

## **The Newcastle Anglican Schools Corporation Ordinance Amendment Ordinance 2016**

An Ordinance to reform the governance of Diocesan Schools, to amend the constitution for the Newcastle Anglican Schools Corporation and for related purposes.

The Diocesan Council of the Diocese of Newcastle ordains as follows -

### **Short Title**

1. This Ordinance may be cited as the Newcastle Anglican Schools Corporation Ordinance Amendment Ordinance 2016.
2. The Newcastle Anglican Schools Corporation Ordinance 2007 (**2007 Ordinance**) is amended by the repeal of all clauses of that Ordinance and inserting in their place all the clauses contained in Schedule One of this Ordinance.
3. All persons employed by the Newcastle Anglican Schools Corporation (**Corporation**) or appointed to an office of the Corporation shall upon assent to this Ordinance remain employed or in office with no derogation of entitlements.
4. All actions validly undertaken in accordance with the 2007 Ordinance remain valid and are held always to have been valid.
5. The Bishop shall appoint Board Members to hold office upon assent to this Ordinance together with the term of office for each appointed Board Member. Thereafter, Board Members will be appointed in accordance with the provisions of Schedule One.
6. This Ordinance shall come into effect on a date determined by the Bishop.
7. The Board shall determine within 120 days of this Ordinance coming into effect or by such other date set by the Bishop the –
  - a. Corporation's Strategic Plan; and
  - b. Corporation's Mediation Rules.

# Schedule One

## NEWCASTLE ANGLICAN SCHOOLS CORPORATION ORDINANCE 2007

### PART ONE – PRELIMINARY MATTERS

1. **Short Title**

This Ordinance may be cited as the Newcastle Anglican Schools Corporation Ordinance 2007.

2. **Definitions and Interpretation**

2.1 *Definitions*

In this Ordinance, unless the context otherwise requires –

“**ADI**” has the same meaning as in the Banking Act 1959 (Commonwealth)

“**Affiliated School**” means a school recognized by the Board as a school which is associated with the Anglican Diocese of Newcastle and the Corporation;

“**Bishop**” means the Bishop of Newcastle, any Commissary of the Bishop and the Administrator during a vacancy in the See.

“**Board**” means the board of the Corporation.

“**Board Member**” means a member of the Board in accordance with **clause 10.1**.

“**Bodies Corporate Act**” means the *Anglican Church of Australia (Bodies Corporate) Act* 1938 (NSW).

“**Business Day**” means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

“**Business Manager**” means the Business Manager of the Corporation.

“**Chair**” means, as applicable:

- (a) the person who holds the position as chair of the Corporation pursuant to **clause 10.1(a)**;
- (b) the person who holds the office of Chair of the Board and/or any committee of the Board, including a School Council.

“**Chief Executive Officer**” means the chief executive officer of the Corporation.

“**Church Trust Property Act**” means the *Anglican Church of Australia Trust Property Act* 1917 (NSW).

“**Committee**” means a committee established by the Board under **clause 28**.

**“Corporation”** means the Newcastle Anglican Schools Corporation, established under the Newcastle Anglican Schools Corporation Ordinance 2007.

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

**“Corporation Officer”** means the executive officer of a Division.

**“Diocesan Council”** means the Diocesan Council of the Diocese.

**“Diocese”** means the Diocese of Newcastle in the Anglican Church of Australia.

**“Division”** means an area of activity of the Corporation which is not a School, including any Existing Division.

**“Existing Division”** means the Schools Management Division of the Corporation.

**“Existing Schools”** means:

- (a) Bishop Tyrrell Anglican College;
- (b) Lakes Grammar – An Anglican School;
- (c) Manning Valley Anglican College; and
- (d) Scone Grammar School.

**“Finance Debt”** means and includes any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including –

- (a) an advance or loan;
- (b) drawing, accepting, endorsing, discounting, collecting or paying a bill of exchange, cheque or other negotiable instrument;
- (c) the discounting or sale of receivables;
- (d) entering into any agreement or transaction in connection with raising financial accommodation as a result of which a debt or liability or a contingent debt or liability will or might arise (including any finance lease, hire purchase agreement or title retention agreement);
- (e) any commodity, currency or interest rate swap agreement, forward exchange rate agreement or futures contract (as defined in any statute);
- (f) any reimbursement obligation or indemnity relating to any financial accommodation (including any letter of credit or bank undertaking); or
- (g) any Guarantee of any other Finance Debt.

**“Guarantee”** means the guarantee of any obligation of another party by the Corporation.

**“Mediation Rules”** means the rules adopted by the Board from time to time for the purposes of the Dispute Resolution procedure in **clause 44**.

**“Member”** means a member of the Corporation from time to time in accordance with **clause 6**.

**“Mission”** means the mission of the Corporation as set out in **clause 4**.

**“Objects”** means the objects of the Corporation as set out in **clause 4**.

**“Officer”** means any person who holds an office of the Corporation created by the Board. It includes the Chairman, the Deputy Chairman, the Chief Executive Officer, Business Manager or any other person whose title or acting title includes the words ‘financial controller’, ‘corporate secretary’, ‘executive officer’ or cognate expressions.

**“Ordinance”** means this Ordinance .

**“Principal”** means the chief executive officer of a School whether known as the Principal or by some other title.

**“Responsible Person”** means a responsible person as determined by any relevant law and any ordinance of the Synod.

**“School”** means a school, college or other educational institution conducted by or on behalf of the Corporation and shall include the Existing Schools but not an Affiliated School.

**“School Committee”** means any committee or working group appointed for a School by that School's School Council from time to time pursuant to **clause 31.1(g)**.

**“School Council”** means the governing body of a School constituted by the Board pursuant to **clause 30**.

**“School Ordinances”** means the:

- (a) the Scone Grammar School Council Ordinance 1993;
- (b) the Bishop Tyrrell Anglican College Council Ordinance 1998;
- (c) the Manning Valley Anglican College Council Ordinance 2001; and
- (d) the Lakes Grammar – An Anglican School Ordinance 2011.

**“School Strategic Plan”** means the school strategic plan adopted by any School Council from time to time.

**“Security”** means any mortgage, charge, lien, pledge, general security agreement or any assignment, trust or other arrangement securing the performance or payment of any obligation. It includes a security interest under section 12 of the Personal Property Securities Act 2009 (Cth).

**“Strategic Plan”** means the strategic plan adopted by the Corporation from time to time.

**“Synod”** means the Synod of the Diocese and includes, when the Synod is in recess, the Diocesan Council.

**“Trust Property”** means all or any part of any real or personal property of the Corporation within the meaning of the term “church trust property” in section 4 of the Church Trust Property Act including (without limitation) –

- (a) land and any buildings or improvements on or estates or interests in the land;
- (b) the Schools;
- (c) real or personal property within or outside the geographical boundaries of the Diocese; and
- (d) real or personal property acquired at any time after the date of assent of this Ordinance, within the meaning of the term “church trust property” in section 4 of the Church Trust Property Act.

## 1.2 *Interpretation*

In this Ordinance, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) a reference to any clause or schedule is to a clause or schedule of this Ordinance;
- (g) a reference to any ordinance other than this Ordinance or the School Ordinances is a reference to an ordinance (as so named) of the Diocese of Newcastle;
- (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (i) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

- (j) The provisions of this Ordinance displace the replaceable rules (but not replaceable rules which mandatorily apply to a public company) contained in the Act.
- (k) Headings do not form part of or affect the construction or interpretation of this Ordinance.

## **PART TWO - THE CORPORATION**

### **3. Constitution of Corporation**

The Corporation is constituted with the powers and functions in this Ordinance.

### **4. Objects and Mission**

4.1 The Objects and the Mission of the Corporation are the establishment, promotion, governance, support and advancement of quality education through accessible, affordable and local Anglican Schools that communicate the Gospel of Jesus Christ in a caring environment to students, staff, parents and the wider community.

4.2 An act of the Corporation is not invalid merely because it is contrary to or beyond the Objects.

### **5. Not-for-profit**

The assets and income of the Corporation shall be applied solely in furtherance of the above-mentioned Objects and Mission and no portion shall be distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Corporation.

### **6. Membership of the Corporation**

6.1 The Members of the Corporation shall be the Existing Schools.

6.2 The Diocesan Council may, upon application by:

- (a) An Anglican school;
- (b) A school having educational and religious policies and practices that are consistent with the Objects and Mission of the Corporation,

admit such school as a Member of the Corporation.

6.3 The Diocesan Council may, upon admitting a school as a Member under **clause 6.2** declare that a provision of this Ordinance shall not apply to that school.

### **7. Powers**

The Corporation has the general power to:

- (a) control, manage and conduct the Schools;
- (b) promote, acquire and establish other schools (by acquisition and ownership of shares in companies or otherwise) and control, manage, and conduct those

schools;

- (c) to establish relationships with schools as Affiliated Schools of the Corporation and the Diocese;
- (d) make such arrangements, financial or otherwise for the development, extension and improvement of the Schools; and
- (e) order and conduct the affairs of the Schools in any manner in which it sees fit.

## 8. **Church Trust Property**

8.1 Pursuant to the Church Trust Property Act and as otherwise allowed by law, the Corporation is:

- (a) authorised to govern, manage and control all Trust Property in any manner in which it sees fit and to do all things incidental to such government, management and control; and
- (b) authorised to pool any Trust Property and all matters and things incidental to such pooling.

8.2 Pursuant to the Church Trust Property Act, the Bodies Corporate Act and any other relevant law, it is expedient for the Corporation to be authorised, empowered and directed and the Corporation is so authorised, empowered and directed (as it deems appropriate) to:

- (a) borrow or otherwise raise moneys by such means and methods as the Corporation determines are appropriate and without limitation incur any Finance Debt and enter into derivative and other related financial arrangements and transactions;
- (b) provide any Security or Guarantee in favour of a third party (including any ADI) over all or any part of the Trust Property and any other assets it holds; and
- (c) in the case of the enforcement of any right of any creditor, or default under any obligation, arising under or in connection with any Security or Guarantee provided by the Corporation or Finance Debt incurred by the Corporation, without limitation –
  - (i) to sell all or any part of the Trust Property and other assets whether subject to any Security or otherwise;
  - (ii) to apply all or any part of the Trust Property and other assets or any proceeds from any realisations of the Trust Property and other assets in full or partial satisfaction of any such Finance Debt or liability secured by any such Security or Guarantee; and
  - (iii) to be indemnified from all or any part of the Trust Property and any other assets it holds.

8.3 The Corporation shall comply with the Designated Funds Ordinance 2015.

## 9. **President**

- 9.1 The Bishop shall be the President of the Corporation and the President of each School and shall preside at all meetings of the Board or a School Council at which he or she attends.
- 9.2 The Bishop shall have the right at any time and in such manner as he or she shall think fit to:
- (a) direct an inspection of the Corporation or a School, including its finances, its buildings and equipment; and
  - (b) direct an enquiry into the academic and general affairs of a School.
- 9.3 The Bishop may appoint a person to act as the delegate of the Bishop and who shall preside in the absence of the Bishop and may undertake the functions and responsibilities of the Bishop unless directed otherwise by the Bishop.

## 10. **Board Membership**

- 10.1 The members of the Board are:
- (a) a chair of the Corporation; who will be appointed by the Bishop ("**Chair**");
  - (b) up to two persons appointed by the Bishop;
  - (c) five persons elected by the Diocesan Council; and
  - (d) up to three additional persons appointed by the Board.
- 10.2 To be eligible for appointment as the Chair or otherwise for appointment for or election as a Board Member, a person must be a communicant member of the Anglican Church of Australia, must affirm the Mission of the Corporation and must affirm in writing that they will comply with the duties of a Responsible Person.
- 10.3 To be eligible for appointment as a Board Member a person must affirm in writing that they affirm the Christian faith, that they affirm the Mission of the Corporation and that they will comply with the duties of a Responsible Person.

## 11. **Membership Term**

The term of each Board Member appointed or elected under **clause 10.1** shall in the case of appointments by the Bishop be determined at the discretion of the Bishop, in the case of appointments by the Diocesan Council at the discretion of Diocesan Council and in the case of appointments by the Board at the discretion of the Board but shall not exceed three years.

## 12. **Revocation of Appointment**

The revocation of appointment of a Board Member shall occur in the following manner

- (a) The Bishop may revoke at any time the appointment of any of the Board Members the Bishop has appointed;



- (b) The Diocesan Council, by resolution, may revoke at any time the appointment of any of the Board Members elected by the Diocesan Council;
- (c) The Board, by resolution, may revoke at any time the appointment of a Member appointed by the Board.

**13. Casual Vacancies**

A casual vacancy arising for a Board Member shall be filled for the remainder of the term of the previous occupant in the following manner:

- (a) A casual vacancy of a Member appointed by the Bishop may be filled by the Bishop.
- (b) Casual vacancies arising for Board Members elected by the Diocesan Council shall be filled by the Diocesan Council.
- (c) Casual vacancies arising for Board Members appointed by the Board may be filled by the Board.

**14. Defect in Appointment**

If it is discovered that –

- (a) there was a defect in the appointment or election of a person as a Board Member or as a member of a Board committee; or
- (b) a person appointed to one of those positions was disqualified;

all acts of the Board or the Board committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

**15. Deputy Chair**

The Bishop may appoint a Board Member to serve as Deputy Chair who shall undertake the responsibilities of the Chair in the absence of the Chair provided that the Chair may make such appointment if the Bishop has not made such appointment within 14 days.

**PART THREE – PERSONS SERVING ON BOARDS, SCHOOL COUNCILS OR COMMITTEES**

**16. Responsible Persons**

Every person serving on the Board or a School Council or Committee established under this Ordinance must:

- (a) be and act as a Responsible Person;
- (b) be cleared to work with children in accordance with the *Child Protection (Working with Children) Act 2012 (NSW)*;
- (c) affirm in writing that they affirm the Christian faith; and

(d) affirm in writing that that they affirm the Mission of the Corporation.

**17. Service on the Board, School Councils and Committees is voluntary**

No member of the Board, a School Council or Committee shall receive a payment in connection with that person's activities as a member of the Board, School Council or Committee unless it is in reimbursement for a payment made by the person in connection with the operation of the Corporation or a school.

**18. Termination of appointment**

The office of a person serving on the Board, a School Council or a Committee established under this Ordinance shall become vacant if:

- (a) the term of office for the Member expires; or
- (b) the person:
  - (i) resigns by notice in writing to the Bishop;
  - (ii) dies;
  - (iii) becomes an insolvent, under administration or is unable to control his or her financial affairs;
  - (iv) ceases to hold any qualification which was necessary for election to office;
  - (v) is absent from 3 consecutive ordinary meetings without the leave of the Board or the relevant School Council or Committee and the Board, School Council or Committee by resolution declares the office to be vacant;
  - (vi) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health or becomes otherwise incapable of acting;
  - (vii) is removed from office in accordance with any Ordinance of this Diocese; or
  - (viii) ceases to be a Responsible Person; or
  - (ix) becomes or is a prohibited person within the meaning of the *Child Protection (Prohibited Employment) Act 1998* (NSW).

**PART FOUR - BOARD**

**19. Responsibilities of the Board**

The responsibilities of the Board include:

- (a) developing the Corporation's Strategic Plan, education framework and Policies

- (b) promoting the Mission of the Corporation by ensuring that it and every School and Division operates in a manner that:
  - (i) upholds the Corporation's Mission, and
  - (ii) supports any education framework adopted by the Corporation, and
  - (iii) implements the Corporation's Strategic Plan and Policies; and
- (c) encouraging every School Council and Principal to develop the individual character of their School in the context of its local environment and in a relationship of interdependence with the Corporation;
- (d) serving as the Board of each School; and
- (e) ensuring that the Bishop, any delegate of the Bishop, and the Diocesan Business Manager are kept informed by the Chief Executive Officer on key financial, strategic and risk matters associated with the Corporation or a School and ensure that any requests of the Bishop, any delegate of the Bishop and Diocesan Business Manager are considered by the Board in a timely manner.

**20. Proceedings of the Board**

The proceedings of the Board shall be governed in the following manner –

- (a) The Board may meet for the dispatch of business, adjourn or otherwise regulate its meetings and proceedings as it may resolve;
- (b) The Board may act even if there are vacancies on the Board;
- (c) The Board must meet at least five times each calendar year.
- (d) A meeting of the Board may be convened by –
  - (i) the Bishop; or
  - (ii) the Chair of the Board; or
  - (iii) any four Board Members of the Board.
- (e) The person or persons convening a meeting of the Board must set out or cause to be set out in the notice of meeting the purposes for which the meeting is required and must give at least 14 days prior written notice of such meeting to the other Board Members.
- (f) A Board meeting may be held by the Board Members communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- (g) The Board Members need not all be physically present in the same place for a Board meeting to be held.

- (h) A Board Member who participates in a meeting held in accordance with this clause is taken to be present and entitled to vote at the meeting.
- (i) The Chief Executive Officer may attend and participate in all meetings of the Board but may not vote. The Chief Executive Officer may be excluded by resolution of the Board.

21. **Board Quorum**

The quorum necessary for the transaction of the business of the Board is more than 50% of the number of Board Members (where the number of Board Members shall be calculated without taking into account any Board Member who, at the time the transaction of the business, is on leave of absence formally approved by the Board).

22. **Voting at Meetings of the Board**

- (a) Questions arising at a Board meeting are decided by a majority of the votes of the Board Members present and voting.
- (b) Any question affecting matters of faith, ritual or ceremony in a School or an Affiliated School must also be approved by the Bishop.

23. **Circulating Resolutions**

A question may be resolved without a formal meeting of the Board in the following manner –

- (a) If three-quarters of the Board Members who are eligible to vote on a resolution (excluding any Board Member who, at the time the statement is provided or sent, is on leave of absence formally approved by the Board) have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Board meeting held on the day on which the document was last signed by a Board Member.
- (b) For the purposes of **clause 23(a)**:
  - (i) two or more identical documents, each of which is signed by one or more Board Members, together constitute one document signed by those Board Members on the days on which they signed the separate documents; and
  - (ii) an electronic message, whether a facsimile, email or otherwise, which is received by the Chief Executive Officer on behalf of the Board and is expressed to have been sent by a Board Member is to be taken to be a document signed by that Board Member at the time of its receipt by the Chief Executive Officer.
- (c) The minutes of Board meetings must record that a resolution was passed in accordance with this clause.

**24. Material Conflict of Interest**

- 24.1 A Board Member who has a perceived or actual material conflict of interest in a matter that is to be considered by the Board must inform the Board at the earliest opportunity, must inform the Board prior to the matter being discussed and withdraw from the meeting.
- 24.2 The minimum quorum for consideration at a Board meeting of a matter in which one or more Board Members have a material conflict of interest is three Board Members who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.

**25. Minutes**

- 25.1 The Board must cause minutes to be made of:
- (a) the names of the persons present at all Board meetings and meetings of Board committees;
  - (b) all disclosures of material conflicts of interest;
  - (c) all proceedings of Board meetings and meetings of Board committees;
  - (d) all resolutions made by the Board and Board committees; and
  - (e) all appointments of officers.
- 25.2 Minutes must, upon a resolution of the Board, be signed by the Chair of the meeting and if so signed are conclusive evidence of the matters stated in such minutes.

**26. Common Seal and assumptions**

The rules and assumptions about the common seal are as follows –

- (a) The Board by resolution may authorise any person or persons to do any act or sign or execute any document on behalf of the Corporation;
- (b) For the purpose of affixing the common seal of the Corporation, the provisions of section 7 of the Bodies Corporate Act apply;
- (c) The Board must provide for the safe custody of the common seal. Subject to the next paragraph, the common seal must not be used without the authority of the Board and must be used in the presence of at least two Members who must sign every document to which the Common Seal is affixed;
- (d) Where as a matter of urgency a document is required to be executed under the common seal, the Chair or Deputy Chair may affix the Seal to that document and sign the document and at the first opportunity he or she must report to the Board the action taken.

- (e) A person is entitled to make the assumptions in clauses 26(f) and 26(g) in relation to dealings with the Corporation. The Corporation is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (f) A person may assume that:
  - (i) a document has been duly executed by the Corporation if the document (including any power of attorney) appears to have been executed in accordance with **clause 26(c) or 26(d)**;
  - (ii) this Ordinance has been complied with;
  - (iii) the Officers and agents of the Corporation properly perform their duties to the Corporation; and
  - (iv) an Officer or agent of the Corporation who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (g) The Corporation may maintain a register of Officers, a register of Board Members and a register of Members and any person may assume that anyone who appears in the register (or a copy of it certified by the Chair, Deputy Chair, Chief Executive Officer or the Corporate Secretary) or who is otherwise held out by the Corporation to be an Officer, Board Member or Member has been duly appointed or elected to that position and, in the case of anyone who so appears or has been so held out as an Officer, has the authority to exercise the powers and perform the duties customarily exercised or performed by a similar officer of a corporation or company similar to the Corporation.

## 27. **Report and Accounts**

The Corporation must –

- (a) report in a form acceptable to, as applicable, the Synod, the Trustees or the Diocesan Council:
  - (i) at least once in every year to the Synod on the performance, financial position and activities of the Corporation in the preceding year and ,
  - (ii) at least once every year to the Trustees and the Diocesan Council on its activities,
- (b) provide such other information as to its affairs and operations as the Bishop, the Diocesan Council or the Synod may from time to time request;
- (c) ensure the proper reporting of the performance, financial position and activities of each School as may be required by law.

## 28. **Committees**

The Board may establish and manage Committees in the following manner:

- (a) The Board may establish Committees and may appoint persons who are Board Members and persons who are not Board Members as members of the Committee.
- (b) The Board may delegate any of its powers to Committees and may revoke such delegation.
- (c) The Board must ensure that all Committee members are:
  - (i) Responsible Persons; and
  - (ii) cleared to work with children in accordance with the Child Protection (Working with Children) Act 2012
- (d) The Board, by resolution, may revoke at any time the appointment of a person appointed by the Board to a Committee.
- (e) The Board may, by resolution abolish a Committee at any time. When the Board abolishes a Committee, all members of that Committee cease to hold office on that Committee.
- (f) The Bishop may revoke at any time the appointment of a person appointed by the Bishop to a Committee.
- (g) The meetings and proceedings of any such Committee consisting of two or more members are governed by the clauses of this Ordinance for regulating meetings and proceedings so far as the same are applicable. Any Committee must also conform to any rules imposed upon it by the Board that are compatible with the relevant clauses in this Ordinance.

## **PART FIVE - SCHOOLS**

### 29. **Schools**

The Corporation may conduct the Existing Schools and with the consent of the Diocesan Council and the Bishop may conduct, establish, purchase or otherwise acquire Schools either within the Diocese or elsewhere.

### 30. **School Councils**

- 30.1 The Board shall in normal circumstances establish a School Council to govern the operation of one or more Schools provided that:
- (a) The Board may at any time abolish a School Council at which time all members of that School Council cease to hold office;
  - (b) Where there is no School Council the Board shall undertake the functions and responsibilities of the School Council;

- (c) A School Council is a Committee of the Board;
- (d) The Board must notify the Bishop in writing whenever it establishes or abolishes a School Council;
- (e) The Chief Executive Officer shall notify the Diocesan Council (through the Diocesan Business Manager) in writing of the names, qualifications, experience and church affiliation of the members of each School Council by no later than 28 February in each calendar year.

30.2 Each School Council comprises –

- (a) the Chair, who is appointed by the Bishop for a term of up to three years and whose term of office expires on 15 December of the appropriate year;
- (b) up to two additional people appointed by the Bishop for a term of up to three years and whose term of office expires on 15 December of the appropriate year;
- (c) three additional people elected by the Diocesan Council for a term of up to three years and whose term of office expires on 15 December of the appropriate year; and
- (d) up to three additional persons, who are appointed by the Board each for a term of up to three years and whose term of office expires on 15 December of the appropriate year.

30.3 The School Council may act even if there are vacancies on the School Council.

### 31. **Responsibilities of a School Council**

31.1 The responsibilities of a School Council include:

- (a) promoting the Mission of the Corporation by ensuring that each School for which it has governance responsibility operates in a manner that:
  - (i) supports the mission and ministry of the Diocese;
  - (ii) upholds the Corporation's Mission;
  - (iii) supports any education framework developed by the Corporation, and
  - (iv) complies with the Policies and procedures of the Corporation.
- (b) developing and implementing a school strategic plan, education philosophy, and associated policies for the relevant School that are consistent with the Corporation's Strategic Plan, education framework and Policies.
- (c) preparing in such manner and at such times as the Board determines a recurrent and capital expenditure budget for the relevant School for consideration by the Board and advising the Board in such manner and at such times as the Board determines on the implementation of any budget approved by the Board;



- (d) developing the individual character of each School for which it has governance responsibility in the context of its local environment and in a relationship of interdependence with the Corporation; and
- (e) assisting the Bishop and the Board in the appointment and review of the Principal;
- (f) overseeing and supporting the Principal in the governance of the School in accordance with any policy and procedure approved by the Board;
- (g) appointing such School Committees and School working groups as the Council determines in accordance with any policy and procedure approved by the Board; and
- (h) reporting to the Board in such manner and frequency as the Board may resolve.

## **32. Proceedings of School Councils**

- 32.1 Subject to this Ordinance and any policy of the Board, each School Council may meet together for the dispatch of business, adjourn or otherwise regulate its meetings and proceedings as it may resolve.
- 32.2 The School Council itself may elect a Deputy Chair from among the members of the School Council.
- 32.3 Each School Council must meet at least twice each school term.
- 32.4 A meeting of a School Council may be convened by –
- (a) the President or the Delegate of the President;
  - (b) the Chair of the Corporation; or
  - (c) the Chair of the School Council; or
  - (d) any four members of the School Council.
- 32.5 The person or persons convening a meeting of a School Council must set out or cause to be set out in the notice of meeting the purposes for which the meeting is required.
- 32.6 The quorum necessary for the transaction of the business of a School Council is more than 50% of the number of members of the School Council appointed in accordance with clause 30.2 (excluding any member who, at the time of the transaction of the business, is on leave of absence formally approved by the School Council).
- 32.7 The Principal and the Chief Executive Officer may attend and participate in all meetings of a School Council but may not vote. The Chief Executive Officer may appoint a representative to attend on his or her behalf. The Principal or the Chief Executive Officer's representative may be excluded by resolution of the School Council.

## **PART SIX – FOUNDATIONS, COLLEGIANS ASSOCIATIONS AND SIMILAR BODIES**

### **33. Recognition**

The Board may recognise a Foundation, Collegians Association or similar body for a school where that Foundation, Collegians Association or similar body affirms that all fund raising, expenditure, investment or lending will be in accordance with the policies and procedures of the Corporation.

### **34. Legal Arrangements and Memorandums of Understanding**

The Board may enter into legal arrangements and may enter into a Memorandum of Understanding (howsoever named) with any Foundation, Collegians Association or similar body recognized by the Board.

### **35. Establishment**

The Board may establish a Foundation, Collegians Association or similar body for a School on such conditions as the Board shall determine.

## **PART SEVEN – PATRONS**

### **36. Nomination and Appointment**

The Bishop on the nomination of a School Council and with the concurrence of the Board may appoint a patron or patrons for a School on such terms and conditions as the Bishop may determine.

## **PART EIGHT - OTHER DIVISIONS**

### **37. Establishment and Operation of Other Divisions**

37.1 In addition to any Existing Division, the Board may establish one or more other Divisions of the Corporation (**Other Division(s)**) the operation of which may be overseen by a committee of the Board.

37.2 Each committee that oversees an Other Division must report to the Board in such manner and frequency as the Board may resolve.

37.3 The primary responsibility of an Other Division is to assist in the promotion of the Mission of the Corporation.

37.4 Subject to this Ordinance and any policy of the Board, each committee overseeing an Other Division may meet together for the dispatch of business, adjourn or otherwise regulate its meetings and proceedings as it may resolve.

## **PART NINE – AFFILIATED SCHOOLS**

### **38. Recognition**

With the written concurrence of the Bishop, the Board may recognise a school as an Affiliated School of the Corporation.

### **38.1 Memorandums of Understanding**

With the written concurrence of the Bishop, the Board may enter into a legal arrangement or Memorandum of Understanding (howsoever named) with an Affiliated School which prescribes the nature and extent of the affiliation between the School and the Corporation.

## **PART TEN – EMPLOYMENT AND RELATED MATTERS**

### **39. Employment generally**

39.1 Any person appointed to an executive or leadership role including that of Chief Executive Officer, Principal or Deputy Principal must:

- (a) be of Christian faith and character;
- (b) be a member of the Anglican Church of Australia or of some other church holding the apostolic faith approved by the Bishop;
- (c) have signed a statement in the form last approved by the Board that indicates that he or she is willing to promote the Mission of the Corporation; and
- (d) have consented to abide by any code of conduct established in accordance with the Professional Standards Ordinance 2012.

39.2 The Corporation may establish employment policies that allow the Corporation to appoint only employees who are members of the Anglican Church of Australia or who are of Christian faith and character provided that they are suitably qualified and experienced for the position.

39.3 Subject to the terms of the relevant employment contract, any employee may have his or her employment terminated for incompetence or misconduct or if his or her conduct or statements are, in the reasonable opinion of the Board or those appointed by the Board to appoint other employees, inconsistent with Christian faith or character or the fundamental declarations and ruling principles of the Anglican Church of Australia.

### **40. Chief Executive Officer**

40.1 The Bishop on the recommendation of the Board may appoint a Chief Executive Officer of the Corporation (who is to report directly to the Board) for such period, for such remuneration and on such terms as the Board may resolve and, subject to those terms and the law, may revoke such appointment.

40.2 The Chief Executive Officer is responsible to the Board for:

- (a) the development and implementation of the Corporation's Strategic Plan;
- (b) the implementation of the policies and decisions of the Board;
- (c) communicating the decisions of the Board;
- (d) the employment of staff;
- (e) for the general administration and daily operation of the Corporation within

any budget or policy of the Board; and

(f) such other responsibilities as the Board may assign.

40.3 The Board may by resolution:

(a) give the Chief Executive Officer powers, discretions and duties;

(b) withdraw, suspend or vary any of the powers, discretions and duties given to the Chief Executive Officer; and

(c) authorise the Chief Executive Officer to delegate any of the powers, discretions and duties given to the Chief Executive Officer.

#### 41. **Principals**

41.1 The appointment and remuneration of a Principal shall occur in the following manner:

(a) Upon a vacancy occurring in the office of Principal, the Board shall following consultation with the Bishop, establish a Nominating Committee comprising:

(i) two people appointed by the Board;

(ii) two people appointed by the School Council;

(iii) one person appointed by the Bishop; and

(iv) such other persons as determined by the Board.

(b) The Nomination Committee shall undertake the appointment process in such manner as it determines.

(c) The Nomination Committee shall nominate a suitably qualified person to the Bishop for appointment as Principal.

(d) The Bishop may accept or decline a nomination from the Nomination Committee. If the Bishop declines a nomination s/he is entitled to do so without giving reasons and in that event the Nomination Committee shall make a further nomination. This process will be repeated as many times as necessary until the Bishop accepts a nomination.

(e) The Board following consultation with the School Council shall, subject to the agreement of the Bishop, determine the remuneration and terms and conditions of each Principal.

41.2 The Board may, subject to this Ordinance and the law, revoke the appointment of a Principal.

41.3 In leading the School, the Principal is to demonstrate Christian principles through a living faith and serve as the spiritual leader of the School.

- 41.4 The Principal is responsible to the Board through the School Council for the implementation of the School's strategic plan, the implementation of the Board's and the School Council's policies and decisions, and the general administration and daily operation of the School.
- 41.5 The School Council may, within Board policy:
- (a) give the Principal powers, discretions and duties;
  - (b) withdraw, suspend or vary any of the powers, discretions and duties given to the Principal; and
  - (c) authorise the Principal to delegate any of the powers, discretions and duties given to the Principal.
- 41.6 The Principal may, within Board and School Council policy, employ people at the School for such period, for such remuneration and on such terms as the Principal may determine and, subject to those terms and the law, may terminate such employment.
- 41.7 The Principal is the formal channel of communication between
- (a) the School Council and the School's employees;
  - (b) the School Council and the Board.
- 41.8 The Principal shall ensure that the Bishop, the Diocesan Business Manager and the Chief Executive Officer are kept informed on key financial, strategic and risk matters associated with the School and ensure that any requests of the Bishop, Diocesan Business Manager or the Chief Executive Officer are considered by the School Council in a timely manner.

## 42. **Corporation Officers**

- 42.1 The Board may appoint for each Division a Corporation Officer for such period, for such remuneration and on such terms as the Board may resolve and, subject to those terms and the law, may revoke such appointment.
- 42.2 In leading the Other Division a Corporation Officer is to demonstrate Christian principles through a living faith.
- 42.3 A Corporation Officer is responsible to the Board through the Committee overseeing the Other Division for the implementation of the Other Division's strategic plan, the implementation of the Board's and the committee's policies and decisions and for the general administration and daily operation of the Other Division.
- 42.4 A Corporation Officer may, within Board policy, employ such people as he or she deems necessary in the Other Division on such terms as the Other Executive Officer may determine and, subject to those terms and the law, may terminate such employment.

42.5 A Corporation Officer and the Chief Executive Officer may attend and participate in all meetings of the committee overseeing an Other Division but may not vote. The Chief Executive Officer may appoint a representative to attend on his or her behalf. The Corporation Officer or the Chief Executive Officer's representative may be excluded by resolution of the committee overseeing the Other Division.

#### 43. **School Chaplain**

The Bishop may appoint and licence one or more chaplains to a School after consultation with the School Principal.

### **PART ELEVEN – GENERAL MATTERS**

#### 44. **Dispute Resolution**

44.1 The Diocese is committed to dispute resolution procedure which is aimed at achieving reconciliation between people in dispute and which is to be used to resolve a dispute (**Dispute**) between Members, members of School Councils, Principals, the Chief Executive Officer and Corporation Officers or any of them.

44.2 The Dispute Resolution procedure is as follows –

- (a) The parties to the dispute must promptly attempt a resolution of the Dispute by discussing the Dispute and seeking to reach a resolution by negotiation that seeks to address both the substantive issues and relational elements of the Dispute. This process may involve one or more meetings. With the consent of the parties to the Dispute, the Chairman or the Chair of a School Council or the Chief Executive Officer may be asked by one of the parties to facilitate those discussions.
- (b) If in the opinion of any party to the Dispute, the Dispute cannot be resolved by negotiation, the dispute must be promptly submitted to mediation. This means that the party forming the opinion that the Dispute cannot be resolved by negotiation must within 24 hours of forming that opinion initiate the procedure by giving the other party or parties written notice stating that the Mediation Rules now apply. The notice must also state that a Dispute has arisen and identify what is disputed.
- (c) All parties must participate in the mediation process in good faith, in the sense of genuinely seeking to constructively address the various dimensions of the Dispute. Where mediation is initiated, the parties must seek to agree between them a suitable mediator to use a biblically based Christian mediation process. If within 48 hours of the notice in the previous paragraph being given the parties cannot agree on the selection of a mediator to be used, the parties must accept the mediator nominated by the Bishop or his/her nominee. Any party may ask the Bishop to nominate a mediator.
- (d) All parties must observe the instructions of the mediator about the conduct of the mediation and must sign a mediation agreement with the mediator in the form required by the mediator.

- (e) In the event of a mediation being unsuccessful, the matter will be referred to the Bishop for arbitration . The Bishop will be entitled to appoint an arbitrator in his/her place. The decision of the Bishop or any person appointed by the Bishop as arbitrator shall be final.
- (f) A party to the Dispute must not commence any form of legal proceedings unless this dispute resolution procedure has first been followed and a mutually satisfactory conclusion has not been reached.

#### 45. **Liabilities**

45.1 The Corporation is solely responsible for all liabilities incurred by it or on its behalf other than:

- (a) a liability incurred by or on behalf of the Corporation where another person or entity (a “**Guarantor**”) has agreed to guarantee, that liability; and
- (b) a liability incurred by another person or entity (a “**Principal Debtor**”) which the Corporation (whether alone or otherwise) has agreed to guarantee.

In any such case, both the Corporation and that Principal Debtor or Guarantor will be responsible for that liability together with any other person or entity (a “**Co-Guarantor**”) which has agreed to guarantee that liability.

45.2 The Corporation, its Members, a School Council and the members of a School Council must not represent to any person or corporation that:

- (a) the Bishop; or
- (b) the Synod; or
- (c) the Diocesan Council; or
- (d) any person or persons or any other corporate body or corporation holding church Trust Property for the Anglican Church of Australia in the Diocese; or
- (e) any other corporate body constituted by or pursuant to the Bodies Corporate Act (each a **Diocesan Body**) (other than the Corporation and any Principal Debtor, Guarantor and Co-Guarantor as contemplated by clause 45.1),

will or may meet or discharge all or any part of the liability or liabilities which have been or may or will be incurred wholly or partly by or on behalf of the Corporation.

45.3 The Corporation must not execute or deliver in favour of any person or entity and does not have power to execute or deliver in favour of any person or entity any Security or Guarantee under the terms of which the Corporation represents to the relevant person or entity that any Diocesan Body (other than the Corporation and any Principal Debtor, Guarantor and Co-Guarantor as contemplated by clause 45.1) will or may meet or discharge all or any part of the liability or liabilities of the Corporation which are the subject of that Security Interest or Guarantee.

45.4 Nothing in this Ordinance shall adversely affect the right of any person or entity to recover any liabilities which have been or may or will be incurred by or on behalf of the Corporation.

46. **Confidentiality**

Every Member, every School Council member, every member of a Board, School Council or Committee, the Chief Executive Officer, every Principal and every Corporation Officer must keep confidential all aspects of all transactions of the Corporation, except –

- (a) to the extent necessary to enable the person to perform his or her duties to the Corporation, School, School Council, Committee or other entity;
- (b) as may be required by the President, Delegate of the President and Diocesan Business Manager;
- (c) as required by law;
- (d) when requested to disclose information by the Board to the Board, any auditor or the Synod;
- (e) as otherwise permitted by the Board .

47. **Indemnity**

47.1 Each Member, Board Member, and member of a Committee, School Council or a School Council Committee (in this **clause 47, Indemnified Person**) is, to the maximum extent permitted by law, indemnified out of the property of the Synod against any liability that Indemnified Person may incur to another person in their capacity as such, except to the extent the liability is either of the following –

- (a) a liability owed to the Corporation;
- (b) a liability that is owed to someone other than the Corporation and did not arise out of conduct in good faith.

This clause does not apply to a liability for legal costs.

47.2 Each Indemnified Person is, to the maximum extent permitted by law, indemnified out of the property of the Synod against any liability for legal costs that member may incur in their capacity as such, except to the extent the liability is a liability for legal costs incurred in defending an action for a liability incurred as such a Member and the costs are incurred –

- (a) in defending or resisting proceedings in which the person is found to have a liability for which he or she could not be indemnified under this **clause 47.2**
- (b) in defending or resisting criminal proceedings in which the Indemnified Person is found guilty;



- (c) in defending or resisting proceedings brought by a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (d) in connection with proceedings for relief to the Indemnified Person in which the court denies the relief.
- 47.3 **Clause 47.2(c)** does not apply to costs incurred in responding to actions taken by a liquidator as part of an investigation before commencing proceedings for the court order.
- 47.4 **Clauses 47.1 and 47.2** are separate and independent indemnities and one is not to be read down by reference to the other.
- 47.5 The Corporation may pay a premium in respect of a contract insuring a person who is or has been a member against a liability incurred by the person as a member provided the premium is not for a contract insuring the Member against a liability (other than one for legal costs) arising out of
- (a) conduct by the Member involving a wilful breach of duty in relation to the Corporation; or
  - (b) the Member improperly using his or her position or improperly using information obtained as a Member to –
    - (i) gain an advantage for himself or herself or someone else; or
    - (ii) cause detriment to the Board, a Board committee, a School Council and School Council committee.

#### 48. **Income and Property**

The Corporation's income and property is to be applied solely towards the promotion of the Corporation's Objects. No part of the Corporation's income and property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Members. However, this clause does not prevent:

- (a) the payment in good faith of remuneration to any employee of the Corporation or to any Member or other person in return for any services actually rendered to the Corporation;
- (b) the payment to a Member of out-of-pocket expenses incurred in carrying out the duties of a Member where the payments do not exceed an amount previously approved by the Board;
- (c) the payment to a Member for any service rendered to the Corporation in a professional or technical capacity where –
  - (i) the provision of that service has the prior approval of the Board; and
  - (ii) the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;

- (d) the payment to a Member as an employee of the Corporation where the terms of employment have been approved by a resolution of the Board.

**49. Parish Property**

No property of the Corporation is, or may be, held for the sole benefit of any parish of the Diocese and if any such property is to be acquired and held it may not be acquired or held without an ordinance which authorises the acquisition and the holding of that property.

**PART TWELVE – WINDING UP**

**50. Winding Up**

- 50.1 If, on the Corporation's winding up or dissolution, there remains after satisfaction of all its liabilities any property, such property must not be distributed among the Members but must be given to the Trustees of Church Property for the Diocese of Newcastle to be held on trust for the educational purposes of the Diocese but, if the Diocese does not exist at that time, to some other similar institution or institutions, provided such other institution or institutions –
- (a) have objects similar to the Corporation's Objects; and
  - (b) prohibit the distribution of income and property among its or their members to an extent at least as great as is imposed on the Corporation; and
  - (c) have been endorsed by the Australian Commissioner of Taxation as exempt from income tax.
- 50.2 Such institution or institutions are to be determined by the Members at or before the time of dissolution and, in default, by the Chief Judge in Equity of the Supreme Court of New South Wales or such other Judge of that Court or any other Court as may have or acquire jurisdiction in the matter.
- 50.3 If effect cannot be given to this provision, then such property must be given to some charitable object which prohibits the payment of any income or property to its members.

**PART THIRTEEN – TRANSITIONAL ARRANGEMENTS**

**51. Amendment, Amalgamation and Repeals**

- 51.1 The governance of each School shall on a date determined by the Bishop on the advice of the Corporation Board in each case be amended by the amendment of the ordinance of that School in the manner set out in Schedule A of this Ordinance.
- 51.2 The amalgamation of the schools shall occur on a date determined by the Bishop on the advice of the Corporation Board in each case:
- (a) Scone Grammar School shall be amalgamated into the Corporation and the Scone Grammar School Council Ordinance 1993 repealed;
  - (b) Bishop Tyrrell Anglican College shall be amalgamated into the Corporation

and Bishop Tyrrell Anglican College Council Ordinance 1998 repealed;

- (c) Manning Valley Anglican College shall be amalgamated into the Corporation and the Manning Valley Anglican College Council Ordinance 2001 repealed; and
- (d) Lakes Grammar – An Anglican School shall be amalgamated into the Corporation and the Lakes Grammar – An Anglican School Ordinance 2011 repealed.

51.3 Where a School is amalgamated in accordance with this Ordinance,

- (a) the Principal and all staff in office upon the amalgamation of the School will remain in office with no derogation of entitlements;
- (b) the property of the School is vested in the Corporation; and
- (c) the Corporation assumes the liabilities and responsibilities for school.

## Schedule A

### Amendments to School Ordinances

1. The School Ordinances are amended in the following way:
  - (a) In clause 2:
    - (i) The definition of Board is deleted and a new definition is inserted to read ""Board or "School Board" means the Board of the Newcastle Anglican Schools Corporation acting as the Board of the School"".
    - (ii) A new definition is inserted to read ""Council or "School Council" means the School Council constituted in accordance with clause 3.".
    - (iii) A new definition is inserted to read ""Corporation Ordinance" means the Ordinance of the Newcastle Anglican Schools Corporation 2007".
  - (b) A new clause 2A is inserted to read
    - a. *The governance of the school shall, subject to the provisions of this Ordinance, be the responsibility of the School Board, and*
    - b. *The School Board may establish a School Council in a manner consistent with the Corporation Ordinance with the powers, responsibilities and indemnities of a School Council established under the Corporation Ordinance."*
  - (c) Clauses 3, 4, 5, 6 and 8 shall be repealed.
  - (d) In respect of the Ordinances of Bishop Tyrrell Anglican College, Manning Valley Anglican College and Scone Grammar School, clause 9 shall be repealed.