

3.11 RESPONSIBLE PERSON (UNDER THE AUSTRALIAN CHARITIES AND NOT FOR PROFIT COMMISSION)

For the purposes of the Australian Charities and Not for Profits Commission (ACNC) most of the Diocesan bodies including those in parishes, schools and organisations are considered to be Charities. For this purpose the Diocesan Council on 30 April 2015 adopted the Diocese of Newcastle (Responsible Person) Ordinance 2015 (see Appendix A)

The ACNC requires that those people who hold governance positions within a charity are responsible persons having been satisfied that the board or committee members or trustees are not disqualified from managing a corporation under the *Corporations Act 2001 (Commonwealth)* or disqualified from being a responsible person of a registered charity by the ACNC Commissioner. We are therefore required to have processes in place that enable us to appoint people as a responsible person as well as to remove any person, who does not meet these requirements.

Who is a Responsible Person

Within the Diocese members of the following are deemed to be a responsible person:

Diocesan Boards

- Diocesan Synod
- Diocesan Council
- Trustees of Church Property
- Anglican Savings and Development Fund
- Audit Committee
- CEY Ministries Board
- Christ Church Cathedral Board
- Clergy Emoluments Advisory Board
- Diocesan Missions Committee
- Provincial Synod Representatives
- Samaritans Foundation
- Samaritans Housing Inc
- Anglican Care
- Newcastle Anglican Schools Corporation
- Bishop Tyrrell Anglican College
- Lakes Grammar – An Anglican School
- Manning Valley Anglican College
- Scone Grammar School

Parish Organisations

- Parish Council
- Resourcing Team

Duties of a Responsible Officer

The ACNC has provided a broad framework for the duties of a responsible person, and within our Diocese they are required -

- to act with reasonable care and diligence
- to act honestly and fairly in the best interests of the Diocese
- not to misuse their position or any information they gain as a responsible person
- to disclose conflicts of interest
- to ensure that the financial affairs are managed responsibly, and
- not to allow the charity to operate in an insolvent state..

Removal from Office

This ordinance makes provision for the removal from office of a responsible person should it become necessary. It is expected that before a person might be disqualified from being a responsible person the board, committee, etc. itself may form the view that the person is not acting in the best interest of its primary role. Membership of governance bodies is a privilege within the Diocese afforded by election or appointment, it is not a right.

In this Diocese, the code of conduct established under the Professional Standards Ordinance 2012 called *Faithfulness in Service* (available on the Diocesan website) and the behaviours in the code of conduct called *Being Together* (Appendix B) approved by the General Synod and adopted by the Diocesan Synod in 2014 also spells out expectations of those serving on councils, boards and committees in the Diocese.

This Ordinance places a responsibility on the Diocesan Business Manager to ensure that people in governance positions are aware of their responsibilities as defined by the ACNC and provides a mechanism for removing people from governance positions.

The Diocesan Business Manager will advise each governance body of the duties and responsibilities of persons at least once a year, and otherwise as required. The Diocesan Business Manager will also ensure that each member of a governance body makes the declaration required by the ACNC for the ensuing year. See Appendix C.

Appendix A -- The Diocese of Newcastle (Responsible Person) Ordinance 2015

Appendix B - Being Together

Appendix C - Declaration

RESPONSIBLE PERSON’S DECLARATION

(See section 60.15 of the Australian Charities and Not for Profits Commission Regular 2013)

I..... (a responsible person), a member of the
..... (name of Committee / Board or similar) declare
that in my opinion:

- (a) there are [are not] reasonable grounds to believe that the Diocese / Entity / Parish is able to pay all of its debts, as and when they become due and payable; and
- (b) the financial statements and notes satisfy [do not satisfy] the requirements of the *Australian Charities and Not for Profits Commission Act 2012*.

Signed in accordance with subsection 60.15(2) of the *Australian Charities and Not for Profit Commission Regulations 2013*.

Responsible Person’s Name

Responsible Person’s signature

Dated this day of 2.....

Being Together Expectations of Behaviour in our Church Community

*(Approved by General Synod July 2014 and
adopted by the Newcastle Diocesan Synod October 2014)*

Jesus told us to love one another as he loves us. As Christians we know our life together is strengthened when our behaviour is consistent with our faith. However, our experience of being together can be difficult, particularly when there are differences. So it is important to be clear about how we will behave towards each other.

Being a community:

- We will **value the wellbeing of others**.
- We will **encourage each other to participate** in the life of the church.
- We will **consider the impact of our behaviour** of others.

Relating to each other:

- We will **treat each other with respect and dignity**, irrespective of ability, gender, sexuality, race, age or contribution to the church.
- We will **act with integrity and honesty** in our interactions with each other.

Communicating with each other:

- We will **communicate respectfully** with others, and not in a way that threatens, belittles or humiliates.
- We will **speak with integrity and honesty**, and refrain from speculation and gossip.

Acknowledging difference:

- We will **respect those who are different** from us and **not isolate or ridicule them**.
- We will **listen to and seek to understand** the beliefs, opinions and practices of others, even when we do not share their views.

Responding to conflict:

- We will **accept responsibility** for our part in a conflict.
- We will be willing to **play our part** in resolving a conflict.

THE DIOCESE OF NEWCASTLE (RESPONSIBLE PERSON) ORDINANCE 2015

Be it ordained by the Diocesan Council in accordance with the Synod (Delegation of Powers) Ordinance 2009 as follows:

1. Title

This Ordinance may be cited as the DIOCESE OF NEWCASTLE (RESPONSIBLE PERSON) ORDINANCE 2015.

2. Definitions

In this Ordinance, unless contrary intention appears -

- a. ACNC – means the Australian Charities and Not for Profits Commission or any successor body to that Commission.
- b. governance body – means the Trustees of Church Property, the Diocesan Council, the board, council, committee of any organisation, school, or activity established by Ordinance of Synod.
- c. member – means the member of a governance body.

3. Overarching purpose

The purpose of this Ordinance is to ensure that members of governance bodies in the Diocese are aware of their duties as a responsible person and that a person not fulfilling the duties of a responsible person can be removed from office.

4. Duties of a Responsible Person

A responsible person in the Diocese of Newcastle shall

- (a) Fulfil the duties of a responsible person as defined by the ACNC;
- (b) Comply with the standards outlined in any code of conduct established in accordance with the Professional Standards Ordinance 2012;
- (c) Comply with expectations of behaviour in our church community as established by the General Synod and adopted in this Diocese;
- (d) Use their best endeavours to ensure that the governance body undertakes its affairs in accordance with the Canons, Ordinances, Rules and Policies of the Diocese.

5. Education on the duties of responsible persons

- (a) The Diocesan Business Manager shall advise each governance body of the duties of responsible persons at least once in each calendar year and otherwise as required.

- (b) The governance body shall ensure that each of its members is reminded of the duties of responsible persons at least once in each calendar year and otherwise as required.

6. Responsible Person

- (a) Every governance body shall at least once each year and otherwise as required obtain a responsible person’s declaration from each member of the governance body in the format required by the ACNC.

7. Removal from office

- (a) The Bishop may remove a member from a governance body, specified governance bodies or from all governance bodies before the expiration of the member’s term of office by notice in writing to that member where the Bishop
 - (i) is advised that a member has not submitted a responsible person’s declaration when required to do so by the governance body; or
 - (ii) is advised that a member have been disqualified by the ACNC in the past year, or is disqualified from managing a corporation within the meaning of the *Corporations Act 2001* (Cth); or
 - (iii) forms the view that a member is not a responsible person or is not fulfilling the duties of a responsible person; or
 - (iv) forms the view that a member is not a fit and proper person to be a member.
- (b) A member is suspended from the a governance body or governance bodies specified by the Bishop with immediate effect from the date the Bishop gives notice in accordance with section 7(a).
- (c) Where the member is not an ex-officio member the member may within fourteen days of the notice from the Bishop submit in writing (not exceeding a reasonable length) that the decision of the Bishop should be varied by the Diocesan Council at its next ordinary meeting. The submission should be made to the Diocesan Business Manager.
- (d) The submission of any member in accordance with section 7(c) shall be circulated to every member of the Diocesan Council prior to the next ordinary meeting.
- (e) The Diocesan Council shall review the submission of the member together with such information as the Bishop puts to the meeting.
- (f) The Diocesan Council may by resolution approved by two thirds of the members present and voting vary the decision of the Bishop to remove an elected or appointed member.
- (g) The decision of the Diocesan Council shall be final.

8. Cessation of Membership

- (a) The member shall cease to be a member of a governance body or governance bodies as declared by the Bishop where
 - (i) the member not being an ex-officio member does not make a submission in accordance with section 7(2); or
 - (ii) the member not being an ex-officio member makes a submission but the Diocesan Council at its next ordinary meeting does not resolve to vary the decision of the Bishop; or
 - (iii) the member being an ex-officio member resigns, retires or is otherwise removed from the office giving rise to ex-officio membership.
- (b) The cessation of membership in accordance with this Ordinance shall constitute a vacancy for the purpose of any ordinance of Synod whether or not such ordinance makes provision for a vacancy to occur in this manner.
- (c) The member may not be elected or appointed to any governance body
 - (i) whilesoever they are a disqualified person for the purposes of the ACNC, or
 - (ii) if the person is not a disqualified person for the purposes of the ACNC for a period of two years or such lesser period determined by the Bishop at the time the person is removed from office.

9. Powers of the Bishop

The Bishop may

- (a) rescind a decision to remove a member from office at any time,
- (b) permit a person, who has been removed from office, to be elected or appointed to a governance body, if the person is not a disqualified person for the purposes of the ACNC,
- (c) seek such assistance as the Bishop requires in making a decision in accordance with this Ordinance, and/or
- (d) do all such things as are necessary to ensure that the overarching purposes of this Ordinance are fulfilled.