

NSW CATHOLIC BLOCK GRANT AUTHORITY CHARTER



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1.0 PREAMBLE AND DEFINITIONS

1.1 Preamble

The Trustees of the Province of Sydney and Archdiocese of Canberra and Goulburn (**Trustees**), have formed an authority known as the “NSW Catholic Block Grant Authority” which is the Contract Authority for capital and capital related Block Grants received from the Australian Government and its agencies, for distribution to Catholic Schools in New South Wales. The Trustees will carry out the objects and functions set out in this Charter in relation to the CBGA.

Under this Charter, the Trustees have appointed the CBGA Delegate or Alternate Delegate to carry out the responsibilities of the CBGA.

1.2 Definitions

Acquittal means ensuring that grants are used for the purposes for which they were given. It may include collating financial and statistical information on outlays, obtaining audit certificates and making financial and operational declarations. **Acquitting** has the corresponding meaning.

Alternate Delegate means the Bishop appointed by the Trustees pursuant to **clause 2.3.2** of the CEC Charter.

Block Grants are the capital or capital related grants contracted by the Australian Government or its agencies to the CBGA for distribution to NSW Catholic schools, subject to conditions.

Catholic Schools Authorities means Diocesan Catholic Schools Authorities and Religious Institutes, or their agents, managing Congregational Schools in New South Wales.

Catholic Schools are those schools recognised as Catholic by a Diocesan Bishop and managed by one of the local Catholic Schools Authorities and consequently affiliated with the CEC.

CBGA means the Trustees operating as the NSW Catholic Block Grant Authority.

CBGA Charter means this charter as amended from time to time.

CBGA Delegate means the person nominated by the Trustees to carry out the responsibilities of the Trustees in respect of CBGA matters. This person is the current Chairman of the Commission, unless otherwise decided by the Trustees.

CEC means the Catholic Education Commission New South Wales established by the Trustees under the CEC Charter.

CEC Charter means the CEC charter approved by the Trustees as amended from time to time.

CEC Staff Members mean all persons employed by CEC from time to time.

Chair means the person holding that office pursuant to **clause 4.13** and includes any assistant or acting chair.

Commercial Suppliers mean private sector suppliers providing goods and services for an agreed price.

Commission means the body of Commissioners appointed under **clauses 2.5 and 4.3** of the CEC Charter and charged with ensuring the proper and efficient performance of the functions of the CEC under clause 1.3 of the CEC Charter. In this regard, the Commission has similar responsibilities to that of a board of directors under the Corporations Act 2001(Cth).

Commissioner means the members of the Commission pursuant to the CEC Charter.

Committee means the NSW Catholic Schools State Priority Committee established pursuant to **clause 4.1**.

Committee Member means a member of the Committee.

Contract Authority means the CBGA as the body that contracts with the Australian Government or its agencies to receive and distribute Block Grants and acquitting their outlays to government.

Executive Director means the person appointed as Executive Director pursuant to **clause 4.3** of the CEC Charter.

Executive Officer means the person appointed by the Executive Director to be the prime administrative support person for the CBGA Delegate, pursuant to the Services Agreement entered into by CBGA and CEC from time to time.

Fiscal Year means the year commencing on 1 January and ending on 31 December.

Trustees mean The Trustees of the Province of Sydney and Archdiocese of Canberra and Goulburn under the Roman Catholic Church Communities' Land Act 1942 as amended.

Participating Catholic Schools Authorities means those Catholic Schools Authorities that have entered into agreements with the CBGA and accepted block grant conditions and thereby become members of the CBGA.

Services Agreement means the agreement between the CEC and the CBGA for the provision of management and administrative services to be carried out by the CEC on behalf of the CBGA.

2.0 CBGA

Operations of the CBGA

- 2.1 The CBGA will be operated via the authority of the Trustees in accordance with the terms of this CBGA Charter.

Objects

- 2.2 The primary object of the CBGA is to be the Contract Authority with the Australian Government and its agencies for the receipt, disbursement and Acquittal of capital and other capital-related Block Grants provided for Participating Catholic Schools Authorities, subject to the functions and powers set out in **clause 2.3**.

Functions and Powers

- 2.3 Subject to **clauses 2.6.1 to 2.6.8** inclusive, the CBGA has delegated power to the CBGA Delegate to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:
- 2.3.1 enter into deeds, contracts, licences or lease agreements;
 - 2.3.2 act as the Contract Authority with the Australian Government and its agencies on behalf of Catholic Schools Authorities and individual Catholic Schools where necessary;
 - 2.3.3 enter into funding agreements with Participating Catholic Schools Authorities for the distribution of grant funds;
 - 2.3.4 enter into a Services Agreement with the CEC for management and administrative support; and
 - 2.3.5 do anything incidental to any of its powers.

Power Reserved by CBGA

- 2.4 The CBGA has reserved to itself certain powers under **clauses 2.6.1 to 2.6.8** inclusive. In the event that the CBGA Delegate wishes to exercise any such reserved powers, the CBGA Delegate shall submit a proposal in writing to the CBGA for their prior written approval.
- 2.5 The CBGA may direct the CBGA Delegate at any time in respect of the performance by the CBGA of its functions and in the exercise of powers by the CBGA Delegate and the CBGA Delegate will comply with all such directions.

- 2.6. The CBGA Delegate may not, without the express prior written approval of the CBGA:
- 2.6.1 form, and participate in the formation of, companies under the *Corporations Act 2001*(Cth);
 - 2.6.2 enter into commercial partnerships;
 - 2.6.3 participate in joint ventures;
 - 2.6.4 provide indemnities or guarantees;
 - 2.6.5 acquire land and buildings;
 - 2.6.6 enter into any agreements or other arrangements with Commercial Suppliers involving a liability exceeding \$1,000,000;
 - 2.6.7 participate in the direct management of Catholic Schools, other than through conditions included in government funding; or
 - 2.6.8 borrow moneys.
- 2.7 The Trustees may establish at any time review processes in respect of the operations of the CBGA.

CBGA Delegate

- 2.8 Except as set out in **clause 2.6**, the CBGA delegates its responsibilities to the CBGA Delegate.
- 2.9 The CBGA Delegate will:
- 2.9.1 at all times act in the best interests of the Trustees;
 - 2.9.2 enter into contracts on behalf of the CBGA with the Australian Government and its agencies for capital and other capital-related Block Grants for Catholic Schools;
 - 2.9.3 ensure that the Block Grants are being managed in accordance with contracts (including Guidelines) entered into with the Australian Government and its agencies and that the Acquittal processes are occurring satisfactorily;
 - 2.9.4 enter into contracts with recipients of funding which contain appropriate “back-to-back” provisions to any contract entered into by CBGA with the Australian Government and its agencies and that any amendments or variation to CBGA’s obligations, rights and remedies under any contract with the Australian Government and its agencies will be deemed incorporated into any contract between CBGA and a recipient;
 - 2.9.5 enter into a Services Agreement with the CEC for the provision of management and administrative services to be carried out by the CEC secretariat on behalf of the CBGA;

- 2.9.6 put into place governance arrangements which assist in satisfying the CBGA Delegate's fiduciary duties to the Trustees under the CBGA Charter;
 - 2.9.7 develop consultative arrangements with the Catholic Schools State Priority Committee and the Commission on priorities, policy matters, and guidelines for applicants, as well as other arrangements as required and appropriate; and
 - 2.9.8 ensure fairness and equity in setting priorities for the allocation of capital and capital related Block Grants to Catholic schools.
- 2.10
- 2.10.1 To the extent permitted by law, the Trustees will indemnify the CBGA Delegate and the Alternate Delegate against liability, loss, damage, costs and expenses incurred or to be incurred by the CBGA Delegate or the Alternate Delegate in or arising out of the proper performance of their duties under the CBGA Charter.
 - 2.10.2 The Trustees may enter into an agreement with the CBGA Delegate and the Alternate Delegate containing an indemnity in favour of the CBGA Delegate and the Alternate Delegate, on terms determined by the Trustees.
- 2.11 In the event that the CBGA Delegate is unavailable to carry out his duties and responsibilities under the CBGA Charter, the Alternate Delegate is empowered to fulfil the duties and responsibilities of the CBGA Delegate during the period of absence.
- 2.12 The CBGA Delegate may be removed from office upon resolution by the Trustees, should the Trustees lose confidence in the CBGA Delegate. The CBGA Delegate has no right of appeal against any decision made pursuant to this **clause 2.12**.
- 2.13 The office of the CBGA Delegate shall become vacant if the Delegate:
- 2.13.1 dies;
 - 2.13.2 retires;
 - 2.13.3 becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - 2.13.4 resigns by notice in writing to the Trustees;
 - 2.13.5 is absent from office without the permission of the Trustees for any consecutive period of three (3) months;
 - 2.13.6 is removed from office pursuant to **clause 2.12**; or
 - 2.13.7 is appointed as a Bishop outside the Province of Sydney and Archdiocese of Canberra and Goulburn.
- 2.14 The CBGA Delegate may take out insurance cover for the operations of the CBGA as appropriate.

3.0 OPERATIONS OF THE CBGA

Communication of Trustee Decisions

- 3.1. All Trustees' decisions made in respect of the CBGA are communicated to the CBGA Delegate or to the Executive Director by the secretary of the Trustees.

Reporting to the Trustees

- 3.2. In accordance with **clause 3.3**, CEC shall prepare on behalf of CBGA, the CBGA annual report, which may form part of the CEC annual report that is forwarded to the Trustees as soon as practicable after the end of each Fiscal Year.
- 3.3. The annual CBGA report shall contain the following matters:
 - 3.2.1 outline of activities undertaken;
 - 3.2.2 major contracts entered into by the CBGA Delegate;
 - 3.2.3 details of audits of Block Grant programs;
 - 3.2.4 conflicts of interest involving the CBGA Delegate and/or other persons involved in CBGA business;
 - 3.2.5 issues relevant to the functions of the consultative processes undertaken by the CBGA Delegate; and,
 - 3.2.6 any specific reporting required by the Trustees.

Code of Conduct

- 3.4. The CBGA Delegate, Committee members, CEC Staff Members, Executive Director, Executive Officer and consultants shall, when acting for CBGA:
 - 3.4.1 exercise their powers and discharge their duties with due skill, care and diligence;
 - 3.4.2 make judgements in good faith;
 - 3.4.3 avoid situations of conflict of interest in the subject matter of the judgement, unless that person has complied with **clause 3.5**;
 - 3.4.4 be informed about the subject matter of the judgement to the extent that it is appropriate; and
 - 3.4.5 at all times act in the best interests of CBGA and for proper purposes.

Conflicts of Interest

3.5.

- 3.5.1 CEC, in providing management and administrative services to the CBGA may enter into contracts or arrangements with other organisations, companies or bodies in which the CBGA Delegate, a Commissioner, Committee Member, Executive Director, Executive Officer or CEC Staff Member has material personal interest, provided it does so on arms length commercial terms or, where it is not on arms length commercial terms, notice has been given under **clause 3.5.2**.
- 3.5.2 Persons acting on behalf of the CBGA must give notice as soon as practicable of any material personal interest referred to in **clause 3.5.1**, to the Executive Director and to the CBGA Delegate and the matter must be recorded on the appropriate file. Should the conflict of interest involve the CBGA Delegate, Executive Director or Executive Officer then the Commission Secretary must report that matter to the Trustees. A notice given under this **clause 3.5.2** may be given as a standing notice and must set out the nature and extent of the person's interest and the relation of that interest to the affairs of the CBGA.
- 3.5.3 Subject to **clause 3.5.4**, a Commissioner, Committee member, Executive Director, Executive Officer or CEC Staff Member who has a material personal interest in an existing or proposed contract or arrangement already made or to be made by CBGA or by CEC on behalf of CBGA, and who has disclosed this interest to the Commission or Committee may still participate in giving advice to the CBGA Delegate.
- 3.5.4 In the event that the CBGA Delegate resolves that a Commissioner, Committee Member, Executive Director, Executive Officer or CEC Staff Member has a material personal interest in a matter being discussed by the Committee, the CBGA Delegate can require that person not to be present during discussions.
- 3.5.5 CEC on behalf of the CBGA shall not make any payment for services rendered by a Commissioner or Committee Member in a professional or technical capacity, except where the provision of such services and the amount payable have prior approval by the CBGA Delegate or by a delegate under the Services Agreement and where the amount does not exceed an amount that is commercially reasonable for those services.
- 3.5.6 The failure of the CBGA Delegate, Commissioner, Committee Member, Executive Director, Executive Officer, CEC Staff Member or delegate under the Services Agreement with CEC to make disclosure under this **clause 3.5** does not render void or voidable a contract or arrangement in which the CBGA Delegate, Commissioner, Committee Member, Executive Director, Executive Officer, CEC Staff Member or delegate under the Services Agreement has a direct or indirect interest.

Confidentiality

3.6

- 3.6.1. **Confidential Information** means any information relating to CBGA which is or has any CBGA agents or legal advisors from CBGA or a third party.
- 3.6.2. Confidential Information does not include:
- (a) information expressly stated to be of a non-confidential nature and without restriction as to its use or disclosure which is provided to any of CBGA's Committee members, the CBGA Delegate or any CBGA agents or legal advisors by a third party;
 - (b) information already in the public domain; or
 - (c) information that was in the possession or control of any of CBGA's Committee members, the CBGA Delegate or any CBGA agents or legal advisors prior to any of those parties becoming a CBGA Committee member, the CBGA Delegate or a CBGA agent or legal advisor and which was not received from CBGA.
- 3.6.3 Subject to **clauses 3.6.1 and 3.6.2**, all Confidential Information received from or disclosed by CBGA is received or disclosed in the strictest confidence and no person shall directly or indirectly disclose such Confidential Information to any third party and shall not take commercial advantage of nor use such Confidential Information for any purpose whatsoever other than for the purposes specified and authorised by CBGA or as required by law.

4.0 NSW CATHOLIC SCHOOLS STATE PRIORITY COMMITTEE

Establishment of NSW Catholic Schools State Priority Committee

- 4.1 The Committee is established by the Trustees to provide advice, where required by the particular Block Grant program, to the CBGA Delegate on priorities for the allocation of capital and capital related Block Grants, consistent with contractual arrangements with the Australian Government and the its agencies.

Role of the Committee

- 4.2 The role of the Committee is to provide advice and make recommendations to the CBGA Delegate on the eligibility of an applicant Catholic School to receive funding and the value of grants to applicant schools.
- 4.3 The Committee is not a decision making committee, it is advisory only and does not hold any financial or administrative delegations on behalf of CBGA.

CBGA Delegate's Authority

- 4.4 The CBGA Delegate has authority to:
- 4.4.1 determine the terms of reference of the Committee;
 - 4.4.2 appoint members to the Committee;
 - 4.4.3 fix terms of appointment of Committee members; and,
 - 4.4.4 approve meetings procedures.

Eligibility for Committee Membership

- 4.5 A person will not be eligible for appointment as a Committee member unless, in the opinion of the CBGA Delegate, the person nominated has expertise in one or more of the following fields:
- 4.5.1 education administration;
 - 4.5.2 Catholic religious education;
 - 4.5.3 management;
 - 4.5.4 architecture or educational facilities;
 - 4.5.5 finance and accounting;
 - 4.5.6 corporate governance; or
 - 4.5.7 any other field of expertise the CBGA Delegate considers appropriate.
- 4.6 In appointing Committee members, the CBGA Delegate shall endeavour to ensure that there is a membership balance so that at all times the Committee has available to it the expertise outlined in **clause 4.5**.

Terms of Appointment

- 4.7 The Committee members shall be appointed by the CBGA Delegate:
- 4.7.1 with effect from the day specified in the instrument of appointment; and
 - 4.7.2 hold office for such term as is specified in the instrument of appointment and is eligible for re-appointment.
- 4.8 Committee members may at any time resign in writing to the CBGA Delegate effective from a mutually agreed date.
- 4.9 A Committee member may be removed from office by the CBGA Delegate, should the CBGA Delegate lose confidence in that Committee member. A Committee member has no right of appeal against any decision made pursuant to this **clause 4.9**.
- 4.10 A Committee member may obtain leave of absence from the Committee meetings upon obtaining permission from the CBGA Delegate.
- 4.11 Where a Committee member is absent from three consecutive Committee meetings without leave of absence approved by the CBGA Delegate pursuant to **clause 4.10**, his/her appointment is automatically terminated.
- 4.12 A Committee member holds office on such terms and conditions (if any) in relation to such matters not provided for by the CBGA Charter as are determined, in writing, by the CBGA Delegate.

Appointment of Chair

- 4.13 The CBGA Delegate shall appoint the Chair of the Committee.

Meetings

- 4.14 The Committee shall hold such meetings as are necessary for the efficient performance of its functions but in any event shall meet at least once each year.
- 4.15 Subject to **clauses 4.16** and **4.17**, meetings of the Committee shall be held at such times and places as the Executive Officer from time to time determines.
- 4.16 The Executive Officer:
- 4.16.1 may, at any time, convene a meeting of the Committee; and
 - 4.16.2 shall, on receipt of a written request signed by not less than five (5) other Committee members, convene a meeting of the Committee.
- 4.17 The Trustees or the CBGA Delegate may, at any time, convene a meeting of the Committee.
- 4.18 A minimum of five days notice must be given to all Committee members to convene a meeting of the Committee.

- 4.19 If the Chair is not present at a meeting, the Committee members present may elect a presiding member to chair that meeting, so long as there is a quorum present.
- 4.20 At a meeting of the Committee:
- 4.20.1 at least fifty per cent (50%) of Committee members at that time, but no less than five (5) Committee members, present constitutes a quorum;
 - 4.20.2 decision making shall normally be by consensus;
 - 4.20.3 where a deliberative vote is required, a question shall be decided by a majority of the votes of the Committee present and voting; and
 - 4.20.4 the presiding Committee member (being the Chair, deputy Chair or a presiding member, as the case may be) has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- 4.21 The Chair or Executive Officer may invite a person to attend a Committee meeting for the purpose of advising or informing the Committee on any matter.
- 4.22 Circulating resolutions are permitted in the following circumstances:
- 4.22.1 Where all appointed Committee members sign a document (or two or more separate but identical documents) containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly convened meeting of the Committee on the day that the last signature is affixed.
 - 4.22.2 A facsimile transmission which is received by the Executive Officer and which purports to have been signed by a Committee member shall for the purposes of **clause 4.22.1** be taken to be in writing and signed by that Committee member at the time of the receipt of the facsimile transmission by the Executive Officer in legible form.
 - 4.22.3 An email transmission which is received by the Executive Officer and which purports to have been sent by a Committee member shall for the purposes of this **clause 4.22.3** be taken to be in writing and signed by that Committee member at the time of the receipt of the email transmission by the Executive Officer.
- 4.23 A Committee meeting may be convened or held using any technology consented to by all Committee members. The consent may be a standing one. A Committee member may withdraw consent to the use of a particular technology within a reasonable time period before a Committee meeting.

4.24

4.24.1 All resolutions of the Committee members; or

4.24.2 any act carried out pursuant to such resolutions;

passed at a meeting of the Committee where a quorum is present but where notice of the meeting has not been given as required to each Committee member, shall be as valid as if notice of the meeting had been duly given to all Committee members, provided each Committee member to whom notice was not given subsequently agrees to waive his or her right to the requisite notice.

4.25 Even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any Committee member or person or that they or any of them were disqualified or were not entitled to vote, all acts done:

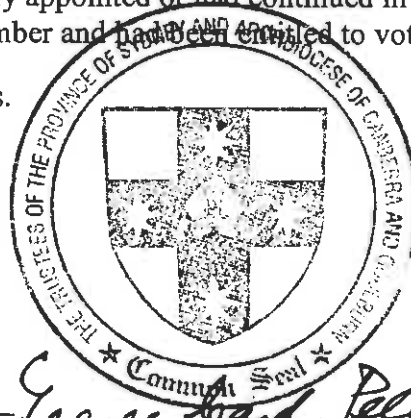
4.25.1 at any meeting of the Committee; or

4.25.2 by any person acting as a Committee member,

shall be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Committee member and had been entitled to vote.

4.26 The Committee shall keep minutes of its proceedings.

THE COMMON SEAL of THE)
TRUSTEES OF THE PROVINCE OF)
SYDNEY AND ARCHDIOCESE OF)
CANBERRA AND GOULBURN was)
hereunto affixed in the presence of the)



+ George Had. Pell
Provincial

PROVINCIAL and two other members)
thereof all of whose signatures are set)
opposite hereto:)
)

+ Arthur Dible
Member

David L. Waelfel
Member

Dated: 31 March 2010