

Anglican Church Property Trust Diocese of Sydney Ordinance 1965 Amendment Ordinance 2023

No 45, 2023

Long Title

An Ordinance to amend the constituting ordinances of the Anglican Church Property Trust Diocese of Sydney and for matters incidental thereto.

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

1. Name of ordinance

This Ordinance is the Anglican Church Property Trust Diocese of Sydney Ordinance 1965 Amendment Ordinance 2023.

2. Amendments to the *Anglican Church Property Trust Diocese of Sydney Ordinance 1965*

The *Anglican Church Property Trust Diocese of Sydney Ordinance 1965* (the “Principal Ordinance”) is amended as follows –

- (a) amend the heading and numbering of all clauses of the ordinance to adopt the drafting convention ‘#. [Heading]’ and insert the following new headings in the Ordinance –
 11. Investment Powers
 12. Investigation of accounts and the financial position of diocesan organisations
 13. Appointment of Staff
 14. Appointment of Executive Officer
 15. Security of documents
 16. Appointment of persons
- (b) delete clauses 1, 19 and 20,
- (c) insert the following as a new clause 1 –
 - “1. Name**
This ordinance is the *Anglican Church Property Trust Diocese of Sydney Ordinance 1965*.”, and
- (d) amend clause 2 as follows–
 - (i) remove the lettering at the beginning of each definition,
 - (ii) insert the following new definitions in alphabetical order -

“Act” means the *Anglican Church of Australia Trust Property Act 1917 (NSW)*.

“Synod” means the Synod of the Diocese of Sydney.

“Synod Governance Policy” means the policy for Diocesan Organisations made by the Synod on 20 October 2014, as amended from time to time, and includes any policy made in substitution of this policy.
- (e) substitute the definition of “diocesan organisation or body” with the following –

“diocesan organisation or body” means any entity that is constituted by ordinance or the Synod or in relation to which the Synod has power to make ordinances.’,
- (f) delete clauses 3, 4, 4A, 4B, 4C, 4D, and 4E, and insert the following clauses 3 and 4 instead –
 - ‘3. Membership and Elections**
 - (1) The members of the Corporate Trustee shall be the Archbishop of Sydney and not more than 9 other members elected by the Synod.
 - (2) The members elected under subclause 3(1) are to include -
 - (a) at least two members of the clergy licensed in the Diocese of Sydney with at least a three-year theological degree from Moore Theological College or another college that is

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endorsed by the Archbishop for the purposes of this clause,
and

(b) at least five laypersons.

(3) A person is disqualified from being nominated or elected as a member if the person –

- (a) is an insolvent under administration, or
- (b) is of unsound mind or whose person or estate is liable to be dealt with in any way under any law relating to mental health, or
- (c) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*, or
- (d) is or has been at any time during the preceding 12 months disqualified from being a responsible person by the Commissioner of the Australian Charities and Not-for-profits Commission, or
- (e) has been convicted of a crime or an offence punishable by imprisonment for more than 12 months, or
- (f) is subject to an order or subsisting recommendation issued or recognised under an Ordinance of the Synod which prohibits them from holding the office of member, or
- (g) is an employee of the Corporate Trustee or Sydney Diocesan Services.

(3) Every member must, upon being elected as, or otherwise becoming, a member, sign the “Statement of Personal Faith” set out in the Synod Governance Policy and deliver it to the Chair (or the Diocesan Secretary, if no Chair has been appointed) within 28 days of the date of that person becoming a member. If a person fails to do so, the Standing Committee is to declare a vacancy in respect of the person in accordance with section 12 of the Act.

4. Casual Vacancies

(1) The Standing Committee may, by resolution, declare a vacancy in the office of member of the Corporate Trustee under section 12 of the Act in respect to a member to the extent it has delegated authority from the Synod to do so under section 40 of the Act. Subject to such delegated authority, the Standing Committee is to declare a vacancy if the member –

- (a) dies, or
- (b) resigns as a member by written notice to the Chair (or to the Diocesan Secretary if the resigning member is the Chair), and such resignation takes effect from the date of receipt of the notice by the Chair (or the Diocesan Secretary, as the case may be), or
- (c) becomes an insolvent under administration, or
- (d) becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under any law relating to mental health, or
- (e) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*, or
- (f) is disqualified from being a responsible person by the Commissioner of the Australian Charities and Not-for-profits Commission, or
- (g) is convicted of a crime or an offence punishable by imprisonment for more than 12 months, or

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- (h) is subject to an order or subsisting recommendation issued or recognised under an Ordinance of the Synod which prohibits them from holding the office of member or requires that they be removed from such office, or
 - (i) becomes an employee of the Corporate Trustee or Sydney Diocesan Services, or
 - (j) is absent without leave for 3 consecutive meetings of the Corporate Trustee and the Corporate Trustee resolves that the person's membership should cease, or
 - (k) fails to disclose his or her actual material conflict of interest in any matter brought for the consideration of the Corporate Trustee which, in the opinion of the Corporate Trustee, resulted in a resolution of the Corporate Trustee which would not have been made if the actual material conflict of interest had been disclosed, and the Corporate Trustee resolves by at least a three-quarters majority that the person's membership should cease as a result of this failure.
- (2) A casual vacancy may be filled by the Standing Committee in accordance with the procedure in section 12 of the Act.', and
- (g) substitute clause 5 with the following –
 - ‘5. Duration of office of members**
 - (1) At each ordinary session of the Synod, the Standing Committee is to bring resolutions declaring vacancies in respect to one third of the persons who are members elected by the Synod for the time being or, if the number of such members is not a multiple of 3, then the nearest number to one third (rounded upwards), are to retire from office.
 - (2) Subject to this Ordinance, a retiring member is eligible for re-election, and each member whose term comes to an end under subclause 5(1) remains in office until his or her successor is elected.
 - (3) The members who are to be declared as vacating office for the purposes of subclause 5(1) are those members who have been in office longest since their last election. As between persons who were elected as members on the same day, those to be declared (unless they otherwise agree among themselves) are to be determined by lot.
 - (4) No vacancy in the office of member affects the authority or powers of the Corporate Trustee and that authority and those powers may be exercised by the members holding office from time to time.
 - (5) A person elected by the Standing Committee to fill a casual vacancy is, for the purposes of subclause 5(3), taken to have been last elected to office on the date the member whose departure gave rise to the vacancy was last elected to office.', and
- (h) insert a new clause 6 as follows (and consequentially renumber the remaining clauses) –
 - ‘6. Members not to be remunerated**
 - (1) A member is not to be remunerated for their service as a member.
 - (2) Nothing in subclause 6(1) prevents a member from being reimbursed for reasonable out of pocket expenses incurred in performing their duties as a member.', and
- (i) substitute the renumbered clause 8 with the following –
 - ‘8. Chair**
 - (1) The members are to appoint one of their number to be chair (“Chair”) for a term which ends on the first to occur of –

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- (a) the date the Chair ceases to be a member,
- (b) the date (if any) specified in the resolution,
- (c) the 3rd anniversary of the resolution of appointment,
- (d) the date that the Chair retires from that role, and
- (e) the date on which the appointment is revoked by resolution of the members.

(2) A member who retires as the Chair under any of subclauses 8(1)(b), (c) or (d) may be reappointed for a further term, except that a member is not eligible to be re-appointed as Chair if such re-appointment would result in that member being the Chair for a continuous period of 9 years or more. For the purposes of this subclause, 2 or more periods of service as Chair will be taken to be one continuous period unless they were separated by a continuous period of at least 12 months during which the person was not the Chair.

(3) A person cannot be the Chair if a member of the person's immediate family is employed by the Corporate Trustee unless the members have considered the circumstances and unanimously agreed to it by secret ballot.

(4) If the President is present at a meeting of the Corporate Trustee, the President is to Chair the meeting, but may appoint the Chair or another member then present to chair all or part of the meeting.

(5) The members may elect a member to be Deputy Chair to chair meetings in the absence of or at the request of the President and the Chair.', and

- (j) substitute the renumbered clause 9 with the following –

'9. Secretary

(1) The members are to appoint a person to be the secretary ("Secretary") of the Corporate Trustee.

(2) A person is not required to be a member to be appointed as Secretary.

(3) A person who is a member cannot serve as the Secretary for more than nine consecutive years.', and

- (k) insert a new clause 10 as follows (and consequently renumber the remaining clauses) –

'10. Meetings of members

(1) The members are to meet at such times as they may determine.

(2) In addition, a meeting of the members may be convened by –

- (a) the Chair, or
- (b) any three members.

(3) A meeting of the members may be held by using any technology approved by the members. A member who is absent from the place of meeting may attend that meeting by using any technology approved by the members. All meetings conducted with the aid of technology under this clause are as valid and effective as if they had been conducted at a meeting at which those members were physically present.

(4) If the President, Chair and Deputy Chair are not present at a meeting or are unable or unwilling to chair the meeting, or part of a meeting, the members present may elect another member then present to chair that meeting or part of the meeting.

(5) At a meeting of the members, the person chairing the meeting has a deliberative vote but does not have a casting vote.

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- (6) The members must cause minutes to be made of each meeting of the members which record –
- (a) the names of the members present,
 - (b) the name of the person or names of the persons who chaired the meeting, or any part of the meeting,
 - (c) all disclosures made by a member of any actual, potential or perceived conflicts of interest, and
 - (d) all resolutions of the members passed at the meeting or taken to have been passed at a meeting.
- (7) The minutes of each meeting are to be signed by the chair of that meeting, or by the chair of the next meeting of the members.
- (8) Subject to this Ordinance and the Act, the members may regulate the proceedings of their meetings in such manner as they determine.’, and
- (l) insert a new clause 11 as follows (and consequently renumber the remaining clauses) –
- ‘11. Quorum**
- A quorum for the transaction of business at a meeting of the Corporate Trustee shall be four members of whom at least one shall be a member in Holy Orders and at least one shall be a member not in Holy Orders.’, and
- (m) insert a new clause 12 as follows (and consequently renumber the remaining clauses) –
- ‘12. Decisions of the members**
- (1) Usually, the members will make decisions by resolution passed at a meeting of the members.
- (2) A resolution of the Corporate Trustee will be passed without a meeting if –
- (a) a copy of the proposed resolution is sent to all members at the request of the Chair (other than members who, at that time, have leave of absence) and a reasonable timeframe within which members may indicate their support for or objection to the proposed resolution being passed is specified,
 - (b) at least 75% of members indicate within the specified timeframe that they support the proposed resolution being passed, and
 - (c) no member objects within the specified timeframe either to the proposed resolution being passed or the proposed resolution being passed without a meeting.’, and
- (n) insert a new clause 14 as follows (and consequently renumber the remaining clauses) –
- ‘14. Acts of the Corporate Trustee**
- Any deed, or instrument, executed or signed, and any other act, matter, or thing done by any two members of the Corporate Trustee in pursuance of a resolution of the Corporate Trustee shall be as effectual as if the same had been executed, signed, or done by all the members of the Corporate Trustee.’, and
- (o) insert a new clause 15 as follows (and consequently renumber the following clauses) –
- ‘15. Duties of members**
- (1) A member is taken to act in good faith in the best interest of the Corporate Trustee and to further the purposes of the Corporate Trustee in any of its separate trustee capacities for the purpose of subclause 15(2)(b) if –

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- (a) the member acts in good faith in pursuing the purpose of the Corporate Trustee in that separate trustee capacity in a manner which advances the broader charitable purposes of the Diocese; and
 - (b) the Corporate Trustee is not, in that separate trustee capacity, insolvent at the time the member acts and does not become insolvent in that capacity because of the member's act; and
 - (c) the member's act is consistent with the separate trusts on which any church property affected by the act is held by the Corporate Trustee in that capacity.
- (2) Each member must –
- (a) in performing their functions exercise the care and diligence that a reasonable individual would exercise as a member, and
 - (b) act in good faith in the best interests of the Corporate Trustee and to further the purpose of the Corporate Trustee in each of its trustee capacities, and
 - (c) not misuse their position as a member, and
 - (d) not misuse information obtained in the performance of their duties as a member, and
 - (e) promptly disclose at a meeting of members, any actual or potential conflict of interest they have as a member and any circumstances which might reasonably be perceived as a conflict of interest, and
 - (f) not participate in discussions, or vote on any matter, in which an actual, potential or perceived conflict of interest arises without the approval of the other members, and
 - (g) manage the financial affairs of the Corporate Trustee in a responsible manner, and
 - (h) not allow the Corporate Trustee to operate while insolvent.
- (3) The Corporate Trustee should maintain records of applicable eligibility criteria.
- (4) The board should, in governing the Corporate Trustee, exercise all the powers of the Corporate Trustee.'
- (p) in the renumbered clause 16(3) substitute the matter "parish or provisional parish" for the matter "parish provisional parish or provisional district",
- (q) insert the matter "appoint an executive director under clause 21," after the first instance of the word "activities" in the renumbered clause 19(1),
- (r) substitute the renumbered subclause 19(2) with the following (and renumber 19(1) as 19) –

'20. Delegation

- (1) The Corporate Trustee may delegate any of its powers (other than approving the affixing of the common seal of the Corporate Trustee) to a committee or committees and such other persons, as the Corporate Trustee thinks fit on such terms, conditions and limitations as the Corporate Trustee may determine.
- (2) A committee or person to which any powers have been delegated under this clause must exercise those powers in accordance with any terms, conditions, limitations and directions or protocols of the Corporate Trustee. A power so exercised is taken to have been exercised by the Corporate Trustee.

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(3) Any such committee is to be chaired by a member of the Corporate Trustee and report the exercise of its delegated functions to the next meeting of the Corporate Trustee.', and

- (s) substitute the text in the renumbered clause 21 with the following –
- ‘The Corporate Trustee may appoint an executive director with this or such other title with the approval of the Standing Committee and define the powers duties and functions of the executive director in relation to property vested in the Corporate Trustee, the administration of its policy or policies and all other activities and affairs under its government and control.’,
- (t) in the renumbered clause 24 substitute the matter “subclause 24(3)” for the matter “17(3)” and substitute the matter “subclause 16(1)(g)” for the matter “paragraph 10(1)(g)”,
- (u) insert a new clause 25 (and consequently renumber the remaining clauses) –

‘25. Compliance with Synod Ordinances and Policies

The Corporate Trustee is to comply with all the applicable ordinances and policies of the Synod (as amended from time to time), including, as applicable –

- (a) the *Investment of Church Trust Property Ordinance 1990*,
- (b) the *Accounts, Audits and Annual Reports Ordinance 1995*, and
- (c) the *Sydney Anglican Use of Property Ordinance 2018*.’, and

- (v) insert new clauses as follows –

‘27. Indemnity

(1) To the extent permitted by law, the Corporate Trustee is to indemnify each person who is, or has been, a member against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served as a member –

- (a) to another person (other than the Corporate Trustee) which does not arise out of conduct involving a lack of good faith, or
- (b) for costs and expenses incurred by that person –
 - (i) in defending proceedings, whether civil or criminal, in which judgement is given in favour of that person or in which that person is acquitted, or
 - (ii) in connection with an application, in relation to those proceedings, in which the court grants relief to that person under the *Corporations Act 2001* or the *Australian Charities and Not-for-Profits Commission Act 2012*.

(2) The Corporate Trustee need not indemnify a person under subclause 27(1) for a liability to the extent that the person receives a payment for that liability under a contract of insurance or under any other ordinance.

(3) To the extent permitted by law, the Corporate Trustee may pay, or agree to pay, a premium for a contract insuring a person who is, or has been, a member against any liability which results directly or indirectly from facts or circumstances relating to the person serving, or having served, in that capacity except where the liability (not being a liability for costs and expenses in defending proceedings, whether civil or criminal and whatever their outcome) arises out of conduct involving –

- (a) a wilful breach of duty to the Corporate Trustee,
- (b) the improper use of information by the person, acquired by virtue of the person being, or having been, a member to

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gain an advantage for that person or another person or to cause detriment to the Corporate Trustee, or

- (c) the improper use of the person's position as a member to gain an advantage for himself or herself or for any other person or to cause detriment to the Corporate Trustee.

(4) To the extent permitted by law, the Corporate Trustee may pay, or agree to pay, a premium for a contract insuring a person who is, or has been, a member against any liability which results directly or indirectly from facts or circumstances relating to that person serving, or having served, in that capacity in respect of costs and expenses in defending proceedings, whether civil or criminal and whatever their outcome.'

3. Savings and Transitional

(1) Nothing in this Ordinance invalidates anything validly done under or pursuant to the Principal Ordinance prior to the date of commencement of this Ordinance.

(2) Notwithstanding the amendments made to the Principal Ordinance by this Ordinance, the persons who, immediately before the commencement of this Ordinance, were elected members of the Corporate Trustee will, subject to the terms of the Principal Ordinance (as amended), continue to be the elected members of the Corporate Trustee until their term ends in accordance with the Principal Ordinance (as amended).

(3) The persons who held the office of Chairman, Deputy Chairman and Secretary of the Corporate Trustee immediately before the commencement of this Ordinance are taken to continue in the equivalent office for the purposes of the Principal Ordinance (as amended by this Ordinance).

4. Commencement

This Ordinance commences on 1 January 2024.

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

R TONG
Chair of Committee

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 20 November 2023.

B BOUNDS
Secretary

I Assent to this Ordinance.

KANISHKA RAFFEL
Archbishop of Sydney

20/11/2023