

## THE DIOCESAN COUNCIL ORDINANCE 1929

**AN ORDINANCE** to repeal the *Diocesan Council Constitution Ordinance of 1925* and to provide a Constitution for the Diocesan Council and for matters incidental thereto.

### BACKGROUND

#### Repeal

The *Diocesan Council Constitution Ordinance of 1925* shall be and is hereby repealed except as to any operation already effected by or act done under the enactments therein comprised or as to any right, title, obligation, or liability already acquired or accrued under any such enactment; but this Ordinance shall not be held to revive any Ordinance repealed by the said Ordinance.

**BE IT ORDAINED** and ruled by the Bishop, Clergy, and Laity of the Diocese of Newcastle in Synod assembled as follows:

### PART 1 – PRELIMINARY

#### Short Title

- This Ordinance may be cited as the *Diocesan Council Ordinance*.

#### Definitions

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

<b>ACNC Act</b>	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .
<b>Bishop</b>	means the Bishop of the Diocese for the time being or any Commissary of the Bishop serving while the Bishop is absent, on leave or acting with the delegated authority of the Bishop, or the Administrator during any vacancy in the office of Bishop.
<b>Board Code of Conduct</b>	means any Code of Conduct established by the Diocesan Council in accordance with clause 22(p).
<b>Diocesan Ministries</b>	means the work of the Diocesan Office, the Professional Standards Committee, the Diocesan Ministry Council, the Newcastle Anglican Church Corporation and such other work to be undertaken by the Bishop or Diocese centrally as a consequence of a Canon, Ordinance or Resolution of the Synod.
<b>Diocese</b>	means the Diocese of Newcastle of the Anglican Church of Australia.

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<b>Funds of the Diocese</b>	means the property held in Trust for the purposes of the Anglican Church of Australia in the Diocese of Newcastle.
<b>Officer of the Diocese</b>	means the Bishop, the Assistant Bishop, the Chancellor, the Deputy Chancellor or an Archdeacon.

### PART 2 – OPERATIVE PART

#### Constitution of the Council

3. The Council shall consist of the following persons:
- (a) the Bishop;
  - (b) the Assistant Bishops;
  - (c) the Chancellor;
  - (d) members elected in accordance with section 4; and
  - (e) appointed in accordance with section 6.

#### Election of members by Synod and nominations

4. The At the first ordinary session of each term of the Synod there shall be elected four clerical members of Synod and four lay persons who are members of Synod to be members of the Council.
5. A person elected under section 4 holds office until the end of the first session of the next term of the Synod and is eligible for re-election.

#### Appointment by Bishop

6. The Bishop may from time to time appoint up to two members of the Synod, clerical or lay, to hold office as members of the Council.
7. A person appointed under section 6 holds office until the end of the first session of the next term of the Synod after the term during which they were appointed and is eligible for re-appointment.

#### Certain persons disqualified

8. Despite any other provision of this Ordinance, a person must not be appointed or elected as a member of the Council under this Ordinance, and such appointment or election will be of no effect if the person:
- (a) is at the relevant time discharging one of the following roles:
    - (i) the Diocesan Chief Executive; or
    - (ii) the Executive Officer of the Diocesan Ministry Council; or
    - (iii) a member of the Board of the Newcastle Anglican Church Corporation;  
or
    - (iv) a member of the Diocesan Ministry Council; or
  - (b) has, since 1 November 2014, served three consecutive terms on the Diocesan Council.

#### Vacancy

9. The office of any member of the Council shall become vacant if that person:

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- (a) resigns by notice in writing to the Bishop;
  - (b) dies;
  - (c) is or becomes an insolvent under administration;
  - (d) ceases to hold any qualification which was necessary for election to office;
  - (e) is absent from 3 consecutive ordinary meetings of the Council without the leave of the Bishop and the Council by resolution declares the office to be vacant;
  - (f) 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;
  - (g) fails to sign the Board Code of Conduct within 2 calendar months of election or appointment to the Council;
  - (h) is removed from office in accordance with any Ordinance of this Diocese; or
  - (i) becomes or is a prohibited person within the meaning of the *Child Protection (Prohibited Employment) Act 1998 (NSW)*.
10. Any vacancy in an appointment made by the Bishop under section 6 shall be filled by the Bishop.
11. Any vacancy in an appointment made by the Synod shall be filled by the Diocesan Council.

### Chairperson of the Council

12. The Bishop shall be Chairperson of the Council, provided that if he or she is unable to be present he or she may by writing under his or her hand appoint a person, being a member of the Council, to preside at that meeting
13. If the Bishop has not appointed a Chairperson as provided in section 12, or if that person so appointed shall be unable to be present, the Bishop's Commissary shall preside, and if he or she be unable to be present, then the person next in ecclesiastical rank in the Diocese and being a member of the Council shall preside at that meeting.

### Quorum

14. The quorum for any meeting of the Diocesan Council shall be the Chairperson and five (5) other members.

### Voting at Meetings

15. All resolutions and decisions of the Council shall be passed in the following manner:
- (a) the votes of clerical and lay members of the Council shall, unless required to be taken separately, be taken collectively; and
  - (b) any resolution or decision so taken shall be deemed to have been duly passed by the Council, provided that on the request of:
    - (i) the Chairperson; or
    - (ii) any three of the clerical or three of the lay members the votes of the Clergy and laity shall be taken separately; and
  - (c) in that case the assent of the Chairperson and a majority of the Clergy and a majority of the laity shall be required to pass a resolution or decision.

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### Meetings

16. The Council shall meet once every month unless the Council decides otherwise and also at such other times as shall be necessary for the transaction of business; special meetings may be convened by the Bishop as may be required.

### Executive Officer

17. The Diocesan Chief Executive being the Executive Officer of the Newcastle Anglican Church Corporation shall be the Executive Officer of the Council.

### Secretary of the Council

18. The Council shall appoint a suitably qualified person to be the Council Secretary.

### Conduct of business

19. The Council may conduct its business in any way it sees fit subject to the Canons, Ordinances and Constitution in force in the Diocese.
20. Without limiting clause 19, the Council:
- (a) may invite any person to observe its meetings or to provide information to it; and
  - (b) will, in the ordinary course, invite the Executive Officer or Chairperson of the Newcastle Anglican Church Corporation and the Diocesan Ministry Council to attend its meetings, speak, and provide such other information as is required by the Council but this does not prevent the Council from meeting without such Executive Officers or Chairpersons as it determines and in accordance with good governance practice.

### Resolution outside meetings

21. The Bishop may at any time circulate via email or facsimile to members of the Council a proposed resolution which if:
- (a) agreed to by a majority of the Clerical members and a majority of the lay members of the Council (such agreement communicated via email or facsimile); and
  - (b) such agreement is received by the Secretary of the Council;
- shall be deemed to be a resolution of the Council duly passed at a meeting of the Council provided also that any such resolution may consist of several documents in like form, each containing assent by one or more members of the Council and may be circulated and received by facsimile or electronically.

### Functions and powers of the Council

22. The functions of the Council are to:
- (a) provide advice to the Bishop, as required between sessions of Synod, for the good governance of the Church;
  - (b) oversee and direct the broad directions and priorities of the Church in this Diocese and oversee, monitor and control the directions, policies and operations of the Diocese, so as to achieve the mission and fundamental objectives of the Church in this Diocese;
  - (c) prepare the business for each session of the Synod to ensure the effective governance and management of the Church in this Diocese;

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- (d) listen to, debate and formulate responses to issues confronting this Diocese, the Anglican Church of Australia or the Anglican Communion;
- (e) discharge its responsibilities under the Constitution, Canons and Ordinances having force in the Diocese;
- (f) ensure compliance with the work, health and safety obligations by the Diocese;
- (g) ensure compliance with the child protection obligations by the Diocese;
- (h) discharge the powers and functions that from time to time may be delegated to it under the *Synod (Delegation of Powers) Ordinance 2009* or any other ordinance or resolution of the Synod;
- (i) when Synod is not in session, discharge the powers and functions bestowed on the Synod by virtue of the *Anglican Church of Australia Constitution Act (NSW) 1902*, the *Anglican Church of Australia Trust Property Act (NSW) 1917*, the *Anglican Church of Australia (Bodies Corporate) Act 1938*, and any other Act of parliament bestowing power and authority on the Synod;
- (j) have the budget for Diocesan Ministries approved by a Diocesan Council Budget Committee comprising the Chairperson of the Diocesan Council, an archdeacon appointed by the Bishop, the Chair of the Newcastle Anglican Church Corporation and the Chair of the Finance and Investment Committee of the Newcastle Anglican Church Corporation;
- (k) procure and have in custody all oaths and declarations and other official documents, relating to Licensed Clergy and other diocesan officers and generally all other matters committed to the management of the Council;
- (l) make elections to vacant offices as the Synod shall from time to time determine;
- (m) make appointments to Boards, Councils and Committees;
- (n) fix the remuneration and policy for reimbursement of expenses for members of Boards, Councils and Committees;
- (o) appoint and fix the remuneration of an auditor or auditors whose duty it shall be to audit the accounts of the Diocesan Council, the Trustees of Church Property, any Body Corporate of the Diocese and such other bodies as the Diocesan Council may determine; ‘
- (p) to determine a Board Code of Conduct for the Diocesan Council, the Diocesan Ministry Council, the Board of the Newcastle Anglican Church Corporation Board, and
- (q) ensure compliance with the *ACNC Act* and any other statute that requires compliance by the Diocese.

### Reporting to Synod

23. The Council shall prepare for presentation to the Synod at each ordinary session a report of its proceedings during the past year together with a full account of the receipts and disbursements of all funds used for Diocesan Ministries prepared as General Purpose Financial reports.

### Minutes

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24. A minute of every resolution or proceeding agreed to at any meeting of the Council shall be kept and a certified copy thereof shall be laid before the Synod at the commencement of each session of the Synod.

### Professional Standards Appointments

25. Where the Council is to make an appointment for any professional standards role the Professional Standards Director shall inform the Council whether any person nominated for such appointment:
- (a) is the subject of adverse information in the National Register kept in accordance with the National Register Canon 2007; or
  - (b) has been refused a Working With Children Check, where such refusal is known to the Professional Standards Director; or
  - (c) is the subject of reliable adverse information which the Professional Standards Director believes should be considered by the Council.

### Standing Committees of the Diocesan Council

26. The Standing Committees of the Diocesan Council are prescribed in Schedule One.
27. The Diocesan Council may by resolution amend Schedule One to add or remove Committees and/or amend their responsibilities.

### Delegations to Committees and Individuals

28. The Council may appoint from time to time such other committee or committees as Council shall determine and to delegate to such committees any portion of its powers and duties except the power to pass ordinances. Such delegation of powers shall be made with obligation to report to the Council or to the Bishop, but the powers so delegated shall be strictly defined and shall be revocable by the Council at pleasure. Members of such committees need not be members of the Council nor of Synod.
29. The Council may delegate to an employee of the Diocese of Newcastle or a Body Corporate of the Diocese any portion of its powers and duties except the power to pass ordinances. Such delegation of powers shall be made with obligation to report to the Council or to the Bishop, but the powers so delegated shall be strictly defined and shall be revocable by the Council at pleasure.

### Conflict of Interest

30. A Council Member must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Council meeting (or that is proposed in a Circular Resolution).
- (a) to the other Council Members; or
  - (b) if all of the Council Members have the same conflict of interest, at the next general meeting, or at an earlier time if reasonable to do so.
31. The disclosure of a conflict of interest by a Council Member must be recorded in the minutes of the meeting.
32. A general notice given to the Council by a Council Member that the Council Member is an officer or member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Council Member's interest in that corporation or firm shall, in relation to any matter involving the Diocese and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Council Member's

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interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Council than was stated in the notice.

33. Each Council Member who has a material personal interest in a matter that is being considered at a Council meeting must not, except as provided under clause 32:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
34. A Council Member may still be present and vote if:
- (a) their interest arises because they are a Council Member, and the other Council Members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the Council Member against liabilities that the Council Member incurs as a Council Member (see clause 32);
  - (c) their interest relates to a payment by the Diocese under clause 38 (indemnity), or any contract relating to an indemnity allowed under this Ordinance;
  - (d) their interest is limited to approving a recommendation of the Clergy Emoluments Board; or
  - (e) the Council Members who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the Council Member, the nature and extent of the Council Member's interest in the matter and how it relates to the affairs of Diocese; and
    - (ii) says that those Council Members are satisfied that the interest should not stop the Council Member from voting or being present.

### Duties of Council Members

35. The Council Members must comply with their duties as Council Members under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the *ACNC Act* which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Council Member;
  - (b) to act in good faith in the best interests of and to further the charitable purpose(s) of set out in clause 4.1 of the *ACNC Act*;
  - (c) not to misuse their position as a Council Member;
  - (d) not to misuse information they gain in their role as a Council Member;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 30 of this Ordinance;
  - (f) to ensure that the financial affairs of the Diocese are managed responsibly;
  - (g) to comply with the Board Code of Conduct; and
  - (h) not to allow the Diocese to operate whilst insolvent.

### Council members access to documents

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36. A Diocesan Council Member has a right of access to the financial records of the Diocese at all reasonable times.
37. If the Diocesan Council Members agree, Diocesan Council must give a Diocesan Council Member or former Diocesan Council Member access to:
- (a) documents provided for or available to the Council Members; and
  - (b) any other documents referred to in those documents.

### Indemnity

38. To the extent permitted by law an Officer of the Diocese and every Council Member shall be indemnified out of the funds of the Diocese against all costs, expenses and liabilities incurred as such by an Officer of the Diocese, Council Member or employee (or former officer, Council Member or employee). However, no such person shall be indemnified out of the funds of the Diocese under this clause unless:
- (a) it is in respect of a liability to another person (other than Synod) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
  - (b) it is in respect of a liability for costs and expenses incurred:
    - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of an Officer of the Diocese, Council Member or employee (or former officer, Council Member or employee) or in which the Officer of the Diocese, Council Member or employee (or former officer, Council Member or employee) is acquitted; or
    - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer of the Diocese, Council Member or employee (or former officer, Council Member or employee).

### Payment of indemnity policy premium

39. To the extent permitted by law, the Diocese may at the discretion of the Council enter into and pay a premium in respect of a policy of insurance insuring an Officer of the Diocese, Council Member or employee (or former officer, Council Member or employee) against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for a liability arising out of conduct involving a wilful breach of duty or conduct that is in breach of this Ordinance.
40. The Council shall have the discretion to approve the terms and conditions of any such policy of insurance.
41. Where an Officer of the Diocese, Council Member or employee (or former officer, Council Member or employee) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Diocese shall not be required to separately indemnify the Council Member under clause 38 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

### Indemnity to continue

42. The indemnity granted by the Diocese, contained in clause 38, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

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**PART 3 – SCHEDULES**

Schedule One

**STANDING COMMITTEES OF THE DIOCESAN COUNCIL**

**1. TEMPORAL AND ADMINISTRATIVE AFFAIRS OF THE DIOCESE**

The Standing Committee of the Diocesan Council with primary responsibility for the temporal affairs of the Diocese and advising the Bishop and Diocesan Council on those affairs is the Board of the Newcastle Anglican Church Corporation (created in accordance with the *Newcastle Anglican Church Corporation Ordinance 2017*) with such responsibilities and powers as defined in its ordinance.

**2. OVERSIGHT OF THE BODIES CORPORATE OF THE DIOCESE**

The Standing Committee of the Diocesan Council with the primary responsibility for advising the Bishop and the Diocesan Council on the strategic, financial and risk matters of the Body Corporates of the Diocese is the Board of the Newcastle Anglican Church Corporation (created in accordance with the *Newcastle Anglican Church Corporation Ordinance 2017*) with the power to direct an inspection of a Body Corporate of the Diocese (including its finances, its buildings and equipment) and/or direct an inquiry into the operational and general affairs of a Body Corporate of the Diocese, and such other responsibilities and powers as defined in its ordinance

**3. ASSISTING THE BISHOP WITH MINISTRY OVERSIGHT**

The Standing Committee of the Diocesan Council with primary responsibility for assisting the Bishop in overseeing the ministry of the Diocese and advising the Diocesan Council on that ministry is the Diocesan Ministry Council (created in accordance with the *Diocesan Ministry Council Ordinance 2017*) with such responsibilities and powers as defined in its ordinance.

**4. PROTECTION OF CHILDREN AND VULNERABLE PEOPLE AND THE REDRESS OF SURVIVORS**

The Standing Committee of the Diocesan Council with the primary responsibility for assisting the Bishop and Diocesan Council develop and implement policy for the protection of children and vulnerable people, and address related risks, and the appropriate support and redress for survivors of abuse is the Professional Standards Committee (created in accordance with the *Professional Standards Ordinance 2012*) with such responsibilities and powers as defined in its ordinance.

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## PART 4 – ORDINANCE ADMINISTRATION

Table of Amendments

Date	Current Section	Amending Instrument	Section Amended
22 February 2018	3(b)	<i>Diocesan Council Ordinance 1929</i>	3.2(b)
26 March 2020	14	Governance During Australian Covid-19 Pandemic Emergency Ordinance 2020	14
	22(j)		22(j)

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