

Marcus Oldham College Bill (No. 2)

No.

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By Authority, Victorian Government Printer

LEGISLATIVE COUNCIL

Read 1° 14 November 1995

(Brought from the Legislative Assembly)

(No. 2)

A BILL

for

An Act to provide for the transfer of certain trust property to Marcus Oldham College A.C.N. 071 444 409, to cancel the trust created by the will of Marcus William Oldham, deceased, and for other purposes.

Marcus Oldham College Act 1995

Preamble

The will of the late Marcus William Oldham, who died on 28 June 1939, created a trust for the establishment and maintenance in perpetuity of an establishment or training school in pastoral farming or agricultural pursuits or other related pursuits.

Under that trust Marcus Oldham College was established in 1961 on a site in Geelong.

The trustees and the Council of Marcus Oldham College now wish for provision to be made for the vesting in Marcus Oldham College A.C.N. 071 444 409, a company limited by guarantee incorporated under the Corporations Law of Victoria, of all real

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

and personal property held by the trustees and for the incorporated body to be made the successor in law of the trustees and the Council.

The Parliament of Victoria therefore enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is—

- (a) to provide for the transfer of certain trust property to Marcus Oldham College A.C.N. 071 444 409; and
- (b) to cancel the trust created by the will of Marcus William Oldham, deceased.

2. Commencement

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- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), Part 2 comes into operation on a day to be proclaimed.
- (3) If Part 2 does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

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3. Definitions

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In this Act—

- “**Council**” means Council of the unincorporated College appointed for the time being by the trustees;
- “**instrument**” includes a document and an oral agreement;
- “**liabilities**” means all liabilities, duties and obligations, whether actual, contingent or prospective;

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“**Marcus Oldham College**” means Marcus Oldham College A.C.N. 071 444 409, a company limited by guarantee incorporated under the Corporations Law of Victoria;

5 “**property**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

10 “**rights**” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

15 “**trust**” means the trusts set out in clause 6 of the will of Marcus William Oldham, deceased, as varied by an order made by the Supreme Court on 20 July 1979;

“**trustees**” means the trustees for the time being of the trust;

20 “**unincorporated College**” means Marcus Oldham Farm Management College (sometimes known as “Marcus Oldham College of Farm Management” and by other names) as established and existing immediately before the commencement of Part 2 including all land or other property vested in, held by or belonging to the trustees under, or in connection with, the trust and all money and securities held by the trustees as belonging to or forming part of any fund held under, or in connection with, the trust;

25 “**will**” includes a codicil and any testamentary disposition.

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PART 2—MARCUS OLDHAM COLLEGE AS SUCCESSOR OF UNINCORPORATED COLLEGE

4. Transfer of assets and liabilities of unincorporated College

35 Subject to this Part, on and from the commencement of this Part—

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- (a) all property and rights of the trustees or the Council in, or in relation to, the unincorporated College vest in Marcus Oldham College subject to the encumbrances (if any) to which they were subject immediately before so vesting; 4
- (b) all liabilities (wherever located) of the trustees or the Council in, or in relation to, the unincorporated College vest in Marcus Oldham College and the rights to which the trustees were, or the Council was, entitled in respect of those liabilities immediately before they ceased to be liabilities of the trustees or the Council (as the case requires) vest in Marcus Oldham College; 10
- (c) the trustees are severally discharged from any joint or several liability in relation to the unincorporated College including any obligation (whether arising under the will that created the trust or otherwise) to apply the land, buildings, funds or other property vested in, held by or belonging to them as trustees for or in connection with the operation of the unincorporated College; 15 20
- (d) Marcus Oldham College is the successor in law of the Council and of the trustees in relation to the unincorporated College; 24
- (e) any scholarship, prize or bursary of a continuing nature administered by the trustees, the unincorporated College or the Council and existing immediately before that commencement shall be administered by Marcus Oldham College as if it were a scholarship, prize or bursary of Marcus Oldham College, but otherwise in accordance with the terms and conditions to which it was subject immediately before that commencement; 30 34
- (f) all contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments (except contracts, agreements or arrangements relating to the members of staff of the 40

5 unincorporated College) made or entered into
by, on behalf of, or in relation to the trustees, the
unincorporated College or the Council and in
force immediately before that commencement
have effect as if made or entered into by, on
behalf of, or in relation to, Marcus Oldham
College;

10 (g) all actions, claims, arbitrations, applications and
other proceedings (including proceedings on
appeal or review) pending or existing
immediately before that commencement by,
against, or in relation to the trustees, the
unincorporated College or the Council have
effect as if they were proceedings by, against, or
15 in relation to Marcus Oldham College, and may
be continued and completed accordingly;

20 (h) any permit, licence or authority of any kind
whatsoever issued or granted to the trustees, the
unincorporated College or the Council by or
under any Act continues to operate, despite
anything in this Act, in favour of Marcus
Oldham College in the same way and to the
same extent as it operated in favour of the
trustees, the unincorporated College or the
25 Council;

(i) all records and documents of the trustees, the
unincorporated College or the Council become
the property of Marcus Oldham College;

30 (j) unless the contrary intention appears, a
reference to the trustees or to the unincorporated
College or to the Council is deemed to be a
reference to Marcus Oldham College if the
reference—

35 (i) is in an Act, other than this Act, a
subordinate instrument within the meaning
of the **Interpretation of Legislation Act
1984**, a judgment or order or any other
document whatever; and

40 (ii) is in relation to a period occurring on or
after that commencement.

5. Land to vest in Marcus Oldham College

- (1) On the commencement of this Part, the property and rights of the trustees in the land described in the folio of the Register set out below vest in Marcus Oldham College subject to the encumbrances (if any) to which they were subject immediately before so vesting. 5

<i>Volume</i>	<i>Folio</i>
9923	605

- (2) On the commencement of this Part, the property and rights of the trustees in the land being Lot 2 on Plan of Subdivision dated 1 March 1965 and deposited in the Office of the Registrar-General in Correspondence No. 65/8805 and being the land described in Conveyance No. 106 Book 816 vest in Marcus Oldham College subject to the encumbrances (if any) to which they were subject immediately before so vesting. 10
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- (3) The provisions of this section are in addition to, and not in derogation from, the provisions of section 4. 20

6. Cancellation of trust and abolition of Council

- (1) On the commencement of this Part, by force of this sub-section—
- (a) the trust shall be cancelled and the trustees shall go out of office; and 25
- (b) the Council shall be abolished and its members shall go out of office.
- (2) A person who, immediately before the commencement of this Part, was a trustee or member of the Council is entitled to be indemnified by Marcus Oldham College in respect of any personal liability arising out of the execution in good faith of the duties, powers, authorities and discretions conferred or imposed on him or her as a trustee or member of the Council to the same extent and in the same circumstances as he or she was entitled to be 30
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indemnified by the unincorporated College before that commencement.

7. Gifts, trusts etc.

If—

5 (a) before or after the commencement of this Part—
(i) a gift, disposition or trust of property is made or declared or is deemed to have been made or declared; or

10 (ii) a trust fund is created—
(whether by deed, will or otherwise) to, in favour of, for the use of, or for the purposes of, the unincorporated College; and

15 (b) the gift, disposition, trust or trust fund takes effect, or may make effect, or the trust fund may be applied, on or after that commencement—

the gift, disposition, trust or trust fund does not fail only because of the provisions of this Part, but on or after that commencement—

20 (c) in the case of a gift, disposition or trust of property, takes effect as if made or declared to or in favour of Marcus Oldham College for a purpose of Marcus Oldham College that corresponds with, or is similar to, those purposes of the unincorporated College for
25 which it was made or declared; or

(d) in the case of a trust fund, may be applied as if created in favour of Marcus Oldham College for a purpose of Marcus Oldham College that corresponds with, or is similar to, those purposes of the unincorporated College for
30 which the fund was created.

8. Staff of unincorporated College

35 (1) On the commencement of this Part, a person who, immediately before that commencement, was a member of the staff employed by the unincorporated

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College or the Council, becomes a member of the staff of Marcus Oldham College.

(2) A person who becomes a member of the staff of Marcus Oldham College under sub-section (1)—

(a) is a member of the staff of Marcus Oldham College with remuneration no less than the person was receiving or was entitled to receive as a member of the staff of the unincorporated College immediately before the commencement of this Part, and on terms and conditions no less favourable than those of the person's appointment at the unincorporated College; and 5
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(b) continues to have the benefit of all entitlements (including all entitlements arising from recognition of prior service with other bodies) accrued in respect of the person's appointment at the unincorporated College before that commencement. 15

(3) A person transferred under sub-section (1) who, immediately before the transfer, was an officer within the meaning of the **State Superannuation Act 1988**, continues, subject to that Act, to be an officer within the meaning of that Act, while he or she continues as a member of staff of Marcus Oldham College. 20

9. *Students of unincorporated College* 25

(1) A person who, immediately before the commencement of this Part, was enrolled as a student of the unincorporated College becomes a student of Marcus Oldham College.

(2) A person who, immediately before the commencement of this Part, was entitled to enrol as a student of the unincorporated College is entitled to apply for enrolment as a student of Marcus Oldham College in a course of study that is the same or substantially the same as that in which he or she was entitled to enrol at the unincorporated College. 30
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10. *Amendment of Register*

- 5 (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Part.
- 10 (2) The Registrar-General must make all entries on the records of enrolment of any Crown grant and on any memorial relating to land that are necessary because of the operation of this Part.

11. *Taxes*

15 No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Act or in respect of any act or transaction connected with or necessary to be done by reason of this Act, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of the trustees or the Council.

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12. *Precedence of Act*

The provisions of this Act have effect despite anything to the contrary in the terms of the trust or in any Act, instrument or rule of law.

