

Trinity Grammar School Constitution Ordinance 1928

(Reprinted under the Interpretation Ordinance 1985.)

The Trinity Grammar School Constitution Ordinance 1928 as amended by the Trinity Grammar School Constitution (Amendment) Ordinance 1961, the Anglican Church of Australia Act 1976, the Trinity Grammar School Constitution (Amendment) Ordinance 1977, the Anglican Church Property Trust Diocese of Sydney (Change of Name) Ordinance 1982, the Diocesan Officers (Retirement) Ordinance 1987, the Trinity Grammar School Constitution Amendment Ordinance 1989, the Diocesan Officers (Retirement) Repeal Ordinance 2001, the Trinity Grammar School Constitution Amendment Ordinance 2003 and the Borrowing Limits of Diocesan Organisations Amendment Ordinance 2016.

Long Title

An Ordinance to regulate the constitution of the Council of Trinity Grammar School and for other matters in connection therewith and to vary the trusts of certain church trust property held in connection therewith.

Preamble

Whereas Trinity Grammar School was founded by the Right Reverend George Alexander Chambers then Rector of Holy Trinity Dulwich Hill in or about the year One thousand nine hundred and thirteen and is now being carried on upon the lands described in the first schedule hereto and Strathfield Grammar School is being carried on in connection with and subsidiary to Trinity Grammar School on the lands described in the second schedule hereto And Whereas the said lands are now vested in the Anglican Church Property Trust Diocese of Sydney hereinafter called the said Trust by virtue of a Deed of Consent by the original trustees And Whereas it is expedient to confirm and endorse the action of the original trustees in acquiring the said lands And Whereas it is expedient that the said Trinity Grammar School and its subsidiary School Strathfield Grammar School should be carried on in future as a Great Public School by a Council under the auspices of the Anglican Church of Australia And Whereas it is expedient that provision should be made for the constitution and election of a Council and to vest authority in such Council for such purposes as are hereinafter mentioned And Whereas the said lands are at present held upon certain trusts set out and declared in a certain Deed of Declaration of Trust dated the third day of October One thousand nine hundred and seventeen whereby they are constituted church trust property within the meaning of the Anglican Church of Australia Trust Property Act 1917 but such trusts are in many respects no longer suitable to the existing circumstances of the School And Whereas by reason of the hereinbefore recited facts which are circumstances subsequent to the creation of the trusts to which the said church trust property is for the time being subject it has become inexpedient to carry out and observe such trusts and it has become expedient to vary the trusts set out and declared in the said Deed of Declaration of Trust by substituting therefore the trusts hereinafter declared concerning the same. Now therefore the Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management and good government of the Anglican Church of Australia within the State of New South Wales and all other powers vested in the said Synod by the Church of Australia Trust Property Act 1917 or otherwise ordains declares directs and rules as follows –

1. The acquisition of the lands and premises described in the first and second schedules hereto and the foundation and establishment of the said School are hereby confirmed and adopted.
2. The name of the School shall be Trinity Grammar School and Strathfield Grammar School shall be carried on and conducted as subsidiary thereto and unless repugnant to the context where the said School is herein mentioned it shall mean and include the said Trinity Grammar School carried on on the lands and premises described in the first schedule hereto and Strathfield Grammar School carried on on the lands and premises described in the second schedule hereto.
3. The said School shall be governed by a Council appointed as hereinafter mentioned.
4. The said Council so appointed as lastly hereinbefore mentioned may from time to time appoint a separate committee to manage and control Strathfield Grammar School.
5. The said Council shall consist of 18 members namely –

- (a) The Archbishop of the Diocese of Sydney for the time being; provided that in the absence of the Archbishop from the Diocese of Sydney the Commissary or during a vacancy of the See the Administrator of the Diocese shall be entitled to attend meetings of the Council ex officio and to vote thereat.
- (b) Three persons appointed by the Trinity Grammar School Old Boys Union so long as such Union is in existence and consists of no less than 50 financial members.
- (c) Twelve other persons to be appointed by Synod of whom six shall be clergymen and six shall be lay persons.
- (d) Two other persons to be elected by the said Council.

5A. The two persons to be elected in accordance with sub-clause 5(d) hereof shall be elected as follows –

- (a) Each member may by writing addressed to the Chairman nominate two persons for election.
- (b) Every member who nominates a person shall signify in writing to the Chairman that that nominee consents to serve, if elected for the appropriate term.
- (c) At least fourteen days' notice in writing of the date for the closing of nominations shall be given to each member.
- (d) If there is no greater number of nominees than there are vacancies, the Chairman shall declare the nominees duly elected.
- (e) In the event of there being a greater number of nominees than there are vacancies a ballot shall be held.
- (f) At least fourteen days' notice in writing of the date for the ballot shall be given to each member and the notice shall include the names ages addresses and occupations of the nominees and such other material as the Chairman may deem appropriate or as the Council may from time to time determine.
- (g) Any ballot shall be conducted by secret ballot at a special ordinary meeting of the Council or by registered post as the Council may determine.
- (h) On the taking of a ballot –
 - (i) where there is one vacancy to be filled –
 - (a) the Chairman shall declare the nominee with the greater or greatest number of votes to have been elected; or
 - (b) where two or more nominees receive an equal number of votes, any nominees receiving a lesser number of votes shall be eliminated and a further ballot taken in respect of the remaining nominees.

If all nominees or two or more remaining nominees receive an equal number of votes, the candidate to be elected shall be determined by the Chairman.
 - (ii) where there are two vacancies to be filled –
 - (a) the Chairman shall declare the two nominees who have each received a higher number of votes than the number of votes received by any of the other nominees to have been elected; or
 - (b) where more than two nominees receive an equal number of votes, any nominees receiving a lesser number of votes shall be eliminated and a further ballot taken in respect of the remaining nominees.

If all nominees or more than two remaining nominees receive an equal number of votes, the candidates to be elected shall be determined by the Chairman.
- (i) The term of office of a member elected under this clause shall be –
 - (A) except as provided by paragraph (B) - 3 years; or
 - (B) in respect of the first two members elected pursuant to this clause –
 - (a) three years in the case of the member receiving the greater number of votes or, where neither member received a greater number of votes than the other, the member who is selected following a determination by lot by the Chairman; and
 - (b) eighteen months in the case of the other member.

5B. The Council shall elect from time to time from amongst its members a Chairman who shall during the ensuing period of three years, in the absence of the Archbishop, the Commissary or Administrator as the case may be, preside at meetings of the Council provided that in the absence of the Chairman and the Archbishop, Commissary and Administrator as the case may be, the meeting may appoint one of the other members then present to act as Chairman of that meeting.

6. At meetings of the Council seven members shall form a quorum and the Chairman shall have both a deliberative and casting vote.

7. If any member of the Council other than the ex officio member shall have been absent from three consecutive meetings of the Council without leave of the Council the seat of such member shall be vacant if so declared by resolution of the Council.

8. Any member of the Council shall ipso facto cease to be a member if his seat be declared vacant in pursuance of clause 7 hereof or if he shall resign his seat or if he shall become bankrupt or insolvent or make any assignment for the benefit of his creditors or become a lunatic.

8A. Whenever a vacancy shall occur in the said Council amongst the members elected by the said Council such vacancy shall be filled by the election of a new member by the said Council. Any member so elected by the said Council shall remain in office only until the end of the term of the member creating such vacancy.

9.

10. Whenever a vacancy shall occur in the said Council among the members elected by the Trinity Grammar School Old Boys' Union such vacancy shall be filled by the election of a new member by the members of the said Old Boys' Union if such Union is then in existence and consists of not less than fifty financial members.

11. Whenever a vacancy shall occur in the said Council among the members elected by the Synod such vacancy shall be filled by the election of a new member by the Synod or when the Synod is not in session by the Standing Committee of the Synod. Any member so appointed by the Standing Committee of the Synod shall remain in office only until the next ordinary session of the Synod.

12. The Synod may by resolution declare that any vacancy existing when the Synod is in session shall not be filled during such session and thereupon after the close of such session such vacancy may be filled by the Standing Committee in lieu of the Synod.

13. The first members of the Council other than the ex officio member shall be –
The said Trust's Representatives – Mr Kelso King, Mr C.M.C. Shannon.
The Old Boys' Union Representatives – Mr Robert Anderson, Mr A.B. Kerrigan B.A.
Synod Representatives – Rt Rev Bishop D'Arcy-Irvine, Rev Canon Langford-Smith, Rev Canon Begbie, Rev W.T. Price B.A., Dip.Ed., Rev F.W. Tugwell B.A., Rev A.L. Wade M.A., B.D., Mr P.R. Cole M.A., Ph.D., Mr T.S. Holt, Mr R.J. Lyons B.A., Mr J.H. Smith, Mr C.P. Taubman, Mr W.J. Williams.

14. Subject to clause 7 hereof members of the Council appointed by the said Trust or by the said Old Boys' Union shall be appointed and hold office for a period of three years.

15. On the first day of each ordinary session of Synod which shall be held after this Ordinance shall have come into force four of the twelve members of the Council appointed by the Synod (two being clergymen and two lay persons) shall retire from office but shall be eligible for reappointment. Such members shall retire in rotation according to their length of time of office provided that where members shall have held office for equal duration of time the member or members to retire may be determined by ballot taken among the members of the Council.

16. Interim successors in office shall retire on the day on which the members whose places they were elected to fill were due for retirement.

17. The said Council of Trinity Grammar School shall manage and carry on the said School and its affairs and shall govern and control the management and user of the church trust property at any time held in connection therewith in such manner as it may deem expedient for the benefit of the said School.

17AA. The said Council may acquire lands and premises additional to those described in the First and Second Schedules hereto when and where it may deem it expedient so to do in the interests of Trinity Grammar School or of church education.

17A. The said Council may acquire or establish a subsidiary school or subsidiary schools within or without the Diocese when and where it may deem it expedient so to do in the interests of Trinity Grammar School or of church education and may for the purpose of assisting it in managing and controlling any such subsidiary school or schools from time to time appoint a committee or committees from among its members and such committee or committees may be authorised by the said Council to co-opt other persons approved by the Archbishop.

17B. (a) The Council shall remain and continue to be solely responsible for all liabilities incurred by it or on its behalf.

(b) The Council and its members and each of them shall not represent to any person or persons or corporation that the Archbishop of Sydney or the Synod of the Diocese of Sydney or the Standing Committee thereof or any person or persons or any other corporate body or corporation holding church trust property for the Anglican Church of Australia in the Diocese of Sydney or any corporate body constituted by or pursuant to the Anglican Church of Australia (Bodies Corporate) Act 1938 shall or may meet or discharge all for any part of any liability or liabilities which have been or may or will be incurred wholly or partly by or on behalf of the Council.

(c) Without limiting any existing express or implied power of Council, the Council may borrow or raise money and secure the repayment thereof with or without Interest.

(d) The Council shall not execute or deliver and shall not have power to execute or deliver any mortgage, charge, debenture, guarantee, indemnity or promissory note, any bill of exchange or other negotiable instrument other than a cheque drawn on the Council's bank unless the following clause is included therein –

“Notwithstanding anything contained therein to the contrary, each of the parties hereto acknowledge and agree that The Council of Trinity Grammar School shall not be liable to any other party hereto for any amount whatsoever (whether by virtue of any express or implied obligation) beyond such amount (if any) as The Council of Trinity Grammar School may be able to pay to that party in the event of The Council of Trinity Grammar School being wound up”

and such clause is not made subject to any qualifications.

18. Subject to the provisions hereof the Council may regulate its own proceedings and for that purpose shall have power to make rescind or alter regulations and may appoint and employ such officers as it may deem necessary and terminate such appointments.

19. The Council in exercising its powers for the purpose of any of its duties referred to or implied in this Ordinance may by resolution authorise any person or persons to do any act or sign any document on its behalf.

20. The Council shall at least once in every year and also whenever a resolution shall be passed and communicated to it by the Synod in that behalf report its proceedings and the progress and condition of the School to the Synod and at the same time present a statement of receipts and expenditure and a balance sheet duly audited showing the financial position of the School.

20A Indemnity

(1) The Council must indemnify each person who is, or has been, a member of the Council against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served as a member of the Council other than a liability –

- (a) owed to the Council or a related body corporate, or
- (b) for a pecuniary penalty order under section 1317G of the Corporations Act 2001 (Cth) or a compensation order under section 1317H of the Corporations Act 2001 (Cth), or
- (c) that is owed to someone other than the Council or a related body corporate and did not arise out of conduct in good faith.

This sub-clause does not apply to a liability for legal costs.

(2) The Council must indemnify each person who is, or has been, a member of the Council against legal costs incurred in defending an action for a liability which results directly or indirectly from facts or circumstances relating to the person serving or having served as a member of the Council other than costs which are incurred –

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under sub-clause (1), or
- (b) in defending or resisting criminal proceedings in which the person is found guilty, or
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established, or
- (d) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

(3) For the purposes of sub-clause (2), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

(4) Sub-clauses (1) and (2) are separate and independent indemnities and one is not to be read down by reference to the other.

(5) The Council need not indemnify a person under sub-clause (1) and/or sub-clause (2) for a liability to the extent that the person is entitled to an indemnity for that liability under a contract of insurance.

(6) The Council may pay, agree to pay, or cause to be paid a premium for a contract insuring a person who is, or has been, a member of the Council against any liability which results directly or indirectly from facts or circumstances relating to the person serving, or having served, in that capacity other than a liability arising out of –

- (a) conduct involving a wilful breach of duty in relation to the Council, or
- (b) the improper use of information by the person, obtained because the person is, or has been, a member of the Council to gain an advantage for that person or another person or to cause detriment to the Council; or
- (c) the improper use of the person's position as a member of the Council to gain an advantage for himself or herself or for another person or to cause detriment to the Council.

This subsection does not apply to a liability for legal costs.

(7) The Council may pay, agree to pay, or cause to be paid a premium for a contract insuring a person who is, or has been, a member of the Council against legal costs incurred in defending an action for a liability which results directly or indirectly from facts or circumstances relating to the person serving, or having served, in that capacity.

(8) The obligations and powers under sub-clauses (1), (2), (6) and (7) are incurred or are to be exercised (as the case may be) only to the extent permitted by law.

21. This Ordinance may be cited as “Trinity Grammar School Constitution Ordinance 1928”.

The First Schedule Hereinbefore Referred To

All that piece or parcel of land situated in the Municipality of Ashfield Parish of Petersham County of Cumberland being the whole of the land comprised in Certificate of Title Registered Volume 3824 Folio 63.

The Second Schedule Hereinbefore Referred To

All that piece or parcel of land situated in the Parish of Concord County of Cumberland being the whole of the land comprised in Certificate of Title Registered Volume 3170 Folio 87.

Notes

Pursuant to the Anglican Church of Australia (Bodies Corporate) Act 1938, the Council was incorporated under the name of “The Council of Trinity Grammar School” by Order published in the Government Gazette on 28 May 1948.

Table of Amendments

Preamble	Amended by Act No 26 of 1976 and Ordinance No 36 of 1982.
Clause 5	Amended by Ordinances Nos 14, 1961; 27, 1977; 28, 1987 and 59, 2001.
Clause 5A	Inserted by Ordinance No 14, 1961 and amended by Ordinance No 27, 1977.
Clause 5B	Inserted by Ordinance No 27, 1977.
Clause 8	Amended by Ordinances Nos 28, 1987 and 59, 2001.
Clause 8A	Inserted by Ordinance No 27, 1977.
Clause 9	Repealed by Ordinance No 14, 1961.
Clause 15	Amended by Ordinance No 27, 1977.
Clause 17AA	Inserted by Ordinance No 6, 1989.
Clause 17A	Inserted by Ordinance No 14, 1961 and amended by Ordinance No 6, 1989.
Clause 17B	Inserted by Ordinance No 27, 1977 and amended by Act No 26 of 1976.
	Amended by Ordinance No 31, 2016.
Clause 20A	Inserted by Ordinance No 55, 2003.

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Diocesan Secretary

26 September 2016