

# The Barker College Ordinance 1978

(Reprinted under the Interpretation Ordinance 1985.)

The Barker College Ordinance 1978 as amended by or in accordance with the Interpretation Ordinance 1985, the Diocesan Officers (Retirement) Ordinance 1987, the Investment of Church Trust Property Ordinance 1990, the Accounts, Audits and Annual Reports Ordinance 1995, the Diocesan Officers (Retirement) Repeal Ordinance 2001, the Barker College Amendment Ordinance 2004, The Barker College Ordinance 1978 Amendment Ordinance 2007, the Borrowing Limits of Diocesan Organisations Amendment Ordinance 2016 and The Barker College Ordinance 1978 Amendment Ordinance 2018.

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## Long Title

An Ordinance to provide for the financial autonomy and general management of Barker College.

## Preamble

Whereas

A. The Council of Barker College was constituted by the Barker College Ordinance of 1919 and was incorporated pursuant to the provisions of the Anglican Church of Australia (Bodies Corporate) Act 1938 by "The Council of Barker College Incorporation Ordinance 1939".

B. In pursuance of the said ordinances Synod has encouraged and in pursuance of this Ordinance Synod will continue to encourage Barker College to provide for the education of young people in Christian living and in the Christian faith as received by the Anglican Church of Australia.

C. Synod has a continuing interest in the maintenance and conduct of Barker College and deems it expedient to make the provisions hereinafter contained.

D. Synod desires to confirm in the Council of Barker College complete financial autonomy in the course of and for the purpose of managing and carrying on the affairs of the School without recourse to financial resources beyond the control of the Council.

Now the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod Hereby Ordains Declares Directs and Rules as follows.

## Part 1

### 1. Short Title

This Ordinance may be cited as “The Barker College Ordinance 1978”.

### 2. Preliminary

In this Ordinance, unless the context otherwise requires or indicates –

- (a) “The School” means Barker College and a reference to “The Council” means the Council of the School elected from time to time pursuant to this Ordinance.
- (b) “The Archbishop” means the Archbishop of the Diocese of Sydney or in his absence his Commissary or if the See be vacant the Administrator of the Diocese.
- (c) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.

### 3. 1919 Ordinance

- (1) Clause 4 to 20 inclusive of the Barker College Ordinance of 1919 and any subsequent amendments to such clauses are hereby repealed.
- (2) The repeal effected by subclause 1 of this clause shall not invalidate or affect any act performed or any appointment, election or regulation made under or by virtue of the repealed clauses of the said Barker College Ordinance of 1919.
- (3) Nothing in this Ordinance shall be construed or deemed, by implication or otherwise, to limit or restrict –
  - (a) any of the powers, duties, rights, privileges or responsibilities which immediately before the passing of this Ordinance attached to the Council of the School;
  - (b) the duties and obligations created by the Accounts Ordinance 1975.
- (4) If another Ordinance in so far as it relates to Barker College is inconsistent with this Ordinance other than the Accounts Ordinance 1975, and the School Chapels and Chaplains Ordinance 1975, this Ordinance shall prevail and the other Ordinance shall, to the extent of the inconsistency, be inoperative.

## Part 2

### 4. Membership of the Council

The Council shall consist of the following members –

- (a) The Archbishop, who shall be President of the Council.
- (b) Eight (8) persons elected by the Synod of whom at least two (2) shall be ordained clergy licensed in the Diocese of Sydney or are to be persons with at least a three year theological degree from Moore Theological College or another college that is endorsed by the Archbishop for the purposes of this clause, and the balance shall be lay persons (which said persons shall be referred to herein as the “Synod Members”).
- (c) Three (3) persons elected by the members of the Old Barker Association from its financial members (which said members shall be referred to herein as “the Old Barker members”) provided that the membership of the Association shall not be less than two hundred and fifty.
- (d) Two (2) persons elected by the members referred to in paragraphs (a) and (b) and the members (if any) referred to in paragraph (c) in the manner hereinafter provided (which said members shall be referred to herein as “the Council nominees”).

### 5. Transitional Provisions

- (1) The members of the Council in office when this Ordinance comes into force being representatives elected by Synod in pursuance of the provisions of the Barker College Ordinance 1919 shall, unless otherwise provided in this Ordinance, retain office until the first day of the next

ordinary session of Synod held after this Ordinance comes into force and they shall retire on that day but shall be eligible for election under this clause.

(2) On the said first day of the next ordinary session of Synod or as soon as conveniently may be after that day, the Synod shall elect the Synod members referred to in clause 4(b) hereof.

(3) As soon as conveniently may be after the said first day, the members elected pursuant to subclause (2) of this clause and the members for the time being elected by the members of the Old Barker Association, shall elect the Council members referred to in clause 4(d) hereof.

## **6. Election of Council Nominees**

The Council nominees shall be elected as follows –

- (a) The Chairman shall give not less than 14 days' notice in writing to each member of the date for the closing of nominations.
- (b) On or before the date for the closing of nominations, each member may, by writing addressed to the Chairman, nominate not more than 2 persons for election. A nomination –
  - (i) shall include the name, age, address and occupation of the nominee and such other matter as the Chairman may deem appropriate or as the Council may from time to time determine, and
  - (ii) shall state that the nominee consents to serve, if elected, for a term of 4 years or such lesser term as may be determined in accordance with this Ordinance.
- (c) As soon as practicable after the date for the closing of nominations, the Chairman shall give not less than 14 days' notice in writing to each member of the date of a special or ordinary meeting of the Council at which the election shall be held. The notice shall include the matter referred to in paragraph (b)(i) in relation to each nominee.
- (d) The members present at the special or ordinary meeting of the Council of which notice has been given under paragraph (c) may, before the election, resolve, by simple majority, that any one or more of the nominees shall be excluded from the election.
- (e) If, after the exclusion of any nominees pursuant to paragraph (d), the number of nominees does not exceed the number of vacancies, the Chairman shall declare those nominees duly elected.
- (f) If, after the exclusion of any nominees pursuant to paragraph (d), the number of nominees exceeds the number of vacancies, a vote shall be taken by secret ballot.
- (g) On the taking of a vote –
  - (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 2 or more nominees receive an equal number of votes, any nominees receiving a lesser number of votes shall be eliminated, a further vote shall be taken in respect of the remaining nominees and the remaining nominee who obtains the greatest or greater number of votes as a consequence of that further vote shall be declared by the Chairman to have been elected.

If all nominees or 2 or more remaining nominees receive an equal number of votes, the nominee to be elected shall be determined by the Chairman.
  - (ii) where there is more than one vacancy to be filled –
    - (a) the Chairman shall declare the nominees who have each received a higher number of votes than the number of vacancies by which the number of vacancies is exceeded to have been elected;
    - (b) where a greater number of nominees than the number of vacancies to be filled receive an equal number of votes, any nominees receiving a lesser number of votes shall be eliminated and a further vote taken in respect of the remaining nominee; or
    - (c) where 2 or more nominees receive an equal number of votes for the last vacancy to be filled, a further vote shall be taken in respect of those nominees and the nominee who obtains the greatest or greater number of votes as a consequence of that further vote shall be declared by the Chairman to have been elected.

If all nominees or a number of nominees greater than the number of vacancies or remaining vacancies receive an equal number of votes, the nominees to be elected shall be determined by the Chairman.

**7. Synod Members: Retirement and Term of Office etc**

(1) Of the Synod members elected pursuant to clause 5 (2), two (2) (one clergy and one lay person) shall retire on the first day of the next ordinary session of Synod immediately after their election.

(2) In each of the next two succeeding years four (4) Synod members (two clergy and two lay persons) shall retire on the first day of the ordinary session of Synod in such respective year.

(3) As soon as conveniently may be after the election of Synod members pursuant to clause 5(2) to establish the orderly retirement of Synod members by rotation for the succeeding years until all original appointees referred to in clause 5 (2) have retired, the members of that group (or the available members of that group, a decision of the Chairman on any question of availability being final) shall determine (by agreement or failing agreement, by lot) which of the members shall retire by rotation in accordance with subclauses (1) and (2) of this clause and shall forthwith report the determination to the Chairman in writing signed by the persons taking part in the determination, and the Chairman shall inform the President of the determination.

(4) Subject to subclauses (1) and (2) of this clause and clause 12, the term of office of a Synod member shall be three (3) years.

(5) For the purpose of retaining the number of Synod members required by subclause (b) of clause 4, in each subsequent year after election of members pursuant to clause 5, an election shall be held annually as soon as conveniently may be on or after the first day of each annual ordinary session of Synod.

**8. Council Nominees: Retirement and Term of Office etc**

(1) Of the Council nominees elected pursuant to clause 5 (3) and clause 6, one (1) shall retire on the second anniversary of his election.

(2) Subject to subclause (1) of this clause and clause 12 the term of office of a Council nominee shall be three (3) years.

(3) At the first election of Council nominees pursuant to clause 5 (3) and clause 6 the Council shall nominate which of the nominees is first to retire at the expiration of two years from the anniversary of his election pursuant to subclause (1) of this clause.

(4) For the purpose of retaining the number of Council nominees required by subclause (d) of clause 4 an election shall be held as nearly as practicable on or after the date of retirement of each Council nominee.

**9. Old Barker Association Nominees: Retirement and Term of Office etc**

(1) The members of the Council who have been elected as nominees of the Old Barker Association prior to the day upon which this Ordinance comes into force shall continue to be members of the Council and subject to retirement as herein provided in this clause.

(2) As soon as conveniently may be after the day this Ordinance comes into force, the Old Barker Association shall elect such number of its members as shall be required to provide the requisite number in accordance with clause 4(c).

(3) The Old Barker members shall hold office for three (3) years after the date of their appointment (whether under the repealed Ordinance or under this Ordinance) and the Association subject to the proviso contained in clause 4 (c) hereof shall as soon as conveniently may be after the expiration of the term of appointment of an elected member, elect a replacement.

**10. Retiring Members**

(1) Subject to clause 11 hereof a retiring member (of any category) shall be eligible for re-election and notwithstanding anything contained in this Ordinance shall remain a member (and continue to hold any office to which he may have been elected or appointed by the Council) until the vacancy caused by his retirement has been duly filled.

(2) Nothing in subclause (1) shall apply in respect of an Old Barker member where, on the expiration of his term of office, the membership of the Old Barker Association is less than 250.

**11. . . . .**

## **12. Casual Vacancies**

A casual vacancy shall occur if a member other than the Archbishop –

- (a) dies;
- (b) resigns his office by writing addressed to the Chairman, and in such a case shall unless the writing specified a later date be deemed to occur when the Chairman receives the writing;
- (c) ceases to have any qualification which was necessary for his election;
- (d) becomes bankrupt or signs any authority effective under Section 188 of the Bankruptcy Act, 1966 as amended or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with or assigns his property for the benefit of his creditors;
- (e) becomes within the meaning of the Mental Health Act 1958 as amended an incapable person, a patient, a protected person or a voluntary patient;
- (f) being an elected member, is for a continuous period of three months absent without the leave of the Council from meetings of the Council held during that period;
- (g) . . . . .

or if the Council, at a meeting of the Council duly convened expressly for the purpose, passes by a majority of not less than two-thirds of the members present and voting a resolution that his office be declared vacant provided that before that meeting the Council shall have

- (i) informed him of the proposed resolution and the grounds on which it will be proposed and
- (ii) given him a reasonable opportunity at a meeting of the Council duly convened expressly for the purpose, of showing cause why his office should not be declared vacant.

## **13. Filling of Casual Vacancies**

(1) A casual vacancy in the office of a Synod member shall be filled by the election of a new member by Synod, or when Synod is not in session by the election of a new member by the Standing Committee of Synod, provided that the Synod may by resolution determine that a casual vacancy exists during a session of Synod shall not be filled during that session, and thereupon after the close of that session that vacancy shall be filled by the election of a new member by the Standing Committee.

(2) A casual vacancy in the office of an Old Barker member shall be filled by the election of a new member by the Association.

(3) A casual vacancy in the office of a Council nominee shall be filled by the election of a new member by the remaining members.

(4) A person who becomes a member pursuant to this clause shall hold office until and retire on the day on which the person whose vacancy he fills would have retired had the vacancy not occurred.

## **14. Deputy President, Chairman etc**

(1) The President when present shall preside at meetings of the Council.

(2) The President may from time to time by notice in writing addressed to the Chairman appoint (and change the appointment of) a Deputy who shall be entitled to attend all meetings of the Council and in the absence of the President the Deputy shall act as a member and shall have a deliberative vote. A Deputy President shall continue in office during a vacancy in the See.

(3) The Council shall elect from among the members a Chairman who in the absence of the President shall preside at meetings; provided that in the absence of both the President and the Chairman the meeting may appoint one of the members then present to act as Chairman of the meeting.

(4) The President, the Chairman or the acting Chairman shall while presiding at a meeting have both a deliberative vote and a casting vote at that meeting.

(5) A quorum for a meeting of the Council is no less than half its members. For the purposes of this subclause a Deputy appointed by the President shall in the absence of the President be reckoned as a member.

(6) Subject to the concurrence of the Chairman the Council may invite any person not a member to be present for the whole or any part of a meeting.

### Part 3

#### **15. Council to Manage etc School**

The Council shall manage and carry on the affairs of the School in accordance with the provisions of every Act of Parliament and Ordinance (including this Ordinance) specifically or otherwise applicable to the School.

#### **16. Appointment of Headmaster**

In appointing any person to be Headmaster, Headmistress or other principal teacher of the school the Council shall have due regard (in addition to the other requirements of the position) to the importance of appointing a person of Christian faith and character who is committed to furthering and is capable of furthering the cause of Christian Education in the School as a Church School.

#### **17. Appointment of Chaplain**

The Council shall appoint to the school, to perform the functions of a Chaplain prescribed by the terms of the School Chapels and Chaplains Ordinance 1975, a Clerk in the Holy Order of priesthood who holds the Archbishop's licence or other authority to officiate and whose appointment is approved by the Archbishop and the Headmaster, Headmistress or other principal teacher.

#### **18. Duties of the Council**

The Council shall, in such manner as it deems most expedient for the benefit of the School –

- (a) control the management and use of the church trust property held for the purposes of or in connection with the School and of all other property of the Council;
- (b) make financial and other arrangements and decisions for the present and future carrying on of the School and maintenance improvement and extension of and addition to the lands premises and other property of any kind owned by the Council or occupied or used directly or indirectly by it in connection with the School;
- (c) use and apply for the benefit of the School all property of the Council and all moneys derived therefrom or from the carrying on of the School;
- (d) determine consistently with this Ordinance the course of education and instruction to be provided in the School and all matters of order and discipline relating to the pupils, teaching staff, other employees of the Council and persons carrying out services for or functions in the School.

#### **19. Powers of the Council**

Subject to this Ordinance, the Council shall have all powers necessary to enable it to perform the duties imposed upon it by this Ordinance and in particular shall have the following powers (the conferring of which shall not be taken as limiting the generality of the preceding words of this clause) –

- (a) to borrow or raise money and secure the repayment thereof with or without interest in such manner as the Council may think fit and to secure the same or the repayment or performance of any debt contract guarantee or other liability incurred or entered into by the Council in any way and in particular by charging all or any of the lands premises and other property of any kind both present and future owned by the Council or occupied or used directly or indirectly by it in connection with the School;
- (b) to invest and deal with moneys in accordance with the provisions of the Investment of Church Trust Property Ordinance 1990 as amended or any such other form or forms of investment as shall be approved by resolution of the Standing Committee at the request of the Council provided that no such approval shall be effective for a period in excess of three years;
- (c) to purchase take on lease or on hire or in exchange or otherwise by any means whatsoever acquire any real or personal property and any rights or privileges which the Council may think fit;
- (d) to sell improve manage develop exchange lease dispose turn to account or otherwise deal with all or any part of the lands premises and other property of any kind owned by the Council or occupied or used directly or indirectly by it in connection with the School;

- (e) to enter into contracts of any kind (including contracts of guarantee and indemnity) and to draw make accept endorse discount execute and issue cheques and other negotiable or transferable instruments;
- (f) to lend and advance money or give credit to any person or company whether on security or not and to take such security (if any) as the Council may think fit for money lent or advanced or credit given by it;
- (g) to employ or appoint or cause to be employed or appointed such persons on such terms and conditions and for such periods as the Council or any person thereto authorised may think fit, and to dismiss or cause to be dismissed or terminate or cause to be terminated the appointment of any person so employed or appointed;
- (h) to control or cause to be controlled the admission withdrawal suspension and expulsion of pupils;
- (i) to appoint such executive or other committee with such powers and duties and to delegate thereto or to a member or employee such matters as the Council may think fit;
- (j) to solicit and accept real or personal property of any kind by way of gift, subsidy or subvention as the Council may think fit;
- (k) to consult with the Councils or governing bodies of other Church Schools and independent schools on matters of common interest and subject to this Ordinance to join with such Councils or governing bodies in endeavours to maintain proper standards of education, preserve independence from control by government whether Federal, State or local and regulate relationships with Federal State and local governments;
- (l) to make such rules regulations or by-laws not inconsistent with this Ordinance as the Council may think fit.

**20. Borrowings etc**

- (a) 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 unless the following clause is included therein –

“Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledge and agree that The Council of Barker College 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 Barker College may be able to pay to that party in the event of the Council of Barker College being wound up.”

and such clause is not made subject to any qualification.

- (b) The Council shall not execute or deliver any bill of exchange or other negotiable instrument other than a cheque drawn on the Council's Bank.

**21. Accounts and Reports**

- (a) The Council shall deliver to the Secretary of the Standing Committee a balance sheet and accounts in respect of the operations of the School during each year ending on the 31st December. Each balance sheet and accounts shall be delivered as aforesaid within three (3) months of the end of the year to which it relates.
- (b) The Council shall at least once in each year present a report to the Synod and shall present a balance sheet and accounts duly audited in respect of the immediately preceding financial year and such other information as may be required from time to time by resolution of Synod.

**22. Accounts Ordinance**

The Council shall comply with the provisions of the Accounts, Audits and Annual Reports Ordinance 1995 as amended from time to time.

**23. Limitation on Borrowings etc**

- (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 other corporate body constituted by or pursuant to the Anglican Church of Australia (Bodies Corporate) Act 1938 shall or may meet or discharge all or 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.

#### **24. Information on Orders etc**

Every order for goods and services or business letter involving the securing of credit for the supply of goods or services to the school issued by or on behalf of the Council shall contain the name of the Council and immediately thereafter or thereunder the words “incorporated under Act of Parliament and constituted by The Barker College Ordinance 1978”. The same information shall be shown adjacent to every application of the common seal.

#### **25. Indemnity**

Every member shall be indemnified out of the property of the School for any liability properly incurred by the Council for which he may become personally liable in so far as such liability was not incurred by reason of his misconduct or wilful default.

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#### **Notes**

1. By order published in the Government Gazette on 8 March 1940 under the Anglican Church of Australia (Bodies Corporate) Act 1938, the Council was incorporated under the name of “The Council of Barker College”.
2. Barker College was declared “extra-parochial” by the Archbishop-in-council on 1 December 1953 pursuant to the Extra-Parochial Ordinance 1919.
3. Ordinance No 11 of 2007 amended clauses 4(b) and 4(c) to reduce the membership of the Council. The amendment to clause 4(b) shall apply on and from 30 June 2007 and the amendment to clause 4(c) shall apply from 16 July 2007 or the date of resignation of a presently elected or appointed council member under clause 4(c) whichever event shall first occur.

#### **Table of Amendments**

Preamble	Amended under the Interpretation Ordinance 1985.
Clause 4	Amended by Ordinances Nos 18, 2004, 11, 2007 and 13, 2018.
Clause 8	Amended by Ordinance No 13, 2018.
Clause 9	Amended by Ordinance No 13, 2018.
Clause 11	Amended by Ordinance No 28, 1987 and repealed by Ordinance No 59, 2001.
Clause 12	Amended by Ordinances Nos 28, 1987 and 59, 2001.
Clause 14	Amended by Ordinance No 13, 2018.
Clause 19	Amended by Ordinances Nos 5, 1990 and 31, 2016.
Clause 22	Amended by Ordinance No 34, 1995.
Clause 23	Amended under the Interpretation Ordinance 1985.

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