

NEWCASTLE ANGLICAN CHURCH ORDINANCE 2017

AN ORDINANCE to establish the governance provisions for the operation of The Newcastle Anglican Corporation.

BE IT THEREFORE ordained by the Diocesan Council in accordance with the Synod (Delegation of Powers) Ordinance 2009 as follows.

BACKGROUND

- A. The Diocese of Newcastle has resolved to form the Newcastle Anglican Church Corporation.
- B. The name of the entity is the Newcastle Anglican Corporation (ABN 82 481 240 077) (NAC).
- C. NAC is a not-for-profit entity which is established to be, and to continue as, a charity.

PART 1 – PRELIMINARY

Short Title

- 1. This Ordinance may be cited as the *Newcastle Anglican Corporation Ordinance 2017*.

Type

- 2. NAC is a not-for-profit entity which is established to be, and to continue as, a charity

Definitions

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

ACNC	means the Australian Charities and Not-for-profits Commission.
ACNC Act	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .
ADI	has the same meaning as in the <i>Banking Act 1959</i> (Cth).
APRA	means the Australian Prudential Regulation Authority.
Agency	means an agency of the Diocese established in accordance with the <i>Anglican Church of Australia (Bodies Corporate) Act 1938</i> .
Anglican Care	means Anglican Care ABN 94 273 103 460
Anglican Savings and Development Fund (ASDF)	means the Anglican Savings and Development Fund of the Diocese.

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Assistant Bishop	an Assistant Bishop of the Diocese appointed to the Board by the Bishop for such a term as the Bishop determines.
Auditor	means the Auditor of the Diocese appointed in accordance with the <i>Diocesan Council Ordinance 1929</i> .
Bishop	means the Bishop of Newcastle, in the absence of the Bishop or when the Bishop is unable to exercise their responsibilities it means the Commissary and, during any vacancy in the See, the Administrator of the Diocese.
Board	means the Board appointed pursuant to clause 44 below.
Board Code of Conduct	means the code of conduct established by the Diocesan Council for the Diocesan Council, the Diocesan Ministry Council and the NAC Board.
Board Member	means any person holding the position of a member of the Board for the time being.
Body Corporate	means a Body Corporate of the Diocese formed in accordance with the <i>Bodies Corporate Act</i> .
Bodies Corporate Act	means the <i>Anglican Church of Australia (Bodies Corporate) Act 1938</i> (NSW).
Business Day	means a day on which banks are open for business in Newcastle.
Chairperson	means the Chairperson of the Board appointed in accordance with clause 44(c).
Church Trust Property Act	means the <i>Anglican Church of Australia Trust Property Act 1917</i> (NSW).
Commissary	means the person appointed by the Bishop to act in his/her place when the Bishop is absent from the Diocese
Committee	means a committee established in accordance with clause 59 or clause 61.
Controlled Entities	means Anglican Care, NASC, the member Schools of the NASC, Samaritans and Samaritans Housing
Designated Fund	means the fund established in accordance with the Designated Fund Ordinance.
Designated Fund Ordinance	means the <i>Designated Fund Ordinance 2015</i> passed by the Diocese under the <i>Bodies Corporate Act</i> and includes any amendments thereto or replacements thereof.
DGR	means Deductible Gift Recipient for the purposes of Australian Taxation legislation.
Diocesan Chief Executive	means the Diocesan Chief Executive appointed pursuant to clause 106.
Diocese	means the Anglican Diocese of Newcastle.
Diocesan Council	means the Diocesan Council of the Diocese.
Executive Director	means any person appointed as an executive director in accordance with clause 38A of this Ordinance

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Finance Debt	<p>means and includes any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including:</p> <ul style="list-style-type: none"> 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 <p>any Guarantee of any other Finance Debt.</p>
Financial year	means the financial year of NAC ending on 31 December.
Guarantee	means the guarantee of any obligation of another party by the NAC
Head of Entity	means the person appointed by the Board with the concurrence of the Bishop to be the head of the relevant entity as defined in legislation relating to child protection, disability or aged care (with this definition also applying to the term Head of Agency where relevant)
Member	means a Member of NAC as described in clause 10.
NASC	means Newcastle Anglican Schools Corporation ABN 59 080 029 391
Ordinance	means the Newcastle Anglican Corporation Ordinance 2017 which, until the assent of the Newcastle Anglican Church Corporation Ordinance 2017 Amendment Ordinance 2020, was known as the Newcastle Anglican Church Corporation Ordinance 2017
Parish	means a parish, provisional district or experimental pastoral area of or in the Diocese.
Related Bodies	means the Trustees of Church Property for the Diocese of Newcastle ABN 31 876 908 346 and the Anglican Savings and Development of the Diocese of Newcastle ABN 37 901 809 074

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Responsible Persons Ordinance	means the <i>Diocese of Newcastle (Responsible Persons) Ordinance 2015</i> and includes any amendments thereto or replacements thereof.
Related Bodies	means the Trustees of Church Property for the Diocese of Newcastle ABN 31 876 908 346 and the Anglican Savings and Development of the Diocese of Newcastle ABN 37 901 809 074
Samaritans	means Samaritans Foundation – Diocese of Newcastle ABN 38 574 464 524 and any controlled entity of Samaritans Foundation
Samaritans Housing	means Samaritans Housing ABN 70 614 051 641
School Principal	means a Principal of a school operated by the NASC
Schools Corporation	means the Newcastle Anglican Schools Corporation and its member schools.
School Principal	means a Principal of a school operated by the NASC
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 <i>Personal Property Securities Act 2009 (Cth)</i>
Synod	means the Synod of the Diocese.
Trustees	means the Trustees of Church Property for the Diocese of Newcastle ABN 31 876 908 346, a body corporate pursuant to the <i>Anglican Church of Australia Trust Property Act 1917 (NSW)</i> .
Trust Property	means all or any part of any real or personal property of the NAC within the meaning of the term “church trust property” in section 4 of the <i>Church Trust Property Act</i> including (without limitation): <ul style="list-style-type: none"> (a) land and any buildings or improvements on or estates or interests in the land; (b) real or personal property within or outside the geographical boundaries of the Diocese; and (c) 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 <i>Church Trust Property Act</i>.

Interpretation

3.2 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;

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- (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) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Ordinance; and
- (g) 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.
- (h) where reference is made to the Bishop, except where that reference is to the Bishop as Chairperson of the NAC (particularly in clause 17), such reference should be interpreted as the Bishop exercising the powers of the Bishop of the Diocese (rather than acting in the capacity of Chairperson of the NAC).

3.3 Headings do not form part of or affect the construction or interpretation of this Ordinance.

PART 2 – OPERATIVE PART

4. Objects and Powers

4.1 The charitable objects for which NAC is established is the advancement of religion.

4.2 NAC can only exercise the powers in section 6 of the *Bodies Corporate Act* to:

- (a) carry out the objects of NCC set out in clause 4.1; and
- (b) do all things incidental or convenient in relation to the attainment of an object under clause 4.1.

5. Not for Profit

5.1 The income and property of NAC will only be applied towards the promotion of the objects of NAC set out in clause 4.1.

5.2 No income or assets of NAC will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of NAC. However nothing in this Ordinance will prevent payment in good faith to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to NAC;
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to NAC;

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- (c) of reasonable and proper rent for premises leased by any Member to NAC; and
- (d) for carrying out NAC's charitable purposes.

6. Amending the Ordinance

This Ordinance may only be amended in accordance with the *Bodies Corporate Act*, which as at the date of this Ordinance requires:

- (a) the passing of an amending ordinance by the Synod or by any board, committee, council or body of persons exercising the delegated authority of the Synod;
- (b) the assent of the Bishop;
- (c) the certification of that amending ordinance by the Bishop; and
- (d) a copy of the amending ordinance certified by the Bishop to be filed in the Office of the Registrar-General.

7. Membership

The Members of NAC shall be the members of the Diocesan Council for the time being.

8. Entrance Fee and Subscription

There shall be no entrance fee, annual fee or subscription payable by the Members.

9. Dispute Resolution

The Bishop shall settle and determine any doubt or dispute arising in reference to any matter subject to this Ordinance and may from time to time make directions for remedying any breach, error or omission related to the administration of the Newcastle Anglican Corporation. Any determination or direction from the Bishop shall be final.

10. Annual General Meeting

- 10.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- 10.2 At each annual general meeting, the Board must present an annual report of NAC's activities and finances including audited financial statements.
- 10.3 Even if these items are not set out in the notice of meeting, the business of an annual general meeting shall include:
 - (a) a review of the NAC's activities;
 - (b) a review of NAC's finances;
 - (c) any auditor's report; and
 - (d) the appointment and payment of auditors.
- 10.4 All persons present at the meeting must be given a reasonable opportunity to ask questions or make comments about the management of NAC.

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11. Special General Meeting

11.1 The Board may, whenever it thinks fit, convene a special general meeting of NAC.

11.2 The Bishop may direct the Board to convene a special general meeting.

12. Notice of General Meeting

12.1 Notice of a general meeting must be given to:

- (a) each Member; and
- (b) the auditor.

12.2 Notice of a general meeting must be provided in writing at least twenty-four hours before the meeting.

12.3 Notice of a general meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business.

12.4 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

12.5 Where any general meeting is cancelled or postponed or the venue for the same is changed:

- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Ordinance and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

13. Right to Attend General Meeting

13.1 The Bishop may invite any person who is not a Member to attend and/or address the general meeting.

13.2 The quorum for a meeting of the Board is four members of the Board.

13.3 Any Assistant Bishop shall have an entitlement to attend any meeting of the NAC but shall not have a right to vote in relation to the consideration of any business of the NAC unless the Assistant Bishop is exercising the office of the Bishop in the capacity of Commissary or Administrator of the Diocese.

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14. Bishop to Preside at General Meetings

14.1 The Bishop shall be entitled to preside as President of all general meetings at which he or she is in attendance.

14.2 The Bishop may at his or her sole discretion appoint a person to act as his or her delegate and preside over any general meeting at which the Bishop is not present.

14.3 Where the Bishop is not present at a general meeting and has not appointed a delegate or the delegate is not present, the general meeting shall elect a person to preside over the general meeting.

14.4 In the case of an equality of votes whether on a show of hands or on a poll, the Bishop (or any delegate appointed pursuant to clause 14.2) at which the show of hands is taken or at which the poll is demanded will have a casting vote.

15. Adjournment of General Meetings

15.1 The Bishop (or any delegate appointed pursuant to clause 14.2):

(a) may adjourn a general meeting with the consent of the meeting; and

(b) must adjourn the general meeting if the meeting so directs;

to a time and place as determined by the Bishop (or any delegate appointed pursuant to clause 14.2 or by operation of clause 14.3).

15.2 If the Bishop or (or any delegate appointed pursuant to clause 14.2) are not present at the general meeting, the general meeting may be adjourned to a time and place agreed by the majority of Members in attendance at the meeting.

15.3 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

15.4 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed

15.5 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

16. Reporting to the Synod

The Board shall submit the annual report presented in accordance with clause 10.2 to the next ordinary session of the Synod.

17. Election and Appointment of Board Members

The Board of the NAC shall comprise:

(a) the Bishop;

(b) up to 10 members appointed by the Diocesan Council,

who (apart from the Bishop) shall be:

(c) responsible persons under the Responsible Persons Ordinance 2015;

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- (d) cleared to work with children in accordance with the *Child Protection (Working with Children) Act 2012* (NSW) (as amended); and
 - (e) have confirmed in writing that they are members of the Anglican Church of Australia and, if not members of the Anglican Church of Australia, that they will undertake their work in accordance with the faith, ethos and values of the Anglican Church of Australia.
- 17.1 The term of office for a Board member (other than the Bishop and the Assistant Bishop) shall expire on the 31 October in the third year of their appointment.
- 17.2 Every Board Member (other than the Bishop and the Assistant Bishop) must retire at least once every 3 years.
- 17.3 A Board Member who retires under clause 17.3 may be nominated for re-election. However, a Board Member may not be elected for more than 3 consecutive terms (or 9 years), except with the written approval of the Diocesan Council.
- 17.4 In the event of there being a casual vacancy on the Board, that vacancy shall be filled for the remainder of the term of that vacancy:
- (a) if the vacancy is for the Chairperson, by a person appointed by the Bishop; and
 - (b) if the vacancy is for a Board Member appointed by the Diocesan Council, by the Diocesan Council.
- 17.5 In the event of there being a casual vacancy on the Board, the Diocesan Council shall appoint a person to fill that vacancy for the remainder of the term.
- 17.6 The Nomination Committee shall normally propose to the Diocesan Council the names of suitable persons for election or appointment to the Board.
- 17.7
- (a) The Bishop may elect to Chair the Board or may appoint another member of the Board to be the Chair of the Board;
 - (b) The Board shall elect a Deputy Chairperson from among the Board members who shall:
 - (i) chair all or part of any Board meeting either at the request of the Chairperson or where the Chairperson is unable (for whatever reason) to do so; and
 - (ii) liaise with the Corporation Secretary to ensure that the Board is provided will all necessary information required by

the elected Board members to undertake the work of the Board;

- (c) Where the Bishop appoints a Chair of the Board, the Bishop may advise the Chair in advance that he/she wishes to preside at all or part of a meeting and shall assume the Chair for those purposes.

17.8 During any term of office, a Board Member may also be appointed to concurrently serve as a Board Member of the Controlled Entities on terms provided for in the separate governance ordinances of those Controlled Entities.

18. Termination of appointment of Board members

A Board member (except the Bishop) ceases being a Board member if he/she:

- (a) gives written notice of resignation as a Board Member to the Bishop and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Bishop);
- (b) dies;
- (c) retires in accordance with clause 17.2, unless re-elected pursuant to clause 17.4.
- (d) is absent for 3 consecutive Members' meetings without approval from the other Members;
- (e) becomes bankrupt;
- (f) is convicted of any offence punishable by imprisonment for five (5) years or more;
- (g) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (h) is disqualified by either the ACNC or ASIC from acting as a responsible person for a charity or as a director of a corporation within the meaning of the Corporations Act 2001 (Cth), respectively;
- (i) fails within two (2) months to sign the Board Code of Conduct;
- (j) refuses any appointment as a Board Member of a Controlled Entity;
- (k) is removed by the Bishop in accordance with his or her powers under the Diocese of Newcastle (Responsible Persons) Ordinance 2015 (as amended) or the Professional Standards Ordinance 2012 or any other Ordinance relating to the Board member's conduct which may be in effect in the Diocese; or
- (l) is removed by ordinary resolution of the Diocesan Council.

19. Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the NAC must be signed, drawn, accepted, endorsed or otherwise executed as the case may be in accordance with the *Designated Funds Ordinance*.

20. Power of the Board

20.1 The Board of the NAC is an entity subject to the control of the Diocesan Council. It is responsible for the governance, management and administration of the business of the Controlled Entities and the Related Entities entrusted to it.

The Board of the NAC is accountable to the Bishop, Synod and Diocesan Council for its corporate performance.

The Board of the NAC must ensure that it undertakes its work in accordance with the mission, values and strategies of the Anglican Diocese of Newcastle. Its powers include, but are not limited, to:

- (a) the operations of Anglican Care, Samaritans, Samaritans Housing, NASC and NASC member schools;
- (b) the operations of the Anglican Savings and Development Fund and its compliance with any APRA requirements;
- (c) the investment portfolio of the Trustees;
- (d) the Diocese’s work, health and safety obligations;
- (e) on the recommendation of the Diocesan Chief Executive and with the concurrence of the Bishop, appoint persons as Executive Directors to its Controlled Entities;
- (f) in relation to the real property holdings of the Diocese and any church trust (including property held for parish purposes) that any:
 - (i) proposed dealing:
 - 1. complies with all relevant legislation;
 - 2. in the interests of the Diocese and any relevant Parish;
 - 3. is fair and reasonable; and
 - 4. can be properly financed;
 - (ii) proposal for the erection, addition, removal, and/or demolition of any building on Church Property, or the addition, removal or alteration of a building used for divine

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- service has the approval of the Bishop; and
- (iii) proposal for the purchase, sale, lease, or license of a building used or to be used for divine service has the approval of the Bishop;
- (g) making recommendations to the Diocesan Council that it pass all measures necessary for the sale, exchange or leasing of real estate and, where appropriate, recommend that land and buildings held by the Trustees be rationalised or that land and buildings be purchased to enable the furtherance of Christian ministry and mission within the Diocese;
- (h) approving the annual Synod budget and any other funds placed under the control of the NAC by Synod, including payment of salaries and other expenses arising from the conduct of Diocesan business;
- (i) overseeing the administration of the Diocesan insurances;
- (j) reviewing the strategic, financial and others risks of any Body Corporate of the Diocese (including the Diocesan agencies and the Schools Corporation) and providing advice to the Bishop, Diocesan Council or other Body Corporate on their operations and activities;
- (k) directing the acquisition by purchase or otherwise any property for the advancement of the objects of the NAC;
- (l) approving any measures to raise money by mortgaging any asset of the NAC for completing acquisitions or for other purposes approved by the Board;
- (m) directing the opening and managing of banking accounts for the NAC and its Controlled Entities and ensuring compliance with any determination made in accordance with the *Designated Fund Ordinance 2015* and authorising operations thereon provided that no account shall be operated upon by less than two persons and shall not be overdrawn without the approval of the Board;
- (n) directing the investment of monies from time to time in institutions that are limited to investment in authorised Trustee Securities with capital (which may include short-term government securities, bank accepted bills and bank certificates of deposits). The income

derived from such investments shall be applied solely towards the promotion of the objects of the NAC;

- (o) subject to the approval of the Diocesan Council, directing the raising of funds by appeal for the purpose of furthering the objects of the NAC;
- (p) receiving, administering and providing for the investment of donations, gifts and legacies and receiving, administering and distributing income to the charitable and mission work of the NAC;
- (q) encouraging Parishes to participate in the ongoing work of the NAC; and
- (r) doing all such things as are incidental or conducive to the exercise and performance of all or any of the powers and duties of the Board and carrying out the objectives of the NAC and the mission of the Diocese.

20.2 Pursuant to the *Church Trust Property Act* and as otherwise allowed by law, the NAC 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.

20.3 Pursuant to the *Church Trust Property Act*, the *Bodies Corporate Act* and any other relevant law, it is expedient for the NAC to be authorised, empowered and directed and the NAC 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 NAC or Finance Debt incurred by the NAC, 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

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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.

21. Delegation of Board Members Powers

21.1 The Board may delegate any of its powers and functions to a Committee of the NAC, an individual Board member or an employee of the NAC or controlled entities (such as the Diocesan Chief Executive or an Executive Director or School Principal) or any person as it considers appropriate on such terms and conditions it considers appropriate and with such restrictions it considers expedient.

21.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

21.3 The delegation must be recorded in NAC's minute book.

22. Standing Committees of the Board

The Board may delegate any powers to a standing committee that can be established by the Board with such terms of reference, charter and membership as the Board shall determine. The creation of, amendments to and termination of the operation of such standing committees shall be undertaken by resolution of the Board.

23. Committee of Board Members

23.1 The Board may delegate any of its powers to a Committee, other than a standing committee, with membership, terms of reference and charter as shall be determined by the Board as it thinks fit and may from time to time revoke such delegation

23.2 The meetings and proceedings of any Committee formed in accordance with clause 23.1 consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Ordinance.

23.3 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by this Ordinance to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

24. Payment to Board Members

24.1 Notwithstanding clause 5.2 above:

(a) The Board Members may, if the Members resolve by ordinary resolution, be paid as remuneration for their services such sum as the Diocesan Council determines.

(b) NAC may:

(i) pay a Board Member for any services rendered to NAC in a professional or technical capacity, other than as a Board Member, if the amount is no more than a reasonable fee for the work done; or

(ii) reimburse a Board Member for expenses properly incurred by the Board Member in connection with the affairs of NAC.

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- 24.2 Any payment made under clause 24.1 must be approved by the Diocesan Council.
- 24.3 NAC may pay premiums for insurance indemnifying Board Members, as allowed for by law and this Ordinance.
25. Conflict of Interest
- 25.1 A Board 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 Board meeting (or that is proposed in a Circular Resolution):
- (a) to the other Board Members; or
 - (b) if all of the Board Members have the same conflict of interest, at the next general meeting, or at an earlier time if reasonable to do so.
- 25.2 The disclosure of a conflict of interest by a Board Member must be recorded in the minutes of the meeting.
- 25.3 A general notice given to the Board by a Board Member that the Board Member is an officer or member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Board Member's interest in that corporation or firm shall, in relation to any matter involving NAC and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Board Member's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.
- 25.4 Each Board Member who has a material personal interest in a matter that is being considered at a Board meeting must not, except as provided under clause 25.5:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 25.5 A Board Member may still be present and vote if:
- (a) their interest arises because they are a Board Member of NAC, and the other Board Members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the Board Member against liabilities that the Board Member incurs as a Board Member (see clause 43);
 - (c) their interest relates to a payment by NAC under clause 44 (indemnity), or any contract relating to an indemnity allowed under this Ordinance; or
 - (d) the Board Members who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Board Member, the nature and extent of the Board Member's interest in the matter and how it relates to the affairs of NAC; and
 - (ii) says that those Board Members are satisfied that the interest should not stop the Board Member from voting or being present.
26. Duties of a Board Member

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The Board Members must comply with their duties as Board 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 Board Member of NAC;
- (b) to act in good faith in the best interests of NAC and to further the charitable purpose(s) of NAC set out in clause 4.1;
- (c) not to misuse their position as a Board Member;
- (d) not to misuse information they gain in their role as a Board Member;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 25;
- (f) to ensure that the financial affairs of NAC are managed responsibly;
- (g) to comply with the Board Code of Conduct; and
- (h) not to allow NAC to operate whilst insolvent.

27. When the Board Meets

The Board may decide how often, where and when it meets, provided that it shall meet together not less than 8 times each calendar year.

28. Calling Board Meetings

28.1 A Board meeting may be convened at any time by:

- (a) the Chairperson; or
- (b) 3 Board Members;

giving at least twenty four hours' notice of the meeting to all Board Members.

28.2 Notice of a Board meeting need not be in writing.

29. Using Technology to Hold Board meetings

29.1 The Board Members may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Board Members.

29.2 The Board Members' agreement may be a standing one.

29.3 A Board Member may only withdraw their consent within a reasonable period before the meeting.

30. Quorum at Board Meetings

30.1 The quorum for a meeting of the Board is four members of the Board.

30.2 No business may be transacted at any Board meeting unless a quorum of Board Members is present at all times during the meeting.

30.3 Board Members who are personally present (or in conference in accordance with clause 29) form a quorum. A Board Member who is disqualified from voting on a

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matter pursuant to clauses 25 shall be counted in the quorum despite that disqualification.

30.4 All resolutions of the Board Members passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Board Member, or any act carried out pursuant to such resolution, shall, provided each Board Member to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Board Members.

31. Voting

31.1 A resolution of the Board must be passed by a majority of votes of the Board Members present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Board Members will for all purposes be taken to be a determination of the Board.

31.2 Each Board Member shall have one vote.

31.3 In case of an equality of votes at a Board meeting, the Chairperson will have a casting vote in addition to a deliberative vote.

31.4 The Board and/or the Bishop may before a vote is taken request that a matter be referred to the Diocesan Council for advice and/or resolution. Such matter will be referred to the next ordinary meeting of the Diocesan Council.

32. Resolution by Board Members

32.1 With the concurrence of the Bishop and the Chair, or where the Bishop is the Chair, with the concurrence of the Bishop and the Deputy Chair, the Board may consider a circular resolution without a Board meeting and such circular resolution may be passed if five or more Board Members sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures may be contained in more than one document.

32.2 The resolution is passed when the last Board Member signs.

32.3 A transmission, via whatever technological means, which is received by NAC and which purports to have been signed by a Board Member shall for the purposes of this clause be taken to be in writing and signed by that Board Member at the time of the receipt of the transmission by NAC in legible form.

32.4 NAC may send a circular resolution by email to the Board Members and the Board Members may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

33. Validation of Acts of Board Members

All acts done:

- (a) at any Board meeting; or
- (b) by any person acting as a Board Member,

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shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Board Member or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Board Member and had been entitled to vote.

34. Minutes and Records

34.1 NAC must make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings;
- (b) a copy of a notice of each general meeting.

34.2 NAC must make and keep the following records:

- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
- (b) circular resolutions of Board Members.

34.3 To allow the Board Members to inspect NAC's records, NAC must give Board Members reasonable access to the records set out in clauses 34.1, 34.2 and 37.1.

34.4 The Board Members must ensure that minutes of an general meeting or a Board meeting are signed within a reasonable time after the meeting by:

- (a) the Chair; or
- (b) any other person presiding over the meeting.

34.5 The Board Members must ensure that minutes of the passing of a circular resolution of Board Members are signed by the Chair within a reasonable time after the resolution is passed.

35. Execution of Documents

35.1 Documents must be executed on behalf of NAC in accordance with the *Bodies Corporate Act*.

35.2 If a document is executed on behalf of NAC:

- (a) using its common seal, the common seal may only be affixed in accordance with the authority of the Board. The common seal must be affixed in the presence of and attested to by the signatures of:
 - (i) 2 Board Members; and
 - (ii) the Diocesan Chief Executive or a person authorised in writing by the Diocesan Chief Executive to sign on his/her behalf.
- (b) pursuant to any applicable delegation, it must be executed in accordance with the terms of that delegation.

36. Financial and related Records

36.1 NAC must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and

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- (b) enable true and fair financial statements to be prepared and to be audited.
- 36.2 NAC must also keep written records that correctly record its operations.
- 36.3 NAC must retain its records for at least 7 years.
- 36.4 The Board Members must take reasonable steps to ensure that NAC's records are kept safe.
37. Board Members Access to Documents
- 37.1 A Board Member has a right of access to the financial records of NAC at all reasonable times.
- 37.2 If the Board Members agree, NAC must give a Board Member or former Board Member access to:
- (a) certain documents, including documents provided for or available to the Board Members; and
- (b) any other documents referred to in those documents.
38. Diocesan Chief executive
- 38.1 The Bishop may appoint a Diocesan Chief Executive to perform the responsibilities and duties of Diocesan Chief Executive of NAC on terms to be agreed between the Board and the Diocesan Chief Executive and approved by the Bishop from time to time.
- 38.2 Candidates for the position of Diocesan Chief Executive will be nominated by the Board for consideration by the Bishop.
- 38.3 The Diocesan Chief Executive may be either a member of the clergy or laity and is responsible to the Board for the management and administration of NAC.
- 38.4 The Diocesan Chief Executive shall be an employee of NAC.
- 38.5 The Board may only terminate the Diocesan Chief Executive's employment upon 3 months' prior written notice to the Diocesan Chief Executive (except in the case of wilful misconduct, in which case the Diocesan Chief Executive's employment may be terminated immediately). Any termination of the Diocesan Chief Executive's employment must first be approved by the Bishop.
- 38.6 The Board will ensure that the terms of the Diocesan Chief Executive's employment require that the Diocesan Chief Executive be required to provide at least 3 months' notice in writing of his/her resignation.
- 38.7 The Diocesan Chief Executive must comply with his/her duties as prescribed in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise his/her powers and discharge his/her duties with the degree of care and diligence that a reasonable individual would exercise if they were the Diocesan Chief Executive of NAC;
- (b) to act in good faith in the best interests of NAC and to further the charitable purpose(s) of NAC set out in clause 5;

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- (c) not to misuse his/her position as Diocesan Chief Executive of NAC;
 - (d) not to misuse information s/he gains in his/her role as Diocesan Chief Executive of NAC;
 - (e) to disclose any perceived or actual material conflicts of interest by written notice to the Member;
 - (f) to ensure that the financial affairs of NAC are managed responsibly; and
 - (g) not to allow NAC to operate whilst insolvent.
- 38.8 The Diocesan Chief Executive shall be entitled to attend all meetings of the Board and have the right to speak but not vote.

38A Executive Directors and Heads of Entities

38A.1 The Board, on the recommendation of the Diocesan Chief Executive and with the concurrence of the Bishop, may appoint persons as Executive Directors who shall report to the Diocese Chief Executive and shall undertake particular responsibilities for the NAC, its Controlled Entities and its Related Bodies as defined by the Board with the concurrence of the Bishop.

38A.2 The Board, on the recommendation of the Diocesan Chief Executive and with the concurrence of the Bishop may appoint persons to be recognised as the Head of Entity for Samaritans, Anglican Care, the NASC and NASC member schools.

39. Inspections and Inquiries by the Bishop and Diocesan Council

39.1 The Board shall ensure that:

- (a) the Diocesan Council are kept informed of all key financial, strategic and risk matters associated with the NAC in such manner and with such frequency as the Diocesan Council determine; and
- (b) any requests of the Diocesan Council are considered by the Board.

39.2 The Diocesan Council may at any time and in such manner as it thinks fit:

- (a) direct an inspection of NAC, its finances, its buildings and equipment; and/or
- (b) direct an inquiry into the operational and general affairs of NAC.

40. By-Laws

40.1 The Board Members may pass a resolution to make by-laws to give effect to this Ordinance. By-laws may not be inconsistent with this Ordinance and, in the event of any inconsistency, the provisions of this Ordinance will prevail.

40.2 The Board Members must comply with by-laws as if they were part of this Ordinance.

41. When Notice is taken to be Given

Written notice under this Ordinance may be:

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- (a) delivered in person, or left at a the recipient's address, and is taken to be given on the day it is delivered;
- (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs; and
- (c) sent by email, fax or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

42. Winding Up

42.1 If any surplus remains following the winding up of NAC, the surplus will not be paid to or distributed to the Members (unless they satisfy the provisions of clauses 42.1(a), (b) and (c), but will be given or transferred to one or more corporation(s) or institution(s) which has:

- (a) charitable objects which are similar to the objects of NAC as set out in clause 4.1;
- (b) a governing document which requires its income and property to be applied in promoting its objects; and
- (c) a governing document which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on NAC by 5.

42.2 The identity of the corporation(s) or institution(s) is to be determined by the Bishop in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

42.3 In the event that NAC ever has its endorsement as a DGR revoked, NAC must transfer all remaining money received in respect of such gifts and contributions to an institution which meets the requirements set out at clauses 42.1(a), (b) and (c). The identity of the other institution or corporation is to be determined by the Bishop in writing.

43. Indemnity

To the extent permitted by law every Board Member shall be indemnified out of the funds of NAC against all costs, expenses and liabilities incurred as such a Board Member or employee (or former Board Member or employee). However, no such Board Member (or former Board Member) shall be indemnified out of the funds of NAC under this clause unless:

- (a) it is in respect of a liability to another person (other than NAC or a related body corporate to NAC) 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 the Board Member (or former Board Member) or in which the Board Member (or former Board Member) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Board Member (or former Board Member).

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44. Payment of Indemnity Policy Premium

44.1 To the extent permitted by law, NAC may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Board Member (or former Board Member) of NAC 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 in relation to NAC.

44.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

44.3 Where a Board Member (or former Board Member) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then NAC shall not be required to indemnify the Board Member under clause 43 except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

45. Indemnity to Continue

The indemnity granted by NAC, contained in clause 43, 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.

46. Transitional

This Ordinance shall come into effect on a date determined by the Bishop.

PART 3 – SCHEDULES (Repealed)

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PART 4 – ORDINANCE ADMINISTRATION

Table of Amendments

Date	Current Section	Amending Instrument	Section Amended
22 February 2018	2	<i>Ordinance Clarification Ordinance 2018</i>	3.1
	17.1(b)	<i>Ordinance Clarification Ordinance 2018</i>	17.1(b)
26 April 2018	22.2	<i>Newcastle Anglican Corporation Ordinance Amendment Ordinance 2018</i>	22.2
28 March 2019	32.1	<i>Newcastle Anglican Church Corporation Ordinance Amendment Ordinance 2019</i>	32.1
2 October 2019	Schedule One C3.1	<i>Resolution of the Board of the NAC</i>	Schedule One C3.1
	Schedule One D3.1	<i>Resolution of the Board of the NAC</i>	Schedule One D3.1
26 March 2020	12.2	<i>Governance During Australian Covid-19 Pandemic Emergency Ordinance 2020</i>	12.2
	28.1	<i>Governance During Australian Covid-19 Pandemic Emergency Ordinance 2020</i>	28.1
	31.1	<i>Governance During Australian Covid-19 Pandemic Emergency Ordinance 2020</i>	31.1
17 August 2020	1. 3.1 3.2 (h) 13.3 14.4 17.1 17.5 17.7 17.8 18 20.1 21.1 22 23.1 23.2 31.4 32.1 34.4 38 39.1 Part 3	<i>Newcastle Anglican Church Corporation Ordinance 2017 Governance Amendment Ordinance 2020</i>	1. 3.1 3.2 (h) 13.3 14.4 17.1 17.5 17.7 17.8 18 20.1 21.1 22 23.1 23.2 31.4 32.1 34.4 38A 39.1 Part 3

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