

**GRAFTON DIOCESAN GOVERNANCE ORDINANCE 2008  
AMENDING (THE CORPORATE TRUSTEES) ORDINANCE 2013**  
Ordinance No. 7 of 2013

An Ordinance to amend the Grafton Diocesan Governance Ordinance 2008 relating to The Corporate Trustees of the Diocese of Grafton.

**PREAMBLE**

WHEREAS presently the appointment, responsibilities and duties of The Corporate Trustees of the Diocese of Grafton are contained within Chapter 15 of the Grafton Diocesan Governance Ordinance 2008 AND WHEREAS it is desirable to have the Ordinance amended THEREFORE the Bishop, Clergy and Laity of the Diocese of Grafton decree and enact as follows:

**AMENDMENT**

1. Chapter 15 of the Grafton Diocesan Governance Ordinance is amended by deleting the present Chapter 15 and substituting in place thereof the Schedule to this Ordinance.
2. This Ordinance may be cited as The Grafton Diocesan Governance Ordinance 2008 Amending (The Corporate Trustees) Ordinance 2013
3. This Ordinance shall come into effect upon receiving the assent of the Bishop.

**ASSENT**

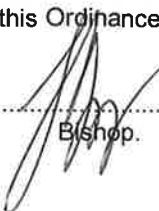
I hereby certify that the Ordinance as printed is in accordance with the Ordinance as passed.

  
.....  
Chairman of Committees

I certify that this Ordinance was passed by Synod on the 13<sup>th</sup> day of October, 2013.

  
.....  
Registrar (ACTING)

I assent to this Ordinance.

  
.....  
Bishop. Dis. Admin.

**GRAFTON DIOCESAN GOVERNANCE ORDINANCE 2008  
AMENDING (THE CORPORATE TRUSTEES) ORDINANCE 2013**

**SCHEDULE**

**CHAPTER 15 - THE CORPORATE TRUSTEES OF THE DIOCESE OF GRAFTON**

**151 Mission and Ministry**

151.1 The incorporated body, The Corporate Trustees of the Diocese of Grafton (The Corporate Trustees), was formed under the provisions of the *Anglican Church of Australia Trust Property Act 1917* with the mission, ministry and purposes of:

- (a) being the trustee of Church Trust Property for Ministry Units;
- (b) being the trustee for the trust funds of Diocesan bodies; and
- (c) receiving bequests on trust, which would otherwise be ineffective, on behalf of Parishes and other church entities and Ministry Units.

**152 Saving Provisions**

152.1 Any repeal of any Ordinances by this Ordinance shall not affect the body of trustees constituted as The Corporate Trustees of the Diocese of Grafton, the persons who are the members of the said body of trustees, property vested, acts and things validated or certificates given under the repealed Ordinances or any of them, nor will this Ordinance, or any repeals by it, be held to revive any Ordinances formerly repealed.

152.2 Except so far as there is anything in this Ordinance inconsistent therewith, this Ordinance shall apply to all matters and things made, done or commenced under any repealed Ordinances and at the commencement of this Ordinance of any force or effect or capable of acquiring any force or effect by virtue of the repealed Ordinances as if this Ordinance had been in force at the time they were made done or commenced and they were made done or commenced hereunder.

152.3 The members of The Corporate Trustees of the Diocese of Grafton are hereby declared to have been elected or appointed in

conformity with the provisions of the *Anglican Church of Australia Trust Property Act 1917* and all acts matters and things done or commenced by the said Corporate Trustees prior to the passing of this Ordinance are hereby validated and confirmed.

### **153 Membership**

153.1 The members of The Corporate Trustees of the Diocese of Grafton shall be the Bishop as Chair and five elected members.

153.2

153.2(a) A person nominating for the office of Corporate Trustee must be a member of the Church as defined by this Ordinance.

153.2(b) The members of the Corporate Trustees of the Diocese of Grafton shall be elected by Synod for a term of five years.

153.2(c) The expiration of that term shall be on the last day of the session of the Ordinary Synod held in the year five years after the Corporate Trustee was elected.

153.2(d) All members are eligible for re-election for a maximum of three consecutive terms, or fifteen years, subject to transition clause 153.2(e).

153.2(e) A Corporate Trustee who, at 1<sup>st</sup> January 2013, had been in office greater than fifteen years shall be eligible for re-election for one further term of five years at the expiration of that Trustee's current term.

### **153.3 Casual Vacancies**

153.3.1 A casual vacancy occurs when a Corporate Trustee

- a) resigns; or
- b) dies; or
- c) becomes physically or mentally ill to a point that in the opinion of a majority of members interferes with the Trustee's ability to continue to carry out the function of a Trustee; or
- d) becomes bankrupt; or
- e) is convicted of an indictable offence; or
- f) is ineligible to hold office in the Anglican Church arising from a professional standards determination; or

g) is absent without leave from three consecutive meetings of the Corporate Trustees.

153.3.2 A casual vacancy shall be filled by either Synod or Bishop-in-Council, as convenience dictates, and the person elected or appointed to the casual vacancy shall serve the balance of the original Member's term.

153.4 Notwithstanding any other Ordinance or appointment the present Corporate Trustees are declared to be in office until the Synods at which by virtue of their election their term of office is to cease.

**154 Corporate Trustees to be "fit and proper" persons**

Synod or Bishop-in-Council in considering a nomination of a person for appointment as a Corporate Trustee shall consider whether such person is a "fit and proper person" (as defined by the Australian Prudential Regulatory Authority or similar Australian financial regulator) to be so appointed. Synod or Bishop-in-Council whilst primarily seeking appropriate skills and experience shall also have regard to gender balance as it seeks suitable nominees.

**154A New Corporate Trustee to be Inducted**

154A.1 Upon the election of a Corporate Trustee (not re-election), the Registrar shall provide to such Trustee

- 1) either in hard copy or in digital medium, or by reference to where such can be obtained, all Acts, Ordinances, policies, manuals or other material necessary for the Trustee to be acquainted with, and prepared for, the responsibilities of the position of Corporate Trustee, and
- 2) either in hard copy or in digital medium, the minutes of all meetings of the Corporate Trustees in the preceding twelve months, and

- 3) either in hard copy or digital medium, a detailed listing of all the Corporate Trustees' investment properties together with pertinent information on the Trustees investment portfolio, and
- 4) either in hard copy or in digital medium, or by reference to where such can be obtained, information, written or diagrammatic, on the inter-relationship between the Corporate Trustees and functional groupings in the Diocese including, but not limited to, Bishop-in-Council, Anglican Funds Grafton Diocese, and the Diocesan Property Board.

154A.2 The Bishop and the Registrar shall, either together or separately, meet with any newly elected (not re-elected) Trustee for an induction session wherein the Trustee is briefed on the functioning role of a Corporate Trustee in the Diocese of Grafton and acquainted with significant matters currently before The Corporate Trustees.

**155 *Bishop to be Chair***

The Bishop shall be the Chair of The Corporate Trustees. In the Bishop's absence The Corporate Trustees shall elect one of their number present to be Chair. The Chair shall have a deliberative vote only.

**156 *Registrar to be Convenor of Meetings***

The Registrar shall convene meetings of The Corporate Trustees upon the request of the Bishop or a quorum of The Corporate Trustees.

**157 *Registrar to be Secretary***

The Registrar of the Diocese shall be the Secretary of The Corporate Trustees and, in addition to other duties assigned to the Secretary, shall carry out the requirements of Sections 42 and 43 of the *Anglican Church of Australia Trust Property Act 1917*.

**158 *Quorum***

Any three of The Corporate Trustees shall form a quorum for meetings of The Corporate Trustees.

**159** *Proceedings Valid even if Vacancy Exists*

The proceedings of The Corporate Trustees shall not be invalid in consequence only of there being a vacancy in the membership of The Corporate Trustees at the time of such proceedings provided that a quorum is present at meetings.

**160** *Funds and Land Vested in The Corporate Trustees*

All Church Trust Property including Capital Funds of the Diocese, Endowment Funds, Church Lands and funds acquired for the purpose of erecting buildings on Church Lands except as hereinafter provided shall be vested in The Corporate Trustees.

**161** *Legal Ownership in The Corporate Trustees as Trustees*

161.1 The Corporate Trustees shall hold the legal estate of such property as shall be vested in them and preserve the same for the purpose set forth in the respective instruments and Declarations of Trust, but the care of any Church, Rectory, hall or other Parish property and the management of the affairs thereof shall be exercised by Parish Councils as hereinafter provided subject nevertheless to the observance of any special trusts affecting such management which shall be in force for the time being and the trusteeship of such sites shall not confer or impose upon The Corporate Trustees any right duty or obligation other than that of permitting the same to be used for the purposes of the Parish. All other rights duties and obligations of ownership shall belong to and rest upon the Parish Council of the Parish which is the beneficial owner of the land or buildings for the time being.

161.2 The Corporate Trustees shall have and may exercise all the powers authorities and functions which are conferred upon The Corporate Trustees by the *Trustee Act 1925*, and in particular shall take into account the matters in section 14C of the said Act, this Ordinance and any other relevant Act or Ordinance.

**162** *Custody Care and Control of Furniture and Records with Churchwardens*

Notwithstanding anything to the contrary herein contained the furniture of every Church and Church books, muniments, records and sacred vessels

of every Parish and all other Parish furniture shall be and be deemed to be vested in and be the property of The Corporate Trustees. The custody, care and control of such furniture, books, muniments, records and sacred vessels shall remain with the Churchwardens of the respective Churches.

**163 Corporate Trustees to Accept or Reject Property Transfer**

The Corporate Trustees may accept or reject the transfer of any property which may be offered to them with the intention of it becoming Church Trust Property and shall in all cases report any action to the next ensuing session of Synod.

**164 Trust to be Declared**

Whenever any Church Trust Property is vested in The Corporate Trustees, the purpose of the Trust and the uses to which it is held shall be ascertained and a Declaration of Trust in accordance therewith shall be executed by The Corporate Trustees and lodged at the Registry to be filed with the relative deed(s) or other documents belonging to the Parish or entity concerned.

**165 Power of Investment**

165.1 The Corporate Trustees unless expressly forbidden by the trust instrument relating to the particular trust may as allowed by section 14 of the *Trustee Act 1925*:

- (a) invest trust funds in any form of investment, and
- (b) at any time vary an investment.

165.2 The individual members of The Corporate Trustees shall have regard to the matters specified in section 14C of the *Trustee Act 1925* when exercising powers of investment.

165.3 Nothing herein contained shall limit or restrict the powers of investment given to The Corporate Trustees in respect to any fund or funds by the trust instrument creating or relating to such fund or funds.

- 166 *The Corporate Trustees may hold Property as Received***  
The Corporate Trustees, if authorised by the trust instrument relating to the particular trust, may for so long as they think fit hold investments and securities other than those authorised by this Ordinance in the form in which the same shall come into their hands.
- 167 *Pooling of Investments Allowed***  
It shall be lawful for The Corporate Trustees for the purposes of investment to pool separate Church Trust Property under their control and management.
- 168 *The Corporate Trustee Authorised to make Payments***  
The Corporate Trustees are hereby authorised to pay such salaries, fees, charges, and other costs as they consider necessary to carry out the provisions of this Ordinance.
- 169 *Secretary to have Custody of Common Seal***
- 169.1 The Secretary shall have the custody of the Common Seal of The Corporate Trustees.
- 169.2 The affixing of the Common Seal of The Corporate Trustees shall be verified by the signature of not fewer than two of The Corporate Trustees and any deed or instrument so sealed shall bear on the face thereof an appropriate sealing clause.
- 169.3 The Corporate Trustees may, subject to the provisions of the *Anglican Church of Australia Trust Property Act 1917* and of this Ordinance, make rules and regulations for the transaction of business.
- 170 *Management Expenses***
- 170.1 The Corporate Trustees may charge against the income of any Church Trust Property held by it in trust for the purposes of investment or income generation or similar:
- (a) all necessary actual costs and expenses incurred in the execution of the trusts and management of the property held under the provisions of this Ordinance; and
  - (b) an annual management charge, of not more than one percent of the value of the asset managed.



- 171 *Investment Returns on Trust Funds and Properties***  
The Corporate Trustees, having due regard to commercial rates of interest payable on Trustee investments, shall pay interest at such rate or rates and at such time or times as The Corporate Trustee shall from time to time determine, to the person, persons or bodies entitled to income from any Church Trust Property held by The Corporate Trustees for investment management.
- 172 *Investment Reserve May be Established***  
The Corporate Trustees may establish a reserve of undistributed income into which may be transferred from time to time any undistributed nett annual income. For the purposes of this clause "nett annual income" means that gross income derived during the year after deduction of all proper administration costs and expenses.
- 173 *Investment Reserve May be Pooled***  
The Corporate Trustees may pool the amount in the reserve of undistributed income with other funds pooled for investment and if so the income from the pooled amount shall be distributed to the reserve of undistributed income at the same rate of return as for other trust monies within the merged funds.
- 174 *When investment Reserve may be used***  
The Corporate Trustees may in any year use so much of the amount standing to the credit of the Investment Reserve of undistributed income as they consider necessary for the purpose of maintaining as far as reasonably practicable the best possible rate of return.
- 175 *Corporate Trustees to account to Bishop-in-Council for Investment Reserve***  
The Corporate Trustees may from time to time, and shall if Bishop-in-Council so requires, make recommendation to Synod as to how any balance in the Investment Reserve of undistributed income not foreseeably required for the purposes of clause 174 hereof should be used and Synod may by resolution give effect to such recommendation.

**176 *Books to Be Kept***

The Corporate Trustees shall cause the accounts of all their transactions to be regularly entered in proper books which shall be kept for the purpose by the Registrar of the Diocese or such other person as may be appointed by Bishop-in-Council and such books and accounts shall be audited by the Diocesan Auditor annually.

**177 *Annual Financial Statements***

The Corporate Trustees shall provide to Bishop-in-Council after the close of its financial year the audited Annual Financial Statements of The Corporate Trustees during the previous year in order that such Annual Financial Statements may be presented to Synod at its next session.

**178 *Property Vested in the Bishop***

The Bishop may act as trustee of property and funds vested in him upon trust for Parish or Diocesan purposes. In all such cases during the vacancy of the See The Corporate Trustees shall become the trustee of such properties and or funds and shall have power to receive rents and interest and to recover the same to receive payment of principal moneys and to invest the same in securities authorised by law for the investment of trust funds and generally to act as trustees of the said properties with power to make any payments out of the income which may be necessary for the protection and preservation of any of the properties administered.

**179 *Property Vested in Separate Trustee***

Any Church Trust Property which by the provisions of the instrument creating such Trust shall belong to or become vested in any trustee (hereinafter called Separate Trustee) other than The Corporate Trustees of the Diocese of Grafton shall be held managed and controlled by the said Separate Trustee subject to the provisions of the *Anglican Church of Australia Trust Property Act 1917* and the due performance of duties by this Ordinance required to be performed by any Separate Trustee.

**180 Duties of Separate Trustees**

180.1 Whenever any Church Trust Property is vested in any Separate Trustee, it shall be the duty of such Separate Trustee to:

- (a) execute a Declaration of Trust in accordance with the purpose of the Trust and to lodge such declaration and a copy of the Deed, Will or other instrument creating the trust at the Bishop's Registry to be filed with the relative deeds or other documents the property of the Parish, Ministry Unit or other entity concerned;
- (b) keep proper accounts;
- (c) supply to Bishop-in-Council not later than 30 days after the close of each financial year a Financial Statement for the previous financial year for presentation to Synod and upon adoption by Synod for publication in the Year Book of the Diocese; and
- (d) permit any certificated auditor or firm of auditors authorised in that behalf by Bishop-in-Council to examine such accounts and relative documents and to audit any accounts relating to the Trust or Trusts.

**181 Names of Separate Trustees to be Registered**

The name of every Separate Trustee shall be entered in a book to be kept by the Registrar of the Diocese and the death removal or resignation of any such Trustee shall be duly entered therein.

**182 Trusts May be Conveyed to The Corporate Trustee**

Any Separate Trustee of Church Trust Property may if the trustee so desires convey such property to The Corporate Trustees upon the original trusts and such conveyance when it has been accepted by the Corporate Trustees shall discharge such conveying Separate Trustee from all subsequent duties in respect of such Trusts.

**183    *Delegation of Powers in Certain Cases***

Bishop-in-Council is hereby appointed a Committee or Council under Section 40 of the *Anglican Church of Australia Trust Property Act 1917* and may during the recess of Synod exercise in place of the Synod of the Diocese such of the powers and functions and do and make such of the things referred to in such Act as may be done by the Synod of the Diocese under the provisions of Section 12, 13, 14, 15, 19, 24, 25, 26, 27, 28, 31, 32, 32B, 37 and 39 of the *Anglican Church of Australia Trust Property Act 1917* and shall report to the Synod at the next session all actions taken under this Section.