

## **The Anglican Diocese of Grafton and its Diocesan Schools.**

### **1. Introduction**

This document is published to provide an outline of the relationship between the Anglican Diocese of Grafton and its Schools to those who work in or with the Schools or whose roles require them to have an understanding of the relationship.

A Diocese in the Anglican Church of Australia is governed by a network of legislation including Federal Government legislation, State legislation, Canons of the Anglican Church of Australia and Ordinances adopted by its Synod. A number of these include provisions that impact on the legal relationship between a Diocese and its organisations and institutions, including Diocesan schools. Of particular relevance are:

- The Anglican Church of Australia (Bodies Corporate) Act 1938– NSW State Legislation
- The Anglican Church of Australia Church Trust Property Act 1917 – NSW State Legislation
- The Common Constitution for Diocesan Schools in the Diocese of Grafton – Diocesan Ordinance
- The Use of Church Names Canon 1989 – Canon of the Anglican Church of Australia

### **2. Establishment of the schools**

A Synod may establish a body corporate “ ... for the purpose of managing, governing or controlling ...” any institution or organisation of the Church and in many instances “... of holding, managing or dealing with any church trust property subject to the control of that Synod”.

Each School Council has been established by ordinance as a body corporate under the provisions of the NSW Government *Anglican Church of Australia (Bodies Corporate) Act 1938* (“*the Bodies Corporate Act*”). In NSW this is a particular and unique form of incorporation which is different from that of a companies limited by guarantee or by shares and imposes different requirements .

The Synod’s legislative framework allows it to make provision for the governance and management of the bodies corporate it establishes and for the management of any property they hold.

Clause 5.1.1 of each School’s constitution confirms that the School Council has been incorporated as a Body Corporate under the Bodies Corporate Act.

By virtue of this arrangement each School carries out its functions for purposes of the the Diocese of Grafton and under the direction of the Synod .

#### **The powers and function of the Council**

Section 6 of the Bodies Corporate Act stipulates that it is the Synod that determines the “powers, authorities, duties and functions conferred or imposed” on the body corporate.

In the Diocese of Grafton, these powers and duties are conferred on a School Council by Synod or Bishop in Council acting on Synod’s behalf through the passing of an Ordinance that establishes or amends the School’s constitution or otherwise confers a power or imposes a duty. Since 2012 all School Constitutions in the Diocese have followed the agreed

form of the Common Constitution for Diocesan Schools. Each School Constitution provides for the appointment of a School Council and designates its powers and responsibilities.

The Constitution also identifies matters the Council needs to refer back to the diocese before undertaking a course of action, usually through seeking the approval of the Bishop-in-Council, or in some cases, the Schools Commission.

### **3. The School Council's Accountability to Synod and the Bishop in Council**

Clause 5.2 the School's Constitutions provides that:

- a. The Council is accountable to the Synod and Bishop in Council.
- b. Bishop in Council is entitled to access to financial and other records maintained by the School.
- c. The Council is required to report to the Synod and Bishop in Council as required by any relevant diocesan policy and may be required to provide other information if requested by Bishop in Council.
- d. The Synod and Bishop in Council may establish policies and procedures concerning compliance with Diocesan policies and the consequence of non-compliance by schools.

### **4. The Anglican Diocese of Grafton Schools Commission**

#### **5. Use of the Anglican name**

The "Use of Church Name Canon 1989" is legislation adopted by General Synod of the Anglican Church of Australia. It has authority in every diocese in Australia. Section 7 of the Canon deals with the use of the name "Anglican" by Schools. It provides that a diocese must only authorise the use of a form of the Church name (which is usually taken to mean the inclusion of the word "Anglican" in the school name) to schools that comply with any diocesan requirements for the conduct, control and curriculum of an Anglican school in the diocese concerned.

Clause 4.1 of each School's Constitution sets out the mandatory aims of the School to be a ministry of the Diocese operating on the basis of a Christian belief in God and a Christian way of life according to the principles and traditions of the Anglican Church and to reflect the vision and values of the Diocese.. Clause 4.2 of the Constitution sets out other diocesan requirements expressed as the School's objectives.

#### **Independent schools**

The Association of Independent Schools (AIS) NSW defines the independent schools sector as one where "each school is independent of government or Catholic system ownership. It is made up of individually operated schools as well as small groups or systems" (AIS - About AIS Independent Schooling, April 2012).

Any reference to the five Diocesan schools as ‘independent’ schools is not intended to be reflective of their relationship with the Diocese. The five schools cannot be considered fully independent of the Diocese, as they are subject to Synod directives by ordinance and resolution in matters of governance and the management of property as a result of their creation under the Bodies Corporate Act and utilisation of church trust property.

#### **6. School property is church property held in trust.**

Section 9(3) of the Bodies Corporate Act confirms that all property “vested in a body corporate” is “church trust property”. This means that all property of a Diocesan School is held and managed by the School Council in trust for the purposes of the Church in the Diocese under the Anglican Church Trust Property Act

Clause 5.4 of each School’s Constitution deals with the management of property and requires that the Council must first obtain the written approval of the Bishop in Council before it:

- a. Purchases, leases or otherwise acquires rights in real property; and
- b. Sells, mortgages, exchanges, leases or otherwise disposes of rights in real property.

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