appoint
..... (name/or position (eg
Principal))
of (address)
and/or in their absence (name)
of (address)
as my representative to vote on my behalf at the meeting(s) of the members of the College [to be held on the day of 20 and at any adjournment of that meeting OR during the period [insert date] to [insert date] OR until this appointment is withdrawn].

[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed by an authorised representative of the Member:

Name of authorised representative and name of Member:.....

Dated:

This notice must be returned to Sydney College of Divinity Ltd ACN 002 653 036 at:
[ADDRESS/EMAIL ADDRESS/FAX No]
by [TIME] on [DATE]
[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME FOR THE MEETING]