

Trinity Grammar School Constitution Amendment Ordinance 2003

No 55, 2003

Long Title

An Ordinance to amend the Trinity Grammar School Constitution Ordinance 1928.

Preamble

- A. The Council of Trinity Grammar School (the "Council") is a body corporate incorporated under the Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW).
- B. The Trinity Grammar School Constitution Ordinance 1928 (the "Principal Ordinance") does not indemnify the members of the Council.
- C. It is expedient to amend the Principal Ordinance to provide for the Council to indemnify its members.

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

1. Name

This Ordinance is the Trinity Grammar School Constitution Amendment Ordinance 2003.

2. Amendment of the Principal Ordinance

The Principal Ordinance is amended by the insertion of the following new clause –

"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.

Trinity Grammar School Constitution Amendment Ordinance 2003

(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.”

3. Transitional

Nothing in clause 2 affects the rights of a person who is or was a member of the Council existing prior to the date of assent to this Ordinance.

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

R TONG
Deputy Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 17 November 2003.

MA PAYNE
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
18/11/2003