

## **SCHOOLS INCORPORATION CANON 1999**

### **A Canon to Provide for the Incorporation of Diocesan Schools and Related Matters 1999**

(Assented to and passed Synod 1999)

#### **1. Preamble**

WHEREAS in the order to provide for the better governance of Diocesan Schools and to protect the Diocese and its entities from each other debts, it is proposed to establish separate legal and financial entities as Companies Limited by Guarantee to take over the assets, liabilities and management of each of the Diocesan Schools.

AND WHEREAS the effecting of this change in Diocesan organisation is dependent upon an arrangement which will secure the repayment of Diocesan debt to the satisfaction of its bankers and in the interests of depositors in the Anglican Savings Fund.

BE it therefore declared and established by the Bishop Clergy and Laity of the Diocese of North Queensland in Synod assembled as follows:

#### **2. Interpretation**

“Operative Date” means 31 December 1999 or such other date as set by the Diocesan Executive, upon which the provisions of this Canon, with regard to incorporation of Schools and the repeal of schools Canons, are to come into force.

#### **3. Executive Authorisation**

The Diocesan Executive is hereby authorised to:

1. Establish a separate entity, being a Company limited by guarantee, in accordance with the provisions of section 5, for each of the Diocesan Schools which the Executive resolves is solvent and able to continue operation as a separate entity.
2. Transfer on such conditions as it considers necessary and for consideration which it may determine, the real estate and other assets of the School held in the name of the Corporation of the Diocesan Synod of North Queensland to new School entity.
3. Negotiate and enter into contracts with the School entities on behalf of the Diocese, in such form as it may determine, to give effect to orderly transfer of assets and the assumption of liabilities by the new School entities.
4. Borrow funds and offers security against the assets of the Diocese, being St James exceed a period of 15 years, and provided also that repayment of those borrowing in principal and interest are able to be met exclusively from the income of the respective asset against which the moneys are borrowed.
5. Require, where it considers it necessary, the repayment of overdrafts and such other external borrowings by Diocesan entities and Parishes, which, however the account may be titled, form part of the external debt of the Diocese.
6. Close sell or merge with another school, a Diocesan School if the Diocesan Executive has formed the opinion that the Diocesan School is insolvent and unable to operate profitably.

#### **4. Conditions To Be Satisfied Before Certain Provisions of this Canon Can Come Into Effect**

The provisions of this canon, related to the separate incorporation of the Schools, the repealing of School Canons and the transfer of any assets to any such new School entity is not to take effect unless and until the Diocesan Executive has resolved, after careful inquiry, that all of the following conditions have been met.

1. Arrangements are in place to incorporate, close sell or merge with another School,

each and every Diocesan School.

2. The total funds available to the Diocese from the debt restructure arrangements, as listed in paragraph (a) following, exceeds the funds required by the Diocese to meet all Diocesan debt and provide liquidity for normal Diocesan operations for the foreseeable future, as listed in paragraph (b) following:
  - (a) Funds available to the Diocese under debt restructure arrangements may come from the following sources:
    1. The incorporation arrangements for the Schools
    2. New borrowings raised and secured against St James Village and/or St James Place
    3. The proceeds from the sale of Talyor Point, or if the property is not sold the proceeds of borrowings secured against that property.
    4. Sales assets of the Diocese
  - (b) Funds required to meet all Diocesan debt and provide liquidity for normal Diocesan operations are those funds sufficient to provide for all of the following:
    1. The repayments of all outstanding external borrowings of the Corporation and its controlled entities from all sources whatsoever.
    2. The repayment of all bank Overdrafts of the Corporation and its controlled entities.
    3. The repayment of Anglican Savings Fund Depositors and or the making of investments, the total of which is sufficient to cover the deposits of all depositors in the Fund and in particular the repayment to St Mark's College of College funds invested in the Anglican Savings Fund.
    4. The meeting of all outstanding debts and other contingencies that may arise from the closure, sale or merger of a Diocesan entity.
    5. Funds in the operating account of the Diocese sufficient to provide for the normal cash flow of the Diocese over the foreseeable future without recourse to further borrowing.
3. The Diocesan Executive to prepare Draft Budgets for the Year 2000 and 2001 for the later consideration of Diocesan Council, which budgets are capable of being implemented and which provide for a surplus or balanced budget in both accrual accounting and cash flow projections.
4. That each School upon incorporation, would be solvent and able to operate profitably, and that if any School would be insolvent or unable to so operate then that School would not be incorporated but would be sold, closed and its assets realised, or the School merged with another School.
5. A sufficient number of members of the School Councils, or those appointed in their place, have consented to act as Directors of the School Corporate Entities, as are required by the Corporations Law and the School Constitutions, Schedule 1.
6. Each and every bank and financial institution to which the Diocese is indebted by way of commercial bills, overdrafts, loans, lease agreements or other facilities have agreed to transfer of liability for those facilities to the respective School or have agreed to other arrangements proposed to extinguish that debt.
7. The Commonwealth and State Government bodies responsible for the provision of funding to Diocesan Schools, have agreed to the transfer of the contingent liability associated with grants provided for schools to the School entity.
8. Other legal, financial, insurance, industrial, and taxation arrangements currently exercised in the name of the Diocese for the operation of the Diocesan Schools are able to be transferred to the new School entities on incorporation.

**5.Incorporation of Schools**

1. Each Diocesan School, for which arrangements have not been made to close, sell or merge the School with another School by the operative date, is to be incorporated as a Company limited by guarantee with the constitution being the constitution as set out in the draft constitutions, Schedule 1.
2. Where the Diocesan Executive has resolved that all of the conditions in section 4. have been met, and all of the legal, financial and contractual arrangements related to incorporation have been completed in respect to a particular School, then the Executive may determine a date for the incorporation of that School and on which the Canon under which that School is managed is repealed, which is earlier than the Operative date.

**6.Repeal of School Canons**

On the Operative Date or earlier, with respect to a particular School canon as provided for Under the provisions of section 5 sub section 2, the following Diocesan Canons are repealed:

1. A Canon to Provide for the Management of All Soul's and St. Gabriel's School 1994
2. A Canon to Provide for the Management of Trinity Anglican School 1994
3. A Canon to Provide for the Management of the Cathedral School Of St. Anne and St. James 1994
4. A Canon to Provide for the Management of Whitsunday Anglican School 1994

**7.Short Title**

The Short Title of this Canon shall be the " School's Incorporation Canon 1999".