

# Anglican Community Services Constitution Ordinance 1961

(Reprinted under the Interpretation Ordinance 1985.)

The Sydney Church of England Homes for Aged Persons Constitution Ordinance 1961 as amended by the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2015, the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016, the Anglican Community Services Constitution Ordinance 1961 Amendment Ordinance 2018, and the Anglican Community Services Constitution Ordinance 1961 Amendment Ordinance 2024.

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### Long Title

An ordinance to provide a constitution for Anglican Community Services.

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

## **Part 1 – Definitions and Interpretation**

### **1. Definitions**

In this ordinance, unless contrary to the context or inconsistent therewith –

“Archbishop” means the Archbishop of Sydney but, in his absence, his Commissary or, if the See is vacant, the Administrator of the Diocese.

“Bible-based church” has the meaning given to those words in the Diocesan Governance Policy. “Board” means the Members acting collectively as the governors of the Body Corporate and in this role known as directors.

“Body Corporate” means Anglican Community Services.

“Chair”, at any time, means the person who, at that time, is appointed as Chair in accordance with clause 16.

“Chief Executive Officer”, at any time, means the person who, at that time, is appointed as Chief Executive Officer in accordance with clause 22.

“Clause” means a clause of this ordinance.

“Christian faith and character” has the meaning given to those words in the Diocesan Governance Policy.”

“Deductible Contribution” means a contribution described in item 7 or 8 of the table in section 30-15 of the *Income Tax Assessment Act 1997* in relation to a fundraising event held for those objects

“Diocesan Governance Policy” means the Governance Policy for Diocesan Organisations made by the Synod on 23 September 2024 as may be amended or replaced from time to time.

“Diocese” means the Diocese of Sydney in the Anglican Church of Australia.

“doctrine of the Diocese” has the meaning given to those words in the Diocesan Governance Policy.

“Elected Member” means –

- (a) a person elected to be a Member by the Synod under clause 8(1)(a) or (b), and
- (b) a person appointed to be a Member under clause 11.

“Gift” means a gift of money or property for the objects of the Body Corporate set out in clause 5.

“Gift Fund” means a gift fund maintained under clause 22A.

“Member” means a person who is a member of the Body Corporate.

“Property” means real and personal property of every description and includes every estate or interest therein.

“Quarter” means a period of 3 consecutive calendar months, the first such month being January, April, July or October.

“SAHMS” means Sydney Anglican Home Mission Society Council, a body corporate constituted under the *Anglican Church of Australia (Bodies Corporate) Act 1938*.

“Synod” means the Synod of the Diocese and includes, when the Synod is in recess, the Standing Committee of the Synod.

### **2. Interpretation**

In this ordinance, headings are for convenience only and do not affect interpretation and except to the extent that the context otherwise requires –

- (a) references to any legislation or to any provision of any legislation include any modification or re-enactment of it, any legislative provision substituted for it, and all statutory instruments issued under such legislation or provision;
- (b) words denoting the singular include the plural and vice versa; and

- (c) words denoting individuals include corporations and vice versa.

### **3. Interpretation Ordinance**

The *Interpretation Ordinance 1985* applies.

### **4. Name of Ordinance**

This ordinance is the Anglican Community Services Constitution Ordinance 1961.

## **Part 2 – Objects**

### **5. Objects**

(1) The Body Corporate is established as a public benevolent institution for the purpose of undertaking works of public benevolence that: (i) reflect the love of God as shown in Christ; (ii) further the work of the Anglican Church of Australia, Diocese of Sydney by promoting and proclaiming the gospel of the Lord Jesus Christ; or (iii) otherwise promote and proclaim the gospel of the Lord Jesus Christ, including –

- (a) the housing, accommodation, maintenance and welfare of older people;
- (b) welfare and support services for the vulnerable, the marginalised, the disabled, and those in necessitous circumstances;
- (c) providing monies, guarantees or indemnities to support any body corporate constituted at the instance of the Synod of the Diocese of Sydney under the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW) undertaking similar objects or objects incidental to any object of the Body Corporate;
- (d) such other benevolent activities as the Board may from time to time determine; and
- (e) such other things as are ancillary, incidental or conducive (or all or any of these matters) to undertaking works of public benevolence (including the attainment of the objects in paragraphs (a)-(d)),

and to bring all such persons under the pastoral care of the Anglican Church of Australia.

(2) In pursuing the objects set out in subclause (1) the Body Corporate must act in a manner which is consistent with the doctrine of the Diocese.

(3) In recognition that the Body Corporate is part of a network of parishes and organisations which is collectively seeking to advance the broader charitable purposes of the Diocese, the Board is permitted to allow the Body Corporate to undertake works of public benevolence as described in subclause (1) in a manner which also advances the broader charitable purposes of the Diocese, including such purposes as are declared or recognised from time to time by the Synod.

## **Part 3 – Constitution and Powers**

### **6. Constitution**

The Body Corporate has the powers and functions provided in the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW) and in this ordinance.

### **7. Powers**

Subject only to any limitations in this ordinance, the Body Corporate has the legal capacity and powers of an individual.

## **Part 4 – Members**

### **8. Membership**

(1) Subject to clause 8(2), the Members are –

- (a) 6 persons elected by the Synod,
- (b) up to 3 persons appointed by the Archbishop,
- (c) up to 2 persons appointed by the Board (excluding the Chief Executive Officer), and
- (d) if the Board so determines, the Chief Executive Officer.

(2) There must be at least 6 Members and the Members must include:

- (a) a majority of non-executive Members who are independent persons for the purposes of the *Aged Care Act 1997* (Cth),
- (b) at least 1 Member who has experience in providing clinical care,

- (c) such other persons (if any) prescribed by applicable law, and
  - (d) at least 2 Members who are ordained clergy licensed in the Diocese each with at least a 3-year theological degree from Moore Theological College or another college that is endorsed by the Archbishop for the purposes of this subclause, provided that the same person may satisfy one or more requirements of this subclause.
- (3) The Members must, so far as reasonably practicable:
- (a) subject to the requirements of subclause (2), have a diverse range of skills, qualifications, and experience appropriate to the discharge of the office of a member of the Body Corporate based on a skills matrix approved by, or on behalf of, the Board, and
  - (b) have a suitable gender balance.
- (4) Any person who is nominated to be elected, appointed or reappointed as a member of the Body Corporate must:
- (a) procure that the nominator inform the Chair of their relevant qualifications, skills, experience, and Christian ministry involvement of the nominee,
  - (b) be of Christian faith and character, attend regularly and be actively involved in a Bible-based church and satisfy all the requirements of the Diocesan Governance Policy which are applicable to Members,
  - (c) be suitable to be involved in: (i) the provision of aged care as key personnel of the Body Corporate (as an approved provider under the *Aged Care Act 1997* (Cth)), by being a fit and proper person with the appropriate experience, skills and qualities as informed by the needs of the Body Corporate; and (ii) child related work in New South Wales by having a valid Working with Children Check and providing their clearance number to the Chair,
  - (d) subject to the requirements of subclause (2), possess skills, qualifications, and experience appropriate to the discharge of the office of a Member: (i) determined by reference to the skills matrix approved by, or on behalf of, the Board; and (ii) certified by the Chair; and
  - (e) sign an acknowledgement of duties and responsibilities of a Member, in a form prepared by the Body Corporate (an "Acknowledgement"), including a confirmation that they: (i) are able and willing to devote the time required to be spent by a Member to properly fulfil those duties and responsibilities; and (ii) have consented to their name, contact details and any other personal information that is reasonably necessary for the proper administration of the Synod, the Diocese or the Body Corporate being collected, used and disclosed for these purposes.
- (5) When a person (the nominator) nominates another person (the nominee) for election or appointment as a member of the Body Corporate all of the following requirements must be met:
- (a) the nominator must have complied with Diocesan Governance Policy,
  - (b) the Board has certified that, in their opinion, the nominee meets the requirements of paragraphs (c) and (d) of subclause (4), and
  - (c) the nominator has certified that the nominee is willing to sign an Acknowledgement if elected and will do so before attending any meeting.

For the purposes of subclause 8(5)(b), the Board must provide a certification of whether the requirements in that subclause are met within 10 days of receiving notice from the nominator of a proposed nomination of a nominee.

- (6) A person who is ineligible for election or appointment as a Member pursuant to clause 9 shall not knowingly permit or procure themselves to be nominated for election, appointment or reappointment as a Member of the Body Corporate.
- (7) Every person, upon being elected or appointed as, or otherwise becoming, a Member, must meet any requirements, and sign any statement(s) and declaration(s), set out in the Diocesan Governance Policy which are applicable to Members and deliver any such statement(s) and declaration(s) to the Chair of the Board within 4 weeks of the date of that person's election or appointment. If a person fails to do so, the person is disqualified from being, and automatically ceases to be, a Member.

(8) The Body Corporate must maintain records of applicable eligibility criteria for Board membership.

## **9. Ineligibility**

A person is ineligible to be elected or appointed as a Member if that person –

- (a) is not suitable to be involved in: (i) the provision of aged care under the *Aged Care Act 1997* (Cth) or is the subject of a subsisting banning order made by the Aged Care Quality and Safety Commissioner; (ii) child-related work in New South Wales including by ceasing to hold a valid Working with Children Check, or
- (b) is disqualified from managing corporations within the meaning of the *Corporations Act 2001* (Cth), or
- (c) has been suspended or removed by the Commissioner of the Australian Charities and Not-For-Profits Commission, at any time during the preceding 12 months, from being a responsible entity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), or
- (d) is of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health or who is otherwise incapable of acting, or
- (e) is subject to a subsisting recommendation from a tribunal or body under the *Ministry Standards Ordinance 2017* (or from a comparable tribunal or body in any other diocese or church) that he or she be prohibited from holding office in bodies such as the Body Corporate, or
- (f) is employed by the Body Corporate (except in the case of the Chief Executive Officer) or any entity which, or a self-employed person who, provides services (for a fee) to the Body Corporate or is a partner or such an entity.

## **10. Duration of Office**

(1) At each ordinary session of the Synod, 2 Elected Members are to retire as Members. The Elected Members to retire under this subclause are those who have been longest in office since their last election or appointment. Where 2 or more Elected Members have been in office for the same period of time, and it is necessary to determine which of them is to retire, the person or persons to retire will be determined by agreement between the relevant Elected Members or, failing agreement, will be determined by lot.

(2) Each Member appointed by the Board or the Archbishop retires as a Member on the first to occur of:

- (a) expiration of their appointment as Member by the Board or the Archbishop (as the case may be); and
- (b) 3 years from the date they were last appointed as a Member by the Board or the Archbishop (as the case may be).

(3) If the Board has determined that the Chief Executive Officer is a Member, the Chief Executive Officer retires as a Member on the expiration of the period (if any) determined by the Board that the Chief Executive Officer shall be a Member.

(4) Subject to this ordinance a retiring Member is eligible for re-election, re-appointment, or re-determination (as the case may be).

(5) A person ceases to be a Member if the person –

- (a) is both the Chief Executive Officer, and a Board Member, and either the Board revokes their appointment pursuant to clause 22(1) or they cease to be the Chief Executive Officer,
- (b) dies,
- (c) resigns as a Member by written notice addressed to the Chair and, in such a case, unless the notice specifies a later date, the resignation is effective when the Chair receives the notice,
- (d) ceases to be suitable to be involved in the provision of aged care as key personnel under the *Aged Care Act 1997* (Cth) or is the subject of a banning order made by the Aged Care Quality and Safety Commissioner,
- (e) is disqualified from managing corporations within the meaning of the *Corporations Act 2001* (Cth),

- (f) has been suspended or removed by the Commissioner of the Australian Charities and Not-For-Profits Commission, at any time during the preceding 12 months, from being a responsible entity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth),
- (g) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health or who is otherwise incapable of acting,
- (h) is subject to a subsisting recommendation from a tribunal or body under the *Ministry Standards Ordinance 2017* (or from a comparable tribunal or body in any other diocese or church) that they be prohibited from holding office or should be removed from office as a Member,
- (i) is absent without leave for 3 consecutive meetings of the Board and the Board resolves that the person's membership should cease,
- (j) fails to sign any statement or declaration required under clause 8(4) or declares that they are no longer able to subscribe to the applicable statement or declaration,
- (k) is in breach of clause 12(1) or 13(1) and the Board resolves by at least three-quarters of its Members that the person should cease to be a Member,
- (l) being an Elected Member, has their membership ended by resolution of the Synod or Standing Committee,
- (m) being an Archbishop appointed Member, has their appointment revoked by the Archbishop, or
- (n) being a Board appointed Member, has their appointment revoked by the Board.

(6) If the Members collectively fail to satisfy the requirements of clause 8(2), then any or all of the Standing Committee, the Archbishop, and the Board must (as the case may be and to the extent required) exercise their respective powers under paragraphs (l), (m) and (n) above and clause 11 to ensure the requirements of clause 8(2) are satisfied. The exercise of those powers in such circumstances does not imply any criticism or failure by the Member(s) whose appointment is revoked.

(7) Except in the case of the Chief Executive where the Chief Executive Officer is a Member, a Member ceases to be a Member at the end of 12 consecutive years of their service as a Member. For the purpose of this subclause, years are consecutive unless they are broken by a period of at least 3 years.

#### **11. Casual Vacancies**

(1) A vacancy among the Elected Members may be filled by the Standing Committee. The person so appointed holds office for the balance of the term of the Member whose place that person has taken.

(2) For the purposes of subclause 11(1) only, the person appointed to fill the vacancy of an Elected Member is taken to have been elected to office at the time the Member whose place that person has taken was last elected, or taken to have been last elected, to office.

#### **12. Duties of Members**

(1) Each Member must –

- (a) exercise their powers and discharge their duties so that the Body Corporate undertakes works that are consistent with clause 5 and the doctrine of the Diocese,
- (b) act in good faith,
- (c) act honestly and fairly in the best interests of the Body Corporate and to further the objects of the Body Corporate,
- (d) in performing their functions, exercise the care and diligence that a reasonable individual would exercise as a Member,
- (e) not use their position as a Member for an improper purpose or in a manner which is inconsistent with the objects of the Body Corporate,
- (f) maintain any confidentiality of information obtained in the performance of their duties as a Member, and not use such information for an improper purpose or in a manner which is inconsistent with the objects of the Body Corporate,
- (g) must exercise their powers and discharge their duties so that the financial affairs of

- the Body Corporate are managed in a responsible manner,
- (h) not allow the Body Corporate to operate otherwise than as a not-for-profit entity,
  - (i) not allow the Body Corporate to operate while insolvent, and
  - (j) comply with any codes of conduct, charter, policy or similar requirement adopted by the Board which are applicable to them.
- (2) A Member is taken to act in good faith in the best interest of the Body Corporate and to further the purposes described in subclause 12(1)(a) if –
- (a) the Member acts in good faith in allowing the Body Corporate to undertake works that are consistent with clause 5 and the doctrine of the Diocese; and
  - (b) the Body Corporate is not insolvent at the time the Member acts and does not become insolvent because of the Member's act.

## **Part 5 – The Board**

### **13. Material Conflict of Interest**

- (1) Unless subclause 13(2) provides otherwise, a Member who has a material personal interest in a matter that relates to the affairs of the Body Corporate must give the Board notice of the interest (which notice may be a standing notice). A notice required by this sub-clause must give details of the nature and extent of the interest, the relation of that interest to the affairs of the Body Corporate and be given at a Board meeting as soon as practicable after the Member becomes aware of their interest in the matter.
- (2) An interest is not a material interest for the purposes of subclause 13(1) if, amongst other things, that interest arises in relation to payment pursuant to subclause 23(a) or (b), an indemnity or a contract of insurance pursuant to clause 26 or is in a contract for the benefit of, or on behalf of, a related body corporate of the Body Corporate and arises only because the Member is a director of that related body corporate.
- (3) A Member who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting on the matter or vote on the matter unless subclause 13(2) or subclause 13(4) applies.
- (4) A Member may be present and not vote, or be present and vote, if Members who do not have a material personal interest in the matter have passed a resolution that identifies the Member, the nature and extent of the Member's interests and its relation to the affairs of the Body Corporate and states that those Members are satisfied that the interest should not disqualify the Member from being present and not voting or being present and voting (as the case may be).
- (5) The obligations under this clause have effect in addition to, and not in derogation of any general law about conflicts of interest.
- (6) A contravention by a Member of this clause does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (7) The Body Corporate must maintain records of conflicts of interest disclosed by a Member.

### **14. General**

- (1) The management and control of the Body Corporate is vested in the Board.
- (2) The Board has power to carry out the objects of the Body Corporate subject to this ordinance and to all applicable laws but otherwise as it considers fit.
- (3) Subject to this ordinance, the Board may regulate its affairs as it thinks fit and has the power to delegate the performance of any of its functions to one or more committees (other than approving the affixing of the common seal of the Board) provided any such committee is chaired by a Member and reports the exercise of its delegated functions as soon as practicable to a subsequent Board meeting.
- (4) The provisions of this ordinance in relation to the duties of Members, and the conduct of Board meetings, apply to the Members and meetings of the committees of the Board in the same way as they apply to Members and meetings of the Board with any necessary changes.

## **15. Role of the Archbishop**

- (1) The Archbishop is the Visitor of the Body Corporate and entitled to exercise the responsibilities, rights and duties of a visitor established by law.
- (2) The Archbishop has the right to attend meetings and –
  - (a) address the Board on any pastoral or policy issue concerning the Anglican Church of Australia as it applies to the Body Corporate including the appointment of the Chief Executive Officer.
  - (b) confidentially receive papers for meetings of the Board at his request, and
  - (c) visit and inspect the premises and/or ministries of the Body Corporate to ensure that its charitable purpose(s) are being pursued in accordance with this ordinance.
- (3) The Archbishop is not a Member of the Board, and so is not entitled to vote on any question or proposal being considered by the Board.

## **16. Chair**

- (1) The Members of the Board are to appoint one of their number to be Chair of the Board for the term which ends on the first to occur of –
  - (a) the date (if any) specified in the resolution of appointment, and
  - (b) the third anniversary of the appointment, and
  - (c) the end of the ninth consecutive year in office of the Chair, and
  - (d) the date on which the appointment is revoked by resolution of the Board.
- (2) A Member who ceases to be Chair because of the occurrence of either of the events referred to in subclauses (1)(a) or (b) is eligible for re-appointment to that office.
- (3) A person cannot be the Chair of the Board if a member of the person's immediate family is employed by the Body Corporate, unless the Board has considered the circumstances and unanimously agreed to it by secret ballot.
- (4) The Chief Executive Officer cannot be the Chair of the Board.

## **17. Chair's Vote**

The Chair has a deliberative vote but does not have a casting vote.

## **18. Quorum**

At meetings of the Board, half of all Members (rounded up to the nearest whole number) must be present to constitute a quorum.

## **19. Meetings**

- (1) A meeting of the Board may be convened by –
  - (a) the Archbishop;
  - (b) the Chair; or
  - (c) any 3 Members.
- (2) The Board must meet at least once in each Quarter.
- (3) The Board may act even if there are vacancies on the Board.
- (4) A Board meeting may be held by the Members communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Members need not all be physically present in the same place for a Board meeting to be held. A Member who participates in a meeting held in accordance with this subclause is taken to be present and entitled to vote at the meeting.
- (5) The Body Corporate must cause minutes to be made of:
  - (a) the names of the persons present at all Board meetings and meetings of all committees of the Board,
  - (b) all disclosures of material conflicts of interest in accordance with clause 13, and
  - (c) all resolutions made by the Board and all committees of the Board.
- (6) Minutes must be signed by the chair of the meeting or by the chair of a subsequent meeting of the relevant body following an agreed resolution to do so. If so, the signed minutes are



conclusive evidence of the matters as between the members of the relevant body stated in such minutes.

(7) All acts done at a Board meeting, or by a person acting as a Member are, even if it is afterwards discovered that:

- (a) there was a defect in the election, appointment or reappointment (including ineligibility pursuant to clause 9) or continuance in office of a person as a Member; or
- (b) a Member was disqualified or was not entitled to vote,

as valid as if that person had been duly elected, appointed or reappointed or had duly continued in office and was qualified and entitled to vote.

## **20. Board Resolutions without a Meeting**

(1) The Board may pass resolutions without a meeting if –

- (a) a copy of the proposed resolution is sent to all Members and a reasonable timeframe within which Members may indicate their support for or objection to the proposed resolution being passed is specified, and
- (b) at least 75% of Members (excluding any Member who, at the time the proposed resolution is sent, is on leave of absence formally approved by the Board) 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.

(2) A resolution in the terms of the proposed resolution that was sent to Members is taken to have been passed at a Board meeting held on the day that subclause (1) is complied with.

(3) The minutes of Board meetings must record that a resolution was passed in accordance with this clause.

## **21. Common Seal**

(1) The common seal of the Body Corporate is not to be affixed to a document except with the authority of a resolution of the Members.

(2) The affixing of the common seal is to be signed by two Members.

## **Part 6 – Chief Executive Officer**

### **22. Chief Executive Officer**

(1) The Board may appoint a Chief Executive Officer of the Body Corporate (who is to report directly to the Board) for such period, for such remuneration and on such terms as the Board may resolve and, subject to those terms and the law, the Board may revoke such appointment.

(2) Before being appointed as Chief Executive Officer,

- (a) a person must:
  - (i) sign (and deliver to the Chair) any statement(s) and declaration(s) set out in the Diocesan Governance Policy,
  - (ii) be of Christian faith and character, regularly attend and be actively involved in a Bible-based church, and
  - (iii) satisfy all other requirements set out in the Diocesan Governance Policy as applicable to the Chief Executive Officer.
- (b) The Archbishop must be satisfied as to the matters described in subclause 22(2)(a)(ii) above and that the person is committed to pursuing the purposes of the Body Corporate in a manner which is consistent with the doctrine of the Diocese.

(3) The Chief Executive Officer is responsible to the Board for the leadership of the Body Corporate, for the implementation of the policies and decisions of the Board and for the general administration and daily operation of the Body Corporate.

(4) The Board may –

- (a) give the Chief Executive Officer powers, discretions and duties;
- (b) withdraw, suspend or vary any of the powers, discretions and duties given to the Chief Executive Officer; and

- (c) authorise the Chief Executive Officer to delegate any of the powers, discretions and duties given to the Chief Executive Officer.

(5) The Chief Executive Officer may, subject to any Board policy, employ such people as the Chief Executive Officer determines is necessary or desirable, for such period, for such remuneration and on such terms as the Chief Executive Officer may determine and, subject to those terms and the law, may terminate such employment.

(6) If the Chief Executive Officer is a Board member, then the Chief Executive Officer does not have a deliberative vote on Board matters related to their own remuneration or conditions.

(7) If the Chief Executive Officer is a Board member, then the Board may determine that the Chief Executive Officer should not be present for a particular meeting, or part of a meeting.

(8) If the Chief Executive Officer is not a Board member, then the Chief Executive Officer has the right to attend and speak at Board meetings unless the Board determines that the Chief Executive Officer should not be present for a particular meeting, or part of the meeting.

## **Part 7 – Income, Property and Liabilities**

### **23. Use of Income and Property**

The Body Corporate's income and property is to be applied solely towards the promotion of the Body Corporate's objects as set out in this ordinance. No part of the Body Corporate's income and property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Members. However, this clause does not prevent –

- (a) the payment in good faith on an arms' length basis of remuneration, bonus, or other emoluments (in each case not being a commission on or percentage of operating revenue) to the Chief Executive Officer or any other employee of the Body Corporate or to any other Member or other person in return for any services actually rendered to the Body Corporate;
- (b) the payment to a Member (other than the Chief Executive Officer) of:
  - (i) remuneration approved by the Board, within an overall limit for all Members (excluding the Chief Executive Officer) approved by Standing Committee and not being a commission on or percentage of operating revenue; or
  - (ii) out-of-pocket expenses incurred in carrying out the duties of a Member;
- (c) the payment to a Member for any service rendered to the Body Corporate in a professional or technical capacity where –
  - (i) the provision of that service has the prior approval of the Board; and
  - (ii) the amount payable is approved by the Board and is on reasonable commercial terms;
- (d) the payment to Members of interest on any money borrowed from such Members for the purpose of the Body Corporate at a rate not exceeding the lowest rate paid for the time being by the Body Corporate's principal bank in New South Wales in respect of term deposits of \$50,000 for six months; or
- (e) the payment to Members of reasonable market rent for premises leased by any Member to the Body Corporate.

### **24. Liabilities**

(1) The Body Corporate shall remain and continue to be solely responsible for all liabilities incurred by it or on its behalf.

(2) The Body Corporate and its Members and each of them shall not represent to any person or corporation that the Archbishop of Sydney or the Synod or any person or persons or any other corporate body or corporation holding church trust property for the Anglican Church of Australia in the Diocese of Sydney or any other corporate body constituted by or pursuant to the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW) shall or may meet or discharge all or any part of any liability or liabilities which have been or may or will be incurred wholly or partly by or on behalf of the Body Corporate.

(3) Any mortgage, charge, debenture or other negotiable instrument given by the Body Corporate over its property (other than a cheque drawn on a bank account held by the diocesan organisation) must limit the liability of the Body Corporate to the amount available to be paid in the event it is wound up.

(4) The Body Corporate must not offer its property as security for any liability other than a liability of the Body Corporate or a body controlled by the Body Corporate.

(5) The Body Corporate shall not execute or deliver any bill of exchange or other negotiable instrument other than a cheque drawn on the Body Corporate's bank account.

## **25. Gift Fund**

(1) The Body Corporate may maintain for the objects of the Body Corporate set out in clause 5 a management account (the **Gift Fund**):

- (a) to identify and record Gifts;
- (b) to identify and record Deductible Contributions;
- (c) to identify and record any money received by the Body Corporate because of such Gifts or Deductible Contributions; and
- (d) that does not identify or record any other money or property.

(2) The Body Corporate must use the Gift Fund only for the objects set out in clause 5.

(3) To avoid any doubt, it is declared that the Gift Fund forms part of the assets of the Body Corporate.

## **Part 8 – General**

### **26. Indemnity**

(1) To the extent permitted by law, the Body Corporate must 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 that Body Corporate or a related body corporate) 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 such proceedings, in which the court grants relief to that person under the *Corporations Act 2001* (Cth).

(2) The Body Corporate need not indemnify a person under subclause (1) for a liability to the extent that the person is entitled to an indemnity for that liability under a contract of insurance.

(3) To the extent permitted by law, the Body Corporate 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 Body Corporate; or
- (b) the improper use of information by the person, acquired by virtue of the person being, or having been, a Member to gain an advantage for that person or another person or to cause detriment to the Body Corporate; 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 Body Corporate.

(4) To the extent permitted by law, the Body Corporate 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.

### **27. Consulting on the delivery of welfare and support services**

The Board must consult with the Standing Committee at least annually in respect to the pursuit of its object under clause 5(b).

## 28. Reporting and compliance

The Board must –

- (a) provide to the Synod or the Standing Committee any information as to the affairs of the Body Corporate which it may be requested to provide by a resolution of the Synod or the Standing Committee respectively,
- (b) at least once in each year report to the Synod in respect to its proceedings and its pursuit of each of its objects,
- (c) exercise their power and discharge their duties so the Body Corporate complies with all applicable ordinances and policies of the Synod (as amended from time to time) including the *Accounts, Audits and Annual Reports Ordinance 1995*, and
- (d) wherever practicable, exercise their powers and discharge their duties so that the applicable provisions of the Diocesan Governance Policy are adopted or implemented by the Body Corporate..

## 29. Discontinuance

(1) The property of the Body Corporate is church trust property within the meaning of the *Anglican Church of Australia Trust Property Act 1917 (NSW)* and therefore must not, as a matter of law, be distributed for the private benefit of individuals either during the operation of the Body Corporate or on its winding-up or dissolution.

(2) In this clause –

“Community Housing Providers National Law (NSW)” has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012 (NSW)*.

“Community housing asset” means –

- (a) land vested in the Body Corporate by or under the NSW community housing legislation, or
- (b) land acquired by the Body Corporate wholly or partly with funding provided by the Housing Agency, or
- (c) land vested in the Body Corporate on which the Housing Agency has constructed housing or made other improvements, or
- (d) funds provided to the Body Corporate by the Housing Agency for the purposes of community housing, or
- (e) any other asset of the Body Corporate that is of a class of assets declared by the NSW community housing legislation as community housing assets for the purposes of the *Community Housing Providers National Law 2012 (NSW)*.

or, if different, the meaning given to “community housing asset” in the *Community Housing Providers National Law 2012 (NSW)*.

“Housing Agency” has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012 (NSW)*.

“Registered community housing provider” has the same meaning as in the *Community Housing Providers National Law 2012 (NSW)*.

(3) Where the Body Corporate has been endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Cth)*, and maintains a Gift Fund, then, where:

- (a) the Body Corporate is wound up; or
- (b) the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Cth)* is revoked;

any surplus assets of the Gift Fund remaining after the satisfaction of (or provision for) all debts and other liabilities relating to the Gift Fund must be transferred to some institution or institutions selected by the Synod and –

- (c) whose objects are charitable;
- (d) which are not-for-profit entities, and which prohibit the distribution of income and property among its or their members (if they have members) to an extent at least as great as is imposed on the Body Corporate under clause 23; and
- (e) are deductible gift recipients.

(4) Where the Body Corporate has been endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth), and does not maintain a Gift Fund, then, where:

- (a) the Body Corporate is wound up; or
- (b) the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth) is revoked;

any surplus:

- (c) Gifts;
- (d) Deductible Contributions; and
- (e) money received by the Body Corporate because of such Gifts or Deductible Contributions,

remaining after the satisfaction of (or provision for) all debts and other liabilities must be transferred to some institution or institutions selected by the Synod and –

- (f) whose objects are charitable;
- (g) which are not-for-profit entities, and which prohibit the distribution of income and property among its or their members (if they have members) to an extent at least as great as is imposed on the Body Corporate under clause 23; and
- (h) are deductible gift recipients.

(5) If the Body Corporate is wound up or dissolved –

- (a) any community housing asset must be transferred to another registered community housing provider in New South Wales or to the Housing Agency;
- (b) if after:
  - (i) compliance with the transfer obligations under clause 29(3), 29(4), and 29(5)(a); and
  - (ii) the satisfaction of (or provision for) all the Body Corporate's debts and other liabilities,

there remains any surplus property, such property must not be distributed among the Members but must be given to some other institution or institutions selected by the Synod and –

- (iii) whose objects are charitable; and
- (iv) which are not-for-profit entities, and which prohibit the distribution of income and property among its or their members (if they have members) to an extent at least as great as is imposed on the Body Corporate under clause 23.

(6) Such institution or institutions, and the shares or proportions are to be determined by the Synod at or before the time of dissolution and, in default, by the Supreme Court of New South Wales or any other Court as may have or acquire jurisdiction in the matter.

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## Notes

1. By Order published in the Government Gazette on 21 September 1962 under the Anglican Church of Australia (Bodies Corporate) Act 1938, the board was incorporated under the name "Board of the Sydney Church of England Homes for Aged Persons". The name of the body corporate was changed to "Church of England Retirement Villages Diocese of Sydney" by clause 4 of Ordinance No 15, 1966 and further changed to "Anglican Retirement Villages Diocese of Sydney" by Ordinance No 31, 1979.
2. The amendments made by Ordinance No 10, 2016 commence on the date determined by the Archbishop in accordance with the requirements in clause 7 of the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016. On 30 June 2016 the Archbishop determined 1 July 2016 to be the Commencement Date.
3. At its meeting of 30 May 2016, the Standing Committee resolved as follows –  
'Standing Committee, in order to implement the merger of the Sydney

Anglican Home Mission Society Council (“Anglicare”) with Anglican Retirement Villages Diocese of Sydney (“ARV”) approved in principle by resolution of the Synod on 27 April 2016 –

- (i) **declares** the office of trustee of the church trust property held by Anglicare (“the Property”) to be vacant, and
- (ii) **elects** ARV, renamed as Anglican Community Services, as trustee of the Property in place of Anglicare,

with such declaration and election to take effect from the Commencement Date determined under clause 10 of the *Sydney Anglican Home Mission Society Council (Merger with Anglican Retirement Villages Diocese of Sydney) Ordinance 2016* and clause 7 of the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016*.’

#### **Table of Amendments**

- 1) The *Anglican Community Services Constitution Ordinance 1961* was amended by a number of Ordinances prior to Ordinance No 33, 2024. These amending Ordinances are no longer relevant since Ordinance No 33, 2024 amended completely the terms of the 1961 Ordinance.

NAOMIE NGUYEN  
**Lawyer**

22 November 2024

BRIONY BOUNDS  
**Diocesan Secretary**