

Moore Theological College Ordinance 1984 Amendment Ordinance 2009

Explanatory Report

Introduction

1. Until 1985, Moore Theological College (MTC) was conducted by the three Trustees of Moore's Estate and from 1919 they were assisted by a committee of management established by an ordinance of the Synod which provided for their election and responsibilities. By the time of Principal DB Knox, the management committee ran the College with minimal involvement of the Trustees acting as trustees.
2. In early 1984, the Synod passed the *Moore College Ordinance 1984* (the "Current Ordinance") which constituted the committee as the Moore Theological College Council. The Trustees of the Estate were ex officio members of the Council. The Current Ordinance gave the Council a Constitution.
3. The Archbishop, whether a Trustee or not, chaired committee/Council meetings.
4. Later in 1984, the unincorporated association, "Moore Theological College Council" was constituted a body corporate under the provisions of the *Anglican Church of Australia (Bodies Corporate) Act 1938*. This gave the Council corporate status and the ability to hold property, to sue and be sued, and to enter into contracts in the name of the Council.
5. In 2006, the NSW Department of Education and Training (DET) (the state regulatory authority) demanded some independence between the *owners* of the College (taken by DET to be the Council members) and its *governors*. The solution devised was to amend the Current Ordinance to create the *Governing Board* which, like the board of a company, would exercise most of the powers of the corporate body, namely the Council. The DET had an apprehension that the Council members *as owners of the enterprise* could dictate to the faculty what was taught. They argued that a board augmented by outsiders would guard academic independence.
6. The main aims of the proposed ordinance are –
 - (a) to preserve the distinctive character of the College as a confessional institution,
 - (b) to preserve links with the intent of the late Thomas Moore as expressed in his will,
 - (c) to make changes reflecting the winding up of the estate of the late Thomas Moore with respect to the College,

- (d) to provide a constitution which, as far as practical, is unexceptional in comparison with those of the other 67 approved Higher Education Providers (HEPs) supervised by the Department of Education, Employment and Workplace Relations etc, almost all of which are constituted in a more usual manner under the Corporations Act 2001 as Companies Limited by Guarantee,
- (e) to cater for the various requirements of the National Governance Protocols for HEPs,
- (f) to anticipate any changes that might be needed at the time the College applies for self-accrediting status (presently planned for late 2010), and
- (g) to provide an explicit foundation for the community engagement aspect of the College.

7. In order to achieve these aims, the proposed ordinance addresses the following areas –

- (a) objects of the Council,
- (b) membership of the Council,
- (c) membership of the Governing Board,
- (d) relationship between the Governing Board and the members of the Council,
- (e) mechanism for appointing the Principal,
- (f) quorum for meetings of members of the Council and meetings of the Governing Board,
- (g) voting by the President, Chairman or acting chairman of the Governing Board, and
- (h) declaration to be signed by members of the Governing Board.

The Objects of the Council

8. The existing object of the Council is expressed in the Current Ordinance as follows –

The object of the Council shall be to manage, govern and control the College as a College or establishment of higher education for –

- (a) *the education of persons in the principles of Christian knowledge and such of the branches of moral, useful and general knowledge as the Council shall from time to time direct and appoint and as shall be consistent with the principles of the Anglican Church of Australia, and*

- (b) *the education and training of candidates for orders in connection with the Anglican Church of Australia and, in particular, but without limiting the generality of the foregoing, the training for such period as may be determined in each case, of candidates for holy orders to serve after ordination in this Diocese and of other persons to serve after completion of such training in this Diocese.*

9. The proposed objects of the Council are set out in clause 3 of the schedule to the proposed ordinance.

10. The Governing Board expects to confirm shortly that the proposed objects, which do not change the underlying activities of the College, will not prejudice the deductible gift recipient status of the College or existing stamp duty and payroll tax exemptions.

Membership of the Council

11. In line with trends derived from the National Governance Protocols, steps are being taken to reduce the size of the Governing Board. The Governing Board does not propose that any change be made to the role of the Archbishop. However, subject to the transitional arrangements specified in clause 3(3) of the proposed ordinance, the Trustees of Moore's Estate are to cease being members of the Council for the following reasons –

- (a) the Governing Board considers that all property derived from the estate of the late Thomas Moore which is relevant to the operation of the College has been transferred to the ownership of the Council,
- (b) the National Governance Protocols preclude ex-officio members of the governing board of a HEP except for the Chair (in this case the Archbishop), the Chief Executive Officer (in this case the Principal) and the "Presiding Member of the Academic Board" (in this case the Chairman of the Board of Studies), and
- (c) continued membership of a self-perpetuating group without explicit Christian commitment or doctrinal requirements is considered inappropriate.

12. The proposed membership of the Council is set out in clause 7 of the schedule to the proposed ordinance.

13. The proposed ordinance reduces the voting membership of the Council as follows –

Positions	Existing	Revised
Archbishop	1	1
Trustees of the Estate of the late Thomas Moore – ex-officio	3	0
Lay – elected by Synod	6	4
Ordained ministers – elected by Synod	5	4
Total	15	9

Membership of the Governing Board

14. Consistent with the foregoing, the proposed membership of the Governing Board is set out in clause 16 of the schedule to the proposed ordinance.

15. The proposed ordinance reduces the voting membership of the Governing Board as follows –

Positions	Existing	Revised
Members of the Council	15	9
The Principal	1	1
Chairman of the Board of Studies	1	1
A faculty member elected by the Faculty	1	1
Laypersons elected by the foregoing	4	3
A 4 th year BD student elected annually by 4 th year BD students	0	1
Person appointed by ADISL	1	1
Total voting members	23	17

16. Comparisons are often made between governance of the College and the governance of a commercial organisation. The College is, however, not primarily a commercial business. It is a Christian higher education learning community operating in a post-Christian world, the students of which are in receipt of significant government funding. Each element of that description introduces factors to be considered in the composition of the Governing Board. Because the College is primarily a Christian learning community and engaged in growing the knowledge of God, its governance should reflect the articulated values of the College.¹ Because the College

¹ The values statement of the College is –

The College seeks to achieve its mission in a manner consistent with biblical values. It is therefore committed to:

CHRISTIAN FAITH: Trust in God and his purposes as these are revealed in Jesus Christ and conveyed to us by the Holy Spirit in the canonical scriptures of the Old and New Testament;

INTEGRITY: Honesty, transparency, fairness and accountability in all personal behaviour and community practices;

engages in higher education in a post-Christian world and its students pay fees funded by the Commonwealth Government, its governance must reflect higher education governance practices – as distinct from contemporary business practice. These are spelt out in the National Governance Protocols for HEPs.

17. Accordingly, the composition of the Governing Board should include members with the skills, experience and perspectives drawn from relevant stakeholders. These include –

- (a) the Synod with its ecclesiastical perspective,
- (b) the Faculty with its pastoral, educational and scholarly interests,
- (c) the 'administration' of the College with its efficiency and financial viability concerns,
- (d) the churches the College seeks to serve with their understanding of desirable attributes of graduates of the College,
- (e) students with their "consumer" point of view, and
- (f) the "State" with its concerns for educational outcomes, academic independence, accountability, transparency and inclusiveness.

18. The various interests are achieved in the proposed membership of the Governing Board as follows –

- (a) The Synod – through membership of the Archbishop and its right to elect 8 others.
- (b) The Faculty – by inclusion (since at least 1984) of a member elected by the Faculty from among themselves.

GRACE: Generosity and compassion in dealings with each other reflecting the undeserved mercy of God in Christ;

SERVICE: Placing the welfare of others above personal interests and convenience, using the gifts and talents that God has graciously given;

COMMUNITY: Loving personal relationships, developed through regular meeting and a common focus, as the proper context for learning about the triune God and his purposes;

SCHOLARSHIP: Rigour of thought characterised by a careful use of primary evidence, breadth of research and appropriate inferences, resulting in fresh and readily accessible approaches to both classic issues and contemporary questions;

GENDER COMPLEMENTARITY: Affirmation of the fundamental equality and mutual dependence of men and women as image bearers of God, while recognising proper differences in roles and responsibilities in life and Christian ministry;

FREEDOM OF INQUIRY: The freedom to subject all ideas to honest inquiry; and

INTEGRATION: Growth in the knowledge of God is best conducted for, and in the context of, life application and active participation in Christian service.

It is considered that the inclusion of a member of the Faculty contributes to the pastoral, educational and theological soundness of the Governing Board's considerations. This is recognized in comparable institutions such as Christian Heritage College Queensland and Avondale College which both elect members of faculty to their governing boards. Furthermore, all Senates of Australian universities include academic representation. The proposed 17-member Governing Board would include three members of Faculty (Principal, Chair of Board of Studies and Faculty representative), who would remain a minority within the quorum of 9.

- (c) The "administration" of the College – through membership by the Principal.
- (d) The churches – through those elected by the Synod.
- (e) Students – although only previously invited to attend without voting rights, the Governing Board considers it appropriate to include a student representative.

Considerations have included –

- the maturity of the students involved,
- the checks and balances within the Corporations Act,
- capacity to deal with sensitive matters via conflict of interest procedures, and
- the predominance of the practice in secular higher education institutions.

- (f) The "State" – by requiring the composition of the Governing Board to include the following –

- Membership of the Governing Board by the Chair of the Board of Studies as required by the NSW DET.
- Three members independent of the 'owners' as required by NSW DET.

This requirement provides the Governing Board with certainty as to its capacity to appoint persons with required expertise (see next point).

- Members with senior higher education experience and those with commercial and/or financial expertise again as required by NSW DET and also by the National Governance Protocols for HEPs.

An essential element of good governance is inclusion of the necessary range of skills to

facilitate achievement of the objects of the entity and effective accountability. While these skills have generally been present in the past, they have not, until October 2006 been requirements within the Current Ordinance. Transparency and the use of public money (via student fees) demands formal provision for these positions.

Relationship between the Governing Board and the Council

19. In the course of the proposed ordinance being prepared the Director of Higher Education in NSW DET has confirmed that the two-level governance structure of Council members and Governing Board is still required.

20. The members of the Council perform a role similar to *the members in general meeting* of a company and the Governing Board performs a role similar to *the board of directors* of a company (see paragraph 5 above).

Mechanism for Appointing the Principal

21. The proposed process for appointing a Principal is described in clause 22.2 of the schedule to the proposed ordinance.

22. The provisions for appointing the Principal have been drafted to prevent members of the Governing Board elected by the Synod being over-ruled by non-Synod elected members. Based on the foregoing, 9 (including the Archbishop) out of 16 members (not including the Principal) of the Governing Board will be elected by the Synod. Accordingly, the requirement for a two-thirds majority vote for the appointment of a Principal would require 11 votes to pass. At least six of the nine Synod-elected members would be required to be part of the two-thirds majority to make an appointment. Four of the nine Synod-elected members would be able to block an appointment with which they disagreed.

Quorum for meetings of Members of the Council and meetings of the Governing Board

23. The present quorum for meetings of members of the 15 person Council is seven. In the proposed ordinance the number of members of the Council is 9 and the quorum is one-half of the members (clause 13.4 of the schedule to the proposed ordinance).

24. The present quorum for meetings of the 23 person Governing Board is 11 provided that no more than 5 are to be members of the Faculty or employees or students, and no more than 6 are to be members of the clergy. This has proved difficult in operation and interpretation. The quorum for a meeting of the proposed 17 person Governing Board is one-half of the members. Employees of the Council and students of the College (a total of four) will always be a

minority within a quorum. While the remaining members of a quorum could include as few as one member of Council such a meeting could not appoint a Principal.

Voting by the President, Chairman or acting chairman of the Governing Board

25. It is proposed that the provisions in the Current Ordinance for a casting vote of the President, Chairman or acting chairman be deleted (with the deliberative vote to remain, clause 21.4 of the schedule to the proposed ordinance).

Declaration to be signed by members of the Governing Board (the Schedule)

26. It is proposed that the declaration to be signed by members of the Governing Board be replaced by wording from the Synod's Education Policy and that the wording be supplemented to retain unique elements of Schedule 1 of the Current Ordinance (including reference to the Nicene Creed and the 39 Articles).

27. The Governing Board of the College commends the proposed ordinance to the Synod for its adoption.

Recommendation

28. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

ROBERT TONG
Secretary, Governing Board

18 September 2009