

Anglican Provident Fund Ordinance 1990 Amendment Ordinance 2003

Explanatory Statement

Introduction

1. The purpose of the proposed ordinance is –
 - (a) to amend the Anglican Provident Fund Ordinance 1990 (the “Principal Ordinance”) in order to comply with the requirements of the Australian Prudential Regulation Authority (“APRA”) and superannuation legislation and regulations, and
 - (b) to update the Principal Ordinance in other respects.
2. The Anglican Clergy Provident Fund Act 1908 requires that an amendment to the Principal Ordinance must be made by an ordinance of the Synod.
3. The Board of the Anglican Provident Fund (“APF”) has indicated there is a degree of urgency in Synod considering the amendments proposed in the ordinance in so far as they relate to complying with the requirements of APRA and superannuation legislation. The Board has therefore requested that the proposed ordinance be promoted to the next possible session of Synod.

APRA and superannuation legislation requirements

4. The amendments proposed to be made to the Principal Ordinance in order to deal with the requirements of APRA and superannuation legislation are as follows –
 - (a) A definition for “Superannuation Authority” has been inserted (clause 2(1)). Although this term is similar to the existing term “Responsible Authority”, the Board considers it necessary to include the term Superannuation Authority primarily because it expands to some extent on the definition of Responsible Authority by referring to “any person or body”. This removes any doubt that a Commonwealth Government authority exercising the requisite powers comes within the definition. The term is used in the proposed definition for Superannuation Law and also in the proposed clause 52.
 - (b) A definition of “Superannuation Law” has been inserted (clause 2(1)). Although this term is similar to the existing term “The Act”, the Board considers it necessary to include the term Superannuation Law in order to comply with APRA requirements. In particular the inclusion of the words “in order to be a complying superannuation fund” at the end of the definition are intended to add greater clarity in terms of the legislation with which the Board must comply.
 - (c) The sole or primary purpose of APF, namely to provide old age pensions for members in accordance with the Principal Ordinance, has been made explicit (clause 2(5)).
 - (d) The payment of a benefit to or on behalf of a member under the Principal Ordinance has been made subject to a general requirement that such a benefit is only payable where permitted by Superannuation Law (clause 2(6)).
 - (e) The existing power of forfeiture of members’ benefits in certain circumstances under clause 46 has been removed. This power is contrary to the Superannuation Industry (Supervision) Act and regulations made under that Act since any such forfeiture is void under that legislation.
 - (f) The Board considers it essential to add a new clause 52 which provides that the provisions of the Superannuation Law are deemed to be incorporated in the Principal Ordinance whether or not particular provisions of the Superannuation Law are specifically set out in the Principal Ordinance.
 - (g) A new clause 53 has been inserted which provides that the Board must disregard any provision of the Principal Ordinance which requires it to act on the direction of any other person or which allows any other person to give a direction to the Board to the extent that such direction or requirement breaches the Superannuation Law.

Other amendments

5. Further amendments to update the Principal Ordinance are as follows –

- (a) A definition of “Body Corporate” has been inserted which refers to the body corporate constituted pursuant to the Anglican Clergy Provident Fund Act 1908 and the Anglican Clergy Provident Fund (Sydney) (Amendment) Act 1941 known as Anglican Provident Fund (clause 2(1)).
- (b) A definition of “Declared Interest Rate” has been inserted which replaces a previous definition known as “Fund Earning Rate” (clause 2(1)). The Fund Earning Rate refers to the actual operation or performance of the Fund. The Declared Interest Rate is defined as the rate determined by the Board in accordance with clause 19. Consequential amendments have been made to clause 19.
- (c) A definition of “Dependant” has been inserted (clause 2(1)). There was previously no definition of Dependant in the Principal Ordinance.
- (d) A definition of “Electorate” has been inserted (clause 2(1)). This defines the entitlement of a diocese within the Anglican Church of Australia other than the Diocese of Sydney to appoint 2 nominees as representatives to the Board in certain circumstances.
- (e) The primary obligation of the Board, namely the management of real and personal property held by the Body Corporate as trustee, has been made explicit (clause 4(1)).
- (f) A provision preventing a person of or above the age of 72 years being elected or appointed to or acting as a member of the Board has been included (clause 4(2)).
- (g) Clause 9 has been amended to provide that a former director is eligible for reappointment without necessarily considering the circumstances as to how he or she became a former director.
- (h) Clause 11(e) has been amended to provide that an office of director becomes vacant if the director is absent for 2 consecutive ordinary meetings without leave. This provision has been inserted because Board meetings usually only take place every 3 months.
- (i) Clause 12 has been amended to provide further detail regarding the regulation of meetings of the directors. Clause 14 has been deleted since its provisions are incorporated into the amended clause 12.
- (j) A new clause 16B sets out the basic functions of the Body Corporate. The Body Corporate must act as trustee and manager of APF and may act as trustee and/or manager of any other superannuation of provident fund.
- (k) The general powers of the Body Corporate in clause 17 have been amended. In particular, provision is made for the appointment of any person or corporation as investment manager of APF or any other superannuation or provident fund in respect of which the Body Corporate is acting as trustee and/or manager (clause 17(2)(g)). The provisions in relation to insurance have been modified (clause 17(2)(i)). Further the general powers clause has been amended so that the Board is now empowered and directed to exercise its duties in accordance with the requirements of the Superannuation Law (clause 17(2)(j)).
- (l) Clauses 35 and 36 have been deleted so that any reference to suspension of annuities in various circumstances no longer applies.

Recommendation

6. The Standing Committee recommends that Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

ROBERT WICKS

Legal Officer

9 October 2003