



2 November 2023

## Letter to the St Kevin's College Community

I wish to provide an update in relation to the incorporation of St Kevin's College.

As previously communicated, following detailed consideration, it was decided to seek regulatory approval for St Kevin's College to transition to an incorporated school model with its own Board.

I am now delighted to announce that we have received regulatory approval to adopt this model. Accordingly, as of December 1, 2023, St Kevin's College will be transferred from the current proprietor Trustees of Edmund Rice Education Australia ("TEREA") to St Kevin's College Limited. As a result, governance responsibility for the College will transfer from TERE A to the Board of St Kevin's College.

The purpose of the change is to implement a localised and responsive governance model and to allow St Kevin's College to make decisions in the best interest of our students and staff. In recent years, in preparation for incorporation, the current Advisory Council together with our Principal Mrs Deborah Barker and the College leadership team have implemented the required governance policies, processes and reporting. This will enable an orderly transition.

St Kevin's College will remain a Catholic school informed by the Charism of the Blessed Edmund Rice. While this will be an important day in our history, operationally, the new model will not result in significant changes to what our community experiences on a day-to-day basis. I imagine you may have further questions and I direct you to the following pages where we have provided more detailed answers.

I would like to take this opportunity to thank Mr Paul O'Malley for his past leadership of the Advisory Council. Without his guidance and leadership, we would not be in this position. I would also like to thank Mr Peter Leahy who preceded Paul in the role of Chair. Peter worked tirelessly to highlight many of the governance issues we set out to address. Finally, I would like to acknowledge the generous work of the current members of the Advisory Council over the past three years.

This would not be possible without the foresight of TERE A to place the priority on the needs of the St Kevin's College students. I thank the Trustees led by Ms Philomena Billington for entrusting and empowering our staff and community.

Finally, I would like to thank our community for their support and patience through this process. I am confident this change will contribute to the solid foundation of St Kevin's College.

Yours Sincerely

**Evan Dwyer**  
Chair St Kevin's College Ltd

ST KEVIN'S COLLEGE

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## Incorporation of St Kevin's College Ltd Your Questions Answered

On 1 December 2023, the ownership and governance of St Kevin's College (the **College**) will be transferred from the Trustees of Edmund Rice Education Australia (**TEREA**) to a newly incorporated entity, St Kevin's College Limited.

### 1 **Why do we need to change the structure for St Kevin's College?**

Presently, the College is owned and governed by TERE. TERE currently has responsibility for managing 54 schools and over 40,000 students across 8 jurisdictions in Australia.

St Kevin's College has evolved. It is a significant institution. It operates in a complex regulatory environment. We have a large community comprising approximately 2,100 students, over 350 staff and volunteers and many thousands of current parents and former students and parents.

Given its size and nature, the College requires a more local, responsive and accountable governance structure. The governance structure needs to be capable of delivering the effective implementation of policies and procedures, particularly in relation to child safety. The structure must be forward looking and manage the ongoing oversight of the risk, strategic direction and financial management of the College. For the past 3 years, the School Advisory Council has been working with TERE, as well as Catholic Education Commission of Victoria (**CECV**) and our regulator the Victorian Registration and Qualifications Authority (**VRQA**), to find a better structure which matches the governance and ownership standards required for the College and by its community.

Following significant consultation, it has been decided to transition from the existing pooled ownership and governance arrangements provided by TERE to a separate ownership and governance model for the College.

This will see, from 1 December 2023:

- a change of proprietor of the College (ie, change in owner and operator of the College) from TERE to a newly incorporated entity, called St Kevin's College Limited
- the adoption of a College Board as the governing body of the College, with a focus solely on the College, its students and staff and our community.

### 2 **What does 'change of proprietor' mean?**

In order to be the proprietor (ie, owner and operator) of a school in Victoria, approval must be obtained from VRQA. Presently, TERE is the approved proprietor of the College.

To give effect to the new ownership and governance model for the College, TERE with the support of the School Advisory Council made an application to VRQA to change the proprietor of the College from TERE to the newly incorporated legal entity, St Kevin's College Limited. VRQA has accepted that application with limited conditions which are currently being addressed.

Accordingly, as of 1 December 2023, the newly incorporated entity St Kevin's College Limited will become the registered proprietor (ie, owner and operator) of the College.



### **3 What does it mean to be incorporated?**

The College is currently not a separate legal entity. It cannot own assets or enter contractual arrangements. It does not have its own board, and relies on TEREA for governance. In many respects, the current ownership and governance structure is not fit-for-purpose for a modern educational entity of the nature of the College.

The new governance structure for the College involves the creation of a new legal entity to become the proprietor of the College. In essence, following implementation of the incorporated school structure, the College:

- will be a separate legal entity with its own College Board providing local governance
- will be able to own and control its own property
- will have the ability to enter contracts in its own right
- will continue to have the benefit of regulatory oversight from CECV and VRQA
- will be a not-for-profit entity, and therefore will be regulated by the Australian Charities and Not-for-profits Commission.

### **4 Will incorporation change the purpose of the College?**

No, the fundamental purpose of the College will remain as the provision of education in the tradition of Blessed Edmund Rice. This has been entrenched in the new Constitution of the College.

Moreover, the College will remain a not-for-profit entity and will be registered with the Australian Charities and Not-for-profits Commission.

### **5 Will incorporation support the safety and wellbeing of children within the College?**

A modern governance structure for a school is essential to embed an organisational culture of child safety and more broadly an effective compliance and risk culture.

This has been recognised in the new Constitution of the College, which expressly states that the purpose of the College includes '*ensuring the safety and wellbeing of all children within all of the operations of the Company*'. This places child safety at the heart of the governance of the College.

Over the past few years, engagement by the existing School Advisory Council, the Principal, senior management and staff has been instrumental in implementing modern policies and procedures, especially with respect to child safety. This has included the implementation of a Governance and Risk Committee, with a Terms of Reference that includes governance of child safety matters. This Committee will continue under the new structure.

### **6 Are there precedents for an incorporated school structure?**

Yes, incorporation will see the College adopt a modern governance model consistent with those used successfully by many independent Catholic schools, as well as many other independent schools in Australia. This includes Xavier College and a number of other APS Schools, as well as Loreto Mandeville Hall and Sacre Coeur.



## **7 What is the role and structure of the College Board?**

Following consultation and approval by TERA, and following all necessary regulatory approvals, members of the existing School Advisory Council have agreed to become the inaugural directors of the new College Board. The inaugural Chair of the College Board will be Evan Dwyer.

The College Board will be responsible for the governance and strategic direction of the College. In concert with College leadership, the College Board will set the strategy for the College, and have a vital role in succession planning for the senior leadership team including the Principal.

The College Board will be supported by a modern board structure comprising the following committees:

- Governance and Risk Committee
- Mission and Education Committee
- Finance Committee
- Property Committee
- Nominations Committee

The Committees will be populated by directors and other members with appropriate expertise. The College is well placed to implement this committee structure, given the existing School Advisory Council has run a similar committee structure in recent years. This prior work will enable an orderly transition to the new structure.

## **8 What is the role of the Principal following incorporation?**

The Principal and the senior management team will continue to have operational responsibilities for the College, including in relation to the education, care and welfare of students, the welfare of the staff and the management and general administration of College business.

The Principal will report directly to and be accountable to the College Board.

## **9 How will College Board and Committee appointments be made?**

The Nominations Committee has been established to ensure appointments to the College Board and the Committees are made by reference to a modern composition policy, which sets out the ideal mix of skills, experience, diversity and qualities required on the College Board and its Committees from time to time. It is the intention through the Nominations Committee and appointment process to ensure appropriate renewal of membership and a consistent culture focussed on College advancement.

## **10 How will this impact day-to-day operations at the College?**

As noted above, the Principal and the senior management team will continue to have operational responsibilities for the College. Incorporation will be an important step in our history to modernise our governance structure, but operationally the new model will not result in significant changes to what our community experiences on a day-to-day basis. Communication channels between families and the College with respect to school and operational matters will not change.



**11 What will be the ongoing relationship between the College and TEREА?**

The College will be incorporated as a company limited by guarantee, being the most common legal structure for an incorporated school. This means the College requires a member, and TEREА will be the sole member of the College. As the College will continue to be a not-for-profit entity, TEREА will not be entitled to any profits from the College.

Given the implementation of a localised College Board, it is intended that TEREА's role with respect to the governance of the College will be very limited.

While the College Board will have governance responsibilities for the College, it is appropriate for the College Board (both current and future) to be subject to some level of oversight with respect to fundamental decisions affecting our College. As such, the Constitution for the newly incorporated entity requires that a limited number of fundamental decisions require the ratification of TEREА as the sole member before those decisions can be taken by the College Board. Those fundamental decisions include among other things the appointment of the Principal, certain transactions relating to land and decisions to cease operating the College.

**12 Will TEREА continue to provide services?**

In the past, the College has paid an annual 'Network Services Fee' to TEREА. This annual Network Services Fee will be replaced by an agreed services agreement. Under the new services agreement, the College may procure specific goods and services from TEREА on an arm's-length basis in the best interests of the College. This provides greater control to the College as to the extent and nature of services it will procure going forward.

The move to this model will see a significant reduction in payments to TEREА. The services agreement with TEREА has been specifically negotiated in order:

- to allow the College to routinely evaluate the need for services, and opt in and out of some or all of the services in accordance with the best interests of the College
- to support routine market testing of procured services so as to ensure these are procured on commercial terms.

**13 Will this impact on staffing levels or staff employment arrangements?**

Staffing levels will not be impacted as a result of incorporation.

Staff will be asked to transfer their employment directly to St Kevin's College Limited through a process facilitated by the College. Except for the change of employer, all terms and conditions of employment will remain unchanged and all accrued service and service related entitlements will continue.

**14 Will the College have more control over its assets?**

Yes. Presently, the College is not a separate legal entity and therefore not capable of owning any assets. Accordingly, the College assets (including land and buildings) are presently held by TEREА on a pooled basis together with the assets of TEREА's other schools. This means that TEREА has the ability to deal with those assets, including for purposes beyond the College.



Under the new incorporated structure, the College assets will be held solely for the benefit of the College. This will allow the assets to be maintained and developed in line with the strategic plan of the College, as set by the College Board from time to time.

**15 Will incorporation result in an increase in fees or operating costs?**

No, incorporation will result in a change to governance and ownership arrangements but will not impact on the operational cost structure of the College. The directors are volunteers and not paid for their role. Over the past few years, and separate from incorporation, the College has invested in its internal governance capabilities, including through the establishment of key roles such as the Director of Human Resources, Director of Governance, Director of Child Safeguarding. These enhancements have been made at the College to lift standards with respect to governance and child safety but also more generally with respect to operational, strategic and financial risks, and are investments that would have been made irrespective of the incorporation of the College.

**16 Does this impact on enrolments or on the waiting list?**

No, this is simply a change to the governance structure, and incorporation will not impact enrolments or waiting lists or the process for making an application.

**17 Will donations to the College be impacted?**

Importantly, any donations or gifts made to the College will remain the property of the new entity and will not be retained by TERA.