

The Illawarra Grammar School Ordinance 1958 Amendment Ordinance 2022

No 6, 2022

Long Title

An Ordinance to update the governance arrangements for The Illawarra Grammar School by amending *The Illawarra Grammar School Ordinance 1958*.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

1. Name of ordinance

This Ordinance is the Illawarra Grammar School Ordinance 1958 Amendment Ordinance 2022.

2. Amendment

The Illawarra Grammar School Ordinance 1958 is amended as follows –

- (a) delete all the text in the Long Title and insert instead –
“An Ordinance to provide a constitution for the Council of “The Illawarra Grammar School”.”
- (b) delete clauses 1 to 25 and insert instead the matter in the Schedule of this ordinance.

3. Transitional

For the purposes of clause 6(3) of the Principal Ordinance, all members of the Council are taken to have commenced as members on the date of their first election prior to the insertion of clause 6(3) by this Ordinance.

Schedule

1. Name

The name of the School established and governed by the Council shall be “The Illawarra Grammar School”.

2. Definitions

- (1) In this Ordinance, unless the context otherwise requires or indicates –
 - “Council” means the Council of The Illawarra Grammar School constituted under this Ordinance.
 - “The School” means The Illawarra Grammar School and a reference to “The Council” means the Council of the School constituted from time to time pursuant to this Ordinance.
 - “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.
 - “Synod” means the Synod of the Diocese of Sydney.
 - “Synod Governance Policy” means the Governance policy for Diocesan Organisations made by the Synod on 20 October 2014, as amended from time to time.
 - “The Illawarra Grammarians Association” means the association of past students of The Illawarra Grammar School.

- (2) The singular includes the plural and vice versa and the masculine includes the feminine and vice versa.

3. Object

The object of the Council is to provide a quality education and exemplary care for students in ways consistent with the teaching of the Bible, the gospel of Jesus Christ, and the doctrines of the Anglican Church Diocese of Sydney, and to maintain and uphold the Christian faith in teaching and practice.

4. President

- (1) The Archbishop is the President of the Council.
- (2) The Archbishop –

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- (a) is not a member of the Council and so is not entitled to vote on any question or proposal being considered by the Council,
- (b) is entitled to receive a copy of papers sent to members in connection with meetings of the Council upon request,
- (c) is entitled to attend meetings of the Council,
- (d) is entitled to address the Council on any pastoral or policy issue concerning the Anglican Church of Australia as it applies to the Council, including the appointment of a Principal, and
- (e) by notice in writing to the Council, may nominate another person to receive the papers and exercise other entitlements on his behalf and may, at any time, by notice in writing to the Council, revoke such a nomination.

5. Membership

Subject to clauses 7 and 10, the members of the Council are –

- (a) Nine (9) persons elected by the Synod (which said persons will be referred to herein as “Synod members”), of whom at least two (2) are to be ordained clergy licensed in the Diocese of Sydney, and at least two (2) are to have (at minimum) a three year theological degree from Moore Theological College or another college that is endorsed by the Archbishop for the purpose of this clause, noting that these requirements may be met by the same two people,
- (b) 1 person elected by The Illawarra Grammarians Association as long as such association is in existence and consists of no less than 50 financial members and such person will be referred to herein as “the Grammarian member”, and
- (c) 2 persons, who have a child or children at the School at the time of election, elected by the members referred to in paragraph (a) and the member (if any) referred to in paragraphs (b) and (c) in the manner hereinafter provided (which said persons will be referred to herein as “Council parent members”).

6. Ineligibility

(1) Every member must, upon being elected or appointed as, or otherwise becoming, a member, sign the “Statement of Personal Faith” set out in the Synod Governance Policy and deliver it to the Chair of the Council within 28 days of the person’s election or appointment. A person who fails to sign and deliver the declaration within this time is disqualified from being, and automatically ceases to be, a member.

(2) A person is not eligible to be appointed or elected as a member if the person –

- (a) is an employee of the Council, or
- (b) is the spouse, a sibling, a child or a parent of a permanent full-time employee of the Council.

(3) A person is not eligible to be re-elected or re-appointed as a member if such re-election or re-appointment would, in the ordinary course, result in that person being a member for a continuous period of 14 years or more. For the purposes of this sub-section, two or more periods of service as a member will be taken to be one continuous period of service unless they were separated by a continuous period of at least 12 months during which the person was not a member.

7. Duration of office

(1) On the first day of the next ordinary session of the Synod, 3 of the members of the Council elected by the Synod are to retire. Subject to this ordinance, a retiring member is eligible for re-election and remains a member until their successor is elected or appointed.

(2) The members to retire under subclause (1) are those who have been longest in office since their last election or appointment. Where 2 or more Members have been in office for the same period of time, and it is necessary to determine which of them is to retire, the person or persons to retire will be determined by agreement between the relevant Members or, failing agreement, will be determined by lot.

(3) Subject to this Ordinance, a person elected as the Grammarian member or the Council parent member holds office for a term of 3 years but is eligible for reappointment.

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8. Casual vacancies

A casual vacancy shall occur if an elected member –

- (a) dies,
- (b) resigns in writing to the Chair of the board or to the Diocesan Secretary,
- (c) ceases to have any qualification which was necessary for his or her election,
- (d) is an insolvent under administration
- (e) is of unsound mind or whose person or estate is liable to be dealt with in any way under the laws relating to mental health or is otherwise incapable of acting
- (f) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*,
- (g) has at any time during the preceding 12 months been disqualified from being a responsible entity of a registered entity by the Commissioner of the Australian Charities and Not-for-profits Commission,
- (h) is convicted of an offence punishable by imprisonment for 12 months or longer,
- (i) is subject to a recommendation from a tribunal or body under the *Ministry Standards Ordinance 2017* (or from a comparable tribunal or body in any other diocese or church) that he or she be prohibited from holding office or should be removed from office as a Council member,
- (j) is absent without leave for 3 consecutive meetings of the Council and the Council resolves that the person's membership should cease,
- (k) fails to sign the Statement of Personal Faith, or declares that he or she is no longer able to subscribe to the Statement, or
- (l) fails to disclose his or her actual material conflict of interest in any matter brought for the consideration of the Council which, in the opinion of the Council, resulted in a resolution of the Council which would not have been made if the actual material conflict of interest had been disclosed, and the Council resolves by at least a three-quarters majority that the person's membership should cease as a result of this failure,

and a person is disqualified from being elected or appointed as a member if any of the circumstances referred to in paragraphs (d) to (i) and (k) apply to the person.

9. Filling of Casual Vacancies

- (1) A casual vacancy in the office of a member elected by the Synod may be filled by the Standing Committee of Synod
- (2) A casual vacancy in the office of Grammarian member may be filled by the election of a new member by the Illawarra Grammarians Association.
- (3) A casual vacancy in the office of a Council parent member 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 they fill would have retired had the vacancy not occurred.

10. Chair of the Council

- (1) The Chair and any other officer of the Council may be elected by the members for a term not exceeding 3 years. Such persons may stand for re-election but may not serve in the same office for more than 9 consecutive years.
- (2) A person may not be the Chair of the Council if a member of the person's immediate family is employed by the Council, unless the Council has considered the circumstances and unanimously agreed to it by secret ballot.

11. Council Meetings

- (1) Meetings of the Council may be convened by the Chair or by a minimum of 4 members.
- (2) A meeting of the members may be held by using any technology approved by the members. A member who is absent from the place of meeting may attend that meeting by using any technology approved by the members. All meetings conducted with the aid of technology

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under this clause are as valid and effective as if they had been conducted at a meeting at which those members were physically present.

- (3) The President when present shall preside at meetings of the Council.
- (4) In the absence of both the President and the Chair the meeting may appoint one of the members then present to act as Chair of the meeting.
- (5) The quorum for a meeting of the Council is seven (7) members of whom at least three Must be Synod members.
- (6) Subject to the concurrence of the Chair the Council may invite any person not a member to be present for the whole or any part of a meeting.
- (7) The Principal or any other principal teacher of the School may attend and speak at meetings of the Council unless the Council determines that he or she should not be present for a particular meeting, or part thereof.
- (8) The Council must cause minutes to be made of –
 - (a) the names of the persons present at meetings of the Council and meetings of Council committees,
 - (b) all disclosures of perceived or actual material conflicts of interest, and
 - (c) all resolutions made by the Council and Council committees.
- (9) Minutes must be signed by the Chair of the meeting or by the Chair of the next meeting of the relevant body following an agreed resolution to do so. If so signed, the minutes are conclusive evidence of the matters as between the members stated in such minutes.

12. Circular resolutions

The Council may pass resolutions without the convention of a meeting if –

- (a) a copy of the proposed resolution is sent to all members and a reasonable timeframe within which members may indicate their support for or objection to the proposed resolution being passed is specified, and
- (b) at least 75% of members indicate within the specified timeframe that they support the proposed resolution being passed, and
- (c) no member objects within the specified timeframe either to the proposed resolution being passed or the proposed resolution being passed without the convention of a meeting.

13. Principal Teachers

- (1) In appointing any person to be the Principal, other principal teacher of the School or member of the School executive, 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.
- (2) The Principal or other principal teacher of the School is responsible to the Council for the leadership and management of the School.
- (3) A person is not eligible to be appointed as the Principal, other principal teacher or member of the School executive unless he or she has first signed the Statement of Personal Faith set out in the Synod Governance Policy.

14. Management

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

- (a) control the management and the 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 additions 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 monies derived therefrom or from the carrying on of the School;

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- (d) determine consistent with this Ordinance the aims and objectives of the School and the course of action or procedure to be followed by employees of the Council and persons carrying out services for or functions in the School.

15. Powers and Duties

Subject to this Ordinance, the Council shall have all powers necessary to enable it to carry out its objects and 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 monies 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 appoint such executive or other committee with such powers and duties and to delegate thereto or to a member or employees such matters as the Council may think fit;
- (i) to solicit and accept real or personal property of any kind by way of gift, subsidy or subvention as the Council may think fit;
- (j) 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:-
 - (i) maintain proper standards of education,
 - (ii) preserve and further freedom of choice in education by parents and guardians of children,
 - (iii) regulate relationships with Federal State and local governments;
- (k) to make such rules regulations or by-laws not inconsistent with this Ordinance as the Council may think fit.

16. Duties of Members

- (1) Members are subject to and must comply with the following duties –
 - (a) to exercise the powers and discharge the duties of the Council with the degree of care and diligence that a reasonable individual would exercise if they were a Council member of the School, and

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- (b) to act in good faith in the best interests of the Council and to further the purposes of the Council, and
- (c) not to misuse their position as a Council member, and
- (d) not to misuse information obtained in the performance of their duties as a Council member of the School, and
- (e) to disclose perceived or actual material conflicts of interest of the member, and
- (f) to ensure that the financial affairs of the Council are managed in a responsible manner, and
- (g) not to allow the Council to operate while insolvent.

(2) A member who has an actual or perceived material conflict of interest in a matter that relates to the affairs of the Council must disclose that interest to the Council and should not participate in any consideration of that matter by the Council unless the Council, by resolution, notes the interest and permits the member to participate

(3) The Council should maintain records of applicable eligibility criteria for Council membership and conflicts of interest disclosed by Council members.

(4) Members are not to be remunerated for their service as board members except by way of reimbursement for reasonable out-of-pocket expenses.

17. Compliance with Ordinances

The Council must comply with all applicable ordinances and policies of the Synod (as amended from time to time) including, as applicable –

- (a) the *Accounts, Audits and Annual Reports Ordinance 1995*,
- (b) the *Anglican Schools Ministry Ordinance 2016*,
- (c) the *Sydney Anglican Use of Property Ordinance 2018*, and
- (d) the *Safe Ministry to Children Ordinance 2018*.

18. Delegation

The Council may delegate the performance of any of its powers to one or more committees provided any such committee is chaired by a Council member and reports the exercise of its delegated powers to the next Council meeting.

19. Liabilities of the Council

- (1) The Council shall be solely responsible for all liabilities incurred by it or on its behalf.
- (2) 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 as amended 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.
- (3) The Council should not offer its property as security for any liability other than a liability of the Council or a body controlled by the Council.
- (4) 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 The Illawarra 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 The Illawarra Grammar School may be able to pay to that party in the event of the Council of The Illawarra Grammar School being wound up”,

and such clause is not made subject to any qualification.

- (5) 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 except in accordance with the

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Investment of Church Trust Property Ordinance 1990 as amended and except in the course of a specific scheme proposed by the Council's bank and approved by a resolution of Standing Committee from time to time.

20. Indemnity

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

21. Not-for-Profit and Winding up

(1) As the property of the Council is church trust property within the meaning of the *Anglican Church of Australia Trust Property Act 1917*, it must not as a matter of law be distributed for the private benefit of individuals, either during the operation of the Council or on its winding-up.

(2) If, on the Council's winding up or dissolution, there remains after satisfaction of all its liabilities any property, such property must be applied for such purposes of the Diocese as the Synod may determine or, where appropriate, such purposes of the Diocese as the Synod may determine which are similar to the purposes of the Council.

(3) Where the Council has any fund or funds which is endorsed as a deductible gift recipient then, upon winding up or dissolution of the Council any moneys held in that fund or those funds must be transferred by the Synod to one or more endorsed deductible gift recipients.

22. Citation

This Ordinance may be cited as "The Illawarra Grammar School Ordinance 1958".

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

R TONG
Chair of Committee

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 7 March 2022.

D GLYNN
Secretary

I Assent to this Ordinance.

KANISHKA RAFFEL
Archbishop of Sydney

07/03/2022