

**THE DUTY OF CARE TO AVOID THE RISK OF HARM FROM ABUSE TO THE
CHILDREN RESIDENT AT THE NORTH COAST CHILDREN'S HOME**

A Who controlled the North Coast Children's Home?

1. From its foundation in 1920 to 20 April 1951 the North Coast Children's Home was operated under the original Constitution which provided:
 - (a) the Home was under the control of the General Committee consisting of 30 members elected by the Subscribers and the clergy of the Church of England in the Diocese of Grafton (cl 10);
 - (b) the General Committee was to elect an Executive Committee consisting of the President (the Vicar of St Andrew's, Lismore), the Honorary Treasurer, the Honorary Secretary and six elected members (cII 9-10);
 - (c) the Executive was empowered to employ such paid officers as they might deem necessary for the working of the Home, "such officers to be under the control of the Executive" (cl 14).

2. From 21 April 1951 to 16 May 1989 the Home was operated under an amended Constitution which provided:
 - (a) the Home would be under "the control and management of an executive" consisting of the President (the Rector of St Andrew's, Lismore) ex officio, up to nine members elected by the subscribers in general meeting (at least two-thirds being members of the Church of England), the Secretary and the Treasurer elected by the members of the Executive Committee with the Bishop having the right to appoint up to four additional members (cII 5-7);
 - (b) the Executive was empowered to employ such paid officers as they might deem necessary for the working of the Home, "such officers to be under the control of the Executive" (cl 14).

B The licence under the *Child Welfare Act 1939*

3. Part VII (ss 28-38) of the *Child Welfare Act 1939* (NSW) as it was in force between 1 December 1939 and 1 November 1969 was headed "Licensing of places established or used for the reception of children apart from their parents and of day nurseries and kindergartens". Section 28(1)(a) and (3), so far as relevant, provided for the grant of a licence by the Minister to a place established or used for the reception and care of one or more children under the age of seven years, apart from their mother or other parent. Subsection (4) provided that every license shall be subject to such conditions and requirements as may be prescribed.

4. Regulation 41 of the *Child Welfare Regulations, 1940* (NSW) specified 15 conditions requirements to which every licence under s 28 of the *Child Welfare Act 1939* for the reception and care of children other than a place established or used for the purpose of conducting a day nursery or kindergarten including:
 - "(a) Each child shall be cared for to the satisfaction of the Minister."

5. The file of the Child Welfare Department contains the application dated 11 June 1940 for a grant of a licence for the Home under s 28 of the *Child Welfare Act 1939* which was made by the Matron and specified the Home was controlled by the "Board of Management comprising three persons". This file records that the Home was licensed on 18 April 1952.

C What was the role of the Corporate Trustees in respect of the Home?

6. From 7 December 1927 the land on which the Home was operated was vested in the Corporate Trustees of the Diocese of Grafton.
7. The Corporate Trustees never sought to exercise any power of management over the Home.

D The duty of care to avoid the risk of harm from abuse to children

8. The control by a person over another in the legal and practical sense is important in identifying cases where a duty of care arises to avoid risks of harm including abuse from that control.
9. The corporate trustee of church land which exercises no control and management over the activities conducted on that land has no responsibility for the abuse of children perpetrated on the land.

E Who had the duty of care to avoid the risk of harm to the children at the Home?

10. The persons from time to time comprising the Executive Committee, being the group of persons who were responsible for the control and management of the Home including its paid officers, had the legal duty of care to avoid the risk of harm from abuse to the children of the Home from its staff. The grant of the licence in respect of the Home under s 28 of the *Child Welfare Act 1939* does not bear upon this question.
11. The Corporate Trustees as the trustee of the land on which the Home was operated had no duty of care to the children of the Home.
12. The connection between the Home and the Church of England in the Diocese of Grafton is not sufficient to impose a duty of care upon the members of the Church of England in the Diocese of Grafton at the relevant time, or the current members of the Anglican Church of Australia in the Diocese of Grafton.

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