



ANGLICAN DIOCESE OF GRAFTON

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.

A Diocese in the Anglican Church of Australia is governed by a network of Federal and 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 Use of Church Names Canon 1989 – Canon of the Anglican Church of Australia
- School Constitutions – a common format and content was adopted in 2012 – Diocesan Ordinances
- The Grafton Anglican Schools Commission Ordinance 1997 (“the Schools Commission Ordinance”), as amended from time to time – Diocesan Ordinance.

2. Establishment of the Schools

Under the Bodies Corporate Act, 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 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 the purposes of the Anglican Church of Australia in the Diocese of Grafton and under the direction of the diocesan Synod.

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. As creations under the Bodies Corporate Act, they are subject to directives of the Synod and the Bishop-in-Council by ordinance and resolution.

3. The Powers and Functions of the School 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 the Bishop-in-Council acting on Synod’s behalf, passing 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 Grafton Anglican Schools Commission (“the Commission”).

School Constitutions are available on the Commission website: <https://www.graftondiocese.org.au/grafton-anglican-schools-commission/>

4. The School Council’s Accountability to Synod and the Bishop-in-Council

Clause 5.2 of each School Constitution provides that:

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

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.

The Schools have obligations under Section 6 of the Schools Commission Ordinance to:

- a) Comply with Diocesan Policies
- b) Provide to the Commission such information as the Commission may request to enable the Commission to fulfil its objects and duties; and
- c) Pay an annual financial contribution, to be used for the purposes of the Commission and Diocesan services to schools.

5. The Grafton Anglican Schools Commission

By the Schools Commission Ordinance 1997, the Synod established the Grafton Anglican Schools Commission to:

- a) advise and make recommendations to the Synod, the Bishop-in-Council and the Schools and to support and monitor the Schools in respect of the following matters:
 - i. The fulfilment of the aims and objectives set out in the Schools’ Constitutions;
 - ii. Planning, establishment, governance, management, promotion and funding of proposed, new and established Schools;
 - iii. Communication and cooperation among the Schools and between the Schools and the Commission and other diocesan entities;

- iv. Communication with Federal, State and Local Governments and other relevant educational bodies on matters relating to schools and education;
 - v. Such other matters as may be referred to the Commission by the Synod or the Bishop-in-Council; and
- b) perform such other functions as may be referred to the Commission by the Synod or the Bishop-in-Council from time to time.

The Commission meets quarterly and reports to the Bishop-in-Council. Commission members are also invited to attend the school hosted Diocesan School Network meetings with Principals, Business Managers and School Council Chairs.

Commission members are appointed by the Bishop or the Bishop-in-Council and have between them a broad range of skills and experience to assist them to contribute to achieving the objectives of the Commission including, but not limited to, education, school management, finance, law and risk management.

6. Use of the Anglican Name

Section 7 of the Use of Church Name Canon 1989, governs 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.

Relevant requirements of the Diocese of Grafton are found in Clause 4.1 of each School’s Constitution which sets out the mandatory aims of the School, first, 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, second, 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. Diocesan Ordinances and policies impose other requirements.

7. School Property is Church Property Held in Trust for Educational Purposes

Section 9(3) of the Bodies Corporate Act provides 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 Section 24 of the Anglican Church Trust Property Act.

The Bishop-in-Council, on behalf of the Synod of the Diocese of Grafton, recognises that property held by the Schools of the Diocese is held for the purpose of providing Christian education in the Anglican tradition in accordance with the aims and objectives outlined in each School’s Constitution.

The Bishop-in-Council further recognises that the Schools of the Diocese are recipients of recurrent government grants to support the delivery of educational outcomes and one-off grants for capital improvements and that there are specific legal requirements associated with those grants which create an obligation to ensure that these funds and assets are used exclusively for the purposes for which the grants are made.

School Property will therefore be used for educational purposes and no other purpose except where that use is ancillary to the educational use.

In circumstances where the financial value of School Property is realised, the resulting financial resources, net of legitimate costs involved in realisation of those financial resources and net of necessary repayments of loans and grants, will be applied for educational purposes and no other purpose.

Where funds arising from the above are held by The Corporate Trustees of the Diocese of Grafton, any investment earnings arising from those funds, net of legitimate expenses involved in the holding or investment of those funds, will be used for educational purposes and no other purpose.