

# Saint John's College Act 1857

As at 26 November 2012

## **Long Title**

An Act to incorporate Saint John's College as a College within the University of Sydney.

## **Preamble**

WHEREAS considerable funds have been subscribed for the institution and endowment in the Archdiocese of Sydney of a Roman Catholic College within the University of Sydney to be called "The College of Saint John the Evangelist" wherein the students shall receive systematic religious instruction and be brought up in the doctrines and discipline of the Roman Catholic Church and provision be made for the residence of the students and their preparation for the University lectures and examinations under collegiate control And whereas it is expedient that the said College should be incorporated:

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:

## **1A Name of Act**

This Act is the *Saint John's College Act 1857*.

## **1 Saint John's College incorporated**

So soon as it shall be made to appear to the satisfaction of the Governor that a sum of not less than ten thousand pounds has been subscribed or contributed for the endowment aforesaid and that the amount has either been paid or secured to be paid for that purpose and that a rector and eighteen fellows for the government of the said College in accordance with the constitution thereof as in this Act set forth have been duly appointed and elected respectively the same shall be notified by proclamation in the New South Wales Government Gazette under the hand of the Governor and immediately upon such notification and from thenceforth the rector and fellows of the same College shall be and they are hereby constituted a body politic and corporate by the name of "The Rector and Fellows of Saint John's College" by which name the said incorporated body shall have perpetual succession and a common seal and shall sue and be sued or otherwise appear and answer and be answered and may take and hold to them and their successors by grant will or otherwise in perpetuity or for any term of life or years as well chattels and other personal property as lands buildings and other hereditaments and the same or any part thereof may alien or otherwise dispose of or demise and also shall or may do all other things incident or appertaining to a body

politic and corporate.

## **2 Restraining disposal of lands derived from the Crown**

Provided always that it shall not be lawful for the said corporation or any persons or person seized of or entitled to lands in trust for the corporation or for the purposes of the College to alienate mortgage charge or demise any lands or hereditaments granted to or in trust for the corporation or for College purposes by Her Majesty or Her Successors without the consent in writing of the Governor with the advice of the Executive Council for the time being.

## **3 Rector and fellows to constitute a Council**

The said body ~~politic or~~ corporate shall consist of a rector and ~~eighteen-twelve~~ fellows of whom ~~six-three~~ shall ~~always~~ be duly approved priests (clerical fellows) and ~~twelve-nine~~ shall be lay persons (lay fellows) ~~men which said eighteen fellows shall appoint the rector who shall not be one of themselves~~ and the rector and fellows for the time being shall ~~together~~ form a Council to be called "The Council of Saint John's College" in which shall be vested ~~at all times~~ the government in every respect of the College and all matters relating thereto.

### **3A Functions of the Council**

The Council has the following functions:

- (a) the development and establishment of policies and plans for the administration and improvement of the College;
- (b) defining the College's educational and pastoral profile;
- (c) supervision of the management of the College's resources and monitoring the College's performance;
- (d) such other functions as are conferred by this or any other Act.

### **3B Appointment of rector and vice-rector**

The fellows shall as required appoint from outside their number the rector and may appoint a vice-rector, and determine the terms and conditions of their appointments, and monitor their performance.

## **4 Visitor**

The Roman Catholic Archbishop of Sydney shall be visitor of the College with all such powers as by law appertain to the office of visitor of a College.

## **5 Rector and vice-rector**

- (1) The rector and the vice-rector shall ~~always~~ be a duly approved priest or a practising Roman Catholic lay person, ~~and the Council shall have power to appoint a vice-rector who shall in the rector's absence have all the powers and discharge all the duties of rector~~ In the absence of the rector and during any vacancy in that office the vice-rector shall have and exercise all the powers duties and functions of the rector. Where the rector is not a duly approved priest, the Council shall appoint a dean who shall be a duly approved priest or professed member of a religious order ~~and~~ who shall have pastoral duties in relation to and

~~for the College. The vice-rector may be the dean if the vice-rector is a duly approved priest.~~

(2) The rector:

(a) is the chief executive officer of the College and its administrative head;

(b) is to exercise stewardship of the College on behalf of the Council;

(c) has such other duties and responsibilities as may be prescribed by the by-laws or determined, subject to the by-laws, by the Council.

## **6 Removal or suspension**

The rector and vice-rector, respectively, shall be ~~respectively~~ liable to removal or suspension for sufficient cause by the fellows subject to an appeal to the visitor.

## **7 Vacancies**

~~Except as provided by section 8B, all vacancies in the office of rector or in the number of fellows occasioned by death resignation or removal or other cause shall as soon as conveniently may be after the vacancy (on notification of the fact under the hand of two fellows) be supplied in the manner following that is to say in the office of rector by the fellows and in the place or post of fellow by the remaining fellows.~~

## **7 Election and appointment of fellows**

(1) Four lay fellows shall be elected by the persons who are qualified to vote to hold office for four years and, subject to s 8A, shall be eligible for re-election. An ordinary election shall be held in November in every alternate year and at each such election two of the elected lay fellows shall retire and their places shall be filled by election.

(2) Three clerical fellows shall be appointed by the Archbishop of Sydney to hold office for four years expiring at the declaration of the poll at an ordinary election and, subject to s 8A, shall be eligible for re-appointment.

(3) One lay fellow shall be appointed by the Vice-Chancellor of the University of Sydney to hold office for four years expiring at the declaration of the poll at an ordinary election and, subject to s 8A, shall be eligible for re-appointment.

(4) Four lay fellows shall be appointed by the Council to hold office for four years and, subject to s 8A, shall be eligible for re-appointment. At the conclusion of the last Council meeting before each ordinary election the two lay fellows appointed by the Council whose terms are expiring shall retire and their places shall be filled by appointment by the other members of the Council.

(5) Appointed members of the Council should be selected taking account of their expertise and experience relevant to the functions exercisable by the Council and an appreciation of the objects, functions, values and activities of the College.

(6) This section has effect subject to s 7A.

**7A Transitional provision**

- (1) The procedure to be followed for the election of four lay fellows in November 2015, the appointment of clerical fellows, and the appointment of four fellows by the Council shall be as prescribed by the by-laws, and if not so prescribed, then as directed by the Council. Two of the elected fellows and two of the fellows appointed by the Council shall hold office for two years and the others shall hold office for four years. One clerical fellow shall hold office for two years and two clerical fellows shall hold office for four years.
- (2) The provisions of subsection (1) shall apply, mutatis mutandis, to the election and appointment of fellows following an exercise of the powers conferred by s 8B after November 2015.

**7B Vacation of office**

The rector or a fellow shall vacate office if and when he or she:

- (a) is convicted of an offence punishable by imprisonment for a term of more than 12 months;
- (b) becomes bankrupt or enters into an arrangement with or compounds with his or her creditors;
- (c) becomes a mentally incapacitated person ;
- (d) resigns by notice in writing to the chairman of the Council;
- (e) fails, without leave of absence duly granted, to attend three consecutive ordinary meetings of the Council;
- (f) vacates office under s 8A.

**7C Casual vacancies**

- (1) Except as provided by s 8B, a casual vacancy in the number of lay fellows (except for the fellow appointed by the Vice-Chancellor) shall be filled by the remaining fellows.
- (2) A casual vacancy in the lay fellow appointed by the Vice-Chancellor shall be filled by the Vice-Chancellor.
- (3) A casual vacancy in the number of clerical fellows shall be filled by the Archbishop of Sydney.
- (4) A fellow appointed to fill a casual vacancy shall hold office for the balance of the term to which his or her predecessor was entitled.

**8 Election of fellows**

~~Provided that the first eighteen fellows shall be elected by the subscribers to the funds of the College at a meeting of the subscribers to be convened by the visitor by notice in one or more newspapers published in Sydney at least one fortnight before the day appointed for such meeting and that, except as provided by section 8B, all vacancies in~~

~~the number of fellows so soon as there shall be twenty members of the College who are graduates of the University continuing on the books of the College shall be supplied by the remaining fellows and the said graduates in such manner as the Council may appoint.~~

### **8 Qualifications and procedure at election**

- (1) A person is qualified to vote in an election of fellows if the person is:
- (a) a fellow or former fellow or the rector or a former rector; or
  - (b) a member of the College who is a graduate of the University of Sydney and has resided in the College for not less than one academic year.
- (2) The procedure at an ordinary election of fellows and the procedure for appointment of fellows by the Council shall be as prescribed in the by-laws and, if not so prescribed, then as directed by the Council.

### **8A Term of office**

~~As from 1 January 1995, a person elected as a fellow shall, except as provided by section 8B, hold office for the term of five years from the date of the person's election or such other term as a by-law or rule made under section 10 may provide.~~

A fellow is not eligible for re-election or re-appointment if a further term would cause him or her to serve on the Council for more than twelve consecutive years, and a fellow automatically vacates office at the expiration of his or her twelfth year of continuous service on the Council.

### **8B Extraordinary vacancies in offices of fellows**

- (1) This section applies in either or both of the following circumstances:
- (a) if there are vacancies in the office of all 6.3-clerical members of the Council,
  - (b) if there are vacancies in all but one of the offices of lay members of the Council.
- (2) In the circumstances to which this section applies, the visitor ~~must~~ may, in consultation with the Vice-Chancellor:
- (a) remove any remaining fellows, and
  - (b) appoint such persons as fellows as are necessary to enable the Council to be constituted in accordance with section 3.
- (3) A person removed under subsection (2) (a) may (but need not) be appointed as a fellow under subsection (2) (b).
- (4) A fellow appointed under this section holds office, unless sooner removed from office, for a period of up to 3 years specified in the fellow's instrument of appointment.
- (5) The visitor may, in consultation with the Vice-Chancellor, remove a fellow appointed under this section from office for any or no stated reason by revoking the appointment of the fellow by notice in writing given to the fellow.
- (6) The visitor may fill a vacancy (however arising) in the office of a fellow appointed under this section for the remainder of the term of office of the fellow

vacating office.

(7) The visitor, in consultation with the Vice-Chancellor, is to convene the first meeting of the Council after the requisite fellows are appointed under this section in such manner as the visitor thinks fit and is to nominate the fellow to preside at that meeting.

(8) The fellows appointed under this section have and may exercise and perform all the functions, powers and duties of fellows supplied under section 8.

(9) In this section: "**Vice-Chancellor**" means the Vice-Chancellor of the University of Sydney.

### **8C Duties of fellows**

When exercising his or her functions as fellow or as a member of the Council, a person should:

- (a) act in the best interests of the College as a whole in priority to any duty owed to those electing or appointing him or her;
- (b) act in good faith, honestly and for a proper purpose;
- (c) exercise appropriate care and diligence;
- (d) not use ~~their~~his or her position to gain an improper advantage for ~~themselves~~himself or herself or anyone else; and
- (e) avoid, as far as possible, any conflict of interest or duty.

### **8D Disclosure**

- (1) If a fellow has a material interest or duty in a matter being considered or about to be considered at a meeting of fellows or of the Council and the interest or duty may raise a conflict with the proper performance of the fellow's duties in relation to consideration of the matter, the fellow must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the interest at a meeting of the Council.
- (2) Subsequently the fellow must not, unless the Council determines otherwise, be present during any deliberation of the Council, or take part in any decision of the Council with respect to the matter.

### **9 Saint John's College to be a College of and within the University**

The College ~~of Saint John hereby incorporated~~ shall be a College of and within the University of Sydney and ~~all~~ students in the College shall ~~immediately upon entering therein matriculate in the said University and shall thereafter continue to be members thereof be enrolled therein~~ and submit and be subject to the discipline thereof, ~~and shall be required duly and regularly to attend the lectures of the University on those subjects and examination and proficiency in which are required for honors and degrees with the exception (if thought fit by the Council) of the lectures on ethics metaphysics and modern history~~ But the Council may establish conditions under which the rector may admit students of other universities. Priority will be given to students of the University of Sydney.

### 10 Power to make by-laws

The Council ~~of the College~~ shall have power from time to time to make ~~and establish all such~~ by-laws ~~and rules~~ for carrying into effect the ~~several~~ provisions and objects of this Act and ~~without limiting the generality of the foregoing - particularly for declaring the causes which shall create vacancies in the office of fellow and~~

- (a) ~~for prescribing directing~~ who shall preside at meetings of the Council and of the fellows; ~~and~~
- (b) ~~for the management of the College; and~~
- (c) ~~for prescribing the duties of the rector and vice-rector and the other several officers thereof; and of the rector and vice-rector and~~
- (d) ~~the ordering of all things in and connected with the College and the discipline thereof~~

~~as to the said Council shall seem expedient and such laws and rules or any of them and~~ from time to time to alter or revoke ~~or to such by-laws and substitute make~~ others in their place.

### 11 By-laws to be laid before Parliament

Provided that every such by-law ~~and rule~~ shall be transmitted to the Governor within thirty days after being made to be ~~by him~~ laid before the Houses of Parliament ~~of the Colony~~ as soon as conveniently may be thereafter.

### 12 Control over students

~~Provided also that t~~he rector or ~~in the absence of the rector the~~ vice-rector, ~~of the College~~ subject ~~only~~ to the ~~by-laws and rules so made and to policies established by the Council,~~ shall have the general superintendence and control of the students and of the institution.

### 13 Vote and quorum at meetings

~~The votes at all meetings of the Council (except votes for the appointment of a rector) shall be taken exclusively of the person presiding unless there shall be an equality of votes in which case he shall have a casting vote and in every case where all the fellows resident within fifty miles of Sydney entitled to attend shall have had notice of the time and place of intended meeting one clerical and two lay members of the Council with the rector shall constitute a meeting of the Council and~~

- (1) The person presiding at meetings of the Council or of the fellows shall have a deliberative as well as a casting vote.
- (2) The quorum for the transaction of business by the Council shall be six, comprising at least two lay fellows and at least one clerical fellow.
- (3) The quorum for the transaction of business by the fellows shall be six, comprising at least three lay fellows and at least two clerical fellows.
- (4) The votes and proceedings of the majority at any such meeting shall be taken and accepted as the votes and proceedings of the Council or fellows

respectively.

#### **14 Meetings of Council**

- (1) The Council may pass a resolution without a meeting being held if all persons entitled to vote on the resolution 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 if the wording of the resolution and statement is identical in each copy. The resolution is passed when the signed document is received by the rector.
- (2) A Council meeting may be called using any technology consented to by the rector and all the fellows and any one or more of the rector and fellows may participate in the meeting using such technology. The consent may be a standing one and cannot be withdrawn after a meeting has been called under this subsection.

#### **~~14 Special power by by-laws~~**

~~Provided that it shall be lawful for the Council by any by-law or by-laws to alter the mode of supplying vacancies in the office of fellows by ordaining and appointing that such vacancies until twenty graduates have become qualified as electors shall be supplied by the remaining fellows and the graduates (continuing on the books of the College) jointly.~~

#### **15 Temporary vacancies not to prejudice the Corporation**

Subject to the quorum provision, a ~~No~~ temporary vacancy or vacancies in the office of rector or in the number of fellows ~~of the College~~ shall ~~be deemed in any way to~~ not affect the constitution of the College, ~~or~~ its privileges or status as an incorporated body, ~~or the powers of the Council or the fellows.~~

#### **~~16 Appointment of Teaching and Research Fellows~~**

~~The Council shall have power by resolution to appoint a person as a teaching or research fellow of the College for such term and to perform such duties and to enjoy such privileges and emoluments as the Council may from time to time determine and direct provided that:~~

- ~~(a) any person so appointed shall not be entitled to vote at any meeting of the Council or to attend any meeting of the Council except at the invitation of the Council, and~~
- ~~(b) any person so appointed shall not be included in the number of fellows provided for in section 3 and the term "fellow" wherever occurring in this Act or in a by-law or rule made under this Act shall not in the absence of express provision include or refer to a person who is for the time being appointed as a teaching or research fellow.~~

### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Saint John's College Act 1857 (21 Vic)*. Assented to 15.12.1857. This Act has been amended as follows:

1994	No 32	<i>Statute Law (Miscellaneous Provisions) Act 1994</i> . Assented to 2.6.1994. Date of commencement of the provisions of Sch 1 relating to the <i>Saint John's College Act (1857) (21 Vic)</i> , assent, Sch 1.
2012	No 102	<i>Saint John's College Amendment Act 2012</i> . Assented to 26.11.2012. Date of commencement, assent, sec 2.

### Table of amendments

Sec 1A	Ins 2012 No 102, Sch 1 [1].
Sec 5	Am 1994 No 32, Sch 1.
Sec 7	Am 2012 No 102, Sch 1 [2].
Sec 8	Am 2012 No 102, Sch 1 [3].
Sec 8A	Ins 1994 No 32, Sch 1. Am 2012 No 102, Sch 1 [4].
Sec 8B	Ins 2012 No 102, Sch 1 [5].
Sec 16	Ins 1994 No 32, Sch 1.