

Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2015

No 37, 2015

Long Title

An Ordinance to amend the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961.

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

1. Name

This Ordinance is the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2015.

2. Amendment

The Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 (the "Principal Ordinance") is amended by the substitution of the Long Title, clauses 1 to 25 and the Schedule in the Schedule to this Ordinance for the Long Title, clauses 1 to 23 and the Schedule of the Principal Ordinance.

3. Transitional Provision

(1) Subject to sub-clause (2), all Members who were elected or appointed pursuant to clause 6(1)(a) and (b) of the Principal Ordinance and are Members immediately before the commencement of this Ordinance are taken to have been elected or appointed as the Members under the Principal Ordinance as amended by this Ordinance.

(2) For the purposes of clause 10 of the Principal Ordinance, as amended by this Ordinance, dealing with Duration of Office, the following persons are taken to have been elected or appointed as Members of the Body Corporate on the following dates –

Name	First Appointed/Elected	Last Appointed/Elected
Ian Steward	17 April 2008	October 2014
Anita Barnett	16 December 2005	October 2014
Amanda Robertson	8 August 2006	October 2015
Terry Dein	22 December 2005	October 2015
Laura Elder	25 June 2013	October 2013
Stephen Buckley	16 March 2015	16 March 2015
Sheelagh Scott	6 March 2012	6 March 2012
Christopher Edwards	29 May 2014	29 May 2014

(3) The Chief Executive Officer of the Body Corporate immediately before the commencement of this Ordinance continues in that role but ceases to be a Member of the Body Corporate.

Schedule

Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961

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An ordinance to provide a constitution for Anglican Retirement Villages Diocese of Sydney.

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.

"Board" means the Members acting collectively as the governors of the Body Corporate and in this role known as directors.

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“Body Corporate” means Anglican Retirement Villages Diocese of Sydney.

“Chairman”, at any time, means the person who, at that time, is acting as chairman of the Board.

“Clause” means a clause of this ordinance.

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

“Elected Member” means –

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

“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.

“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 Retirement Villages Diocese of Sydney Constitution Ordinance 1961.

Part 2 – Objects

5. Objects

The objects of the Body Corporate are to provide, in a Christian environment, for the housing, accommodation, maintenance and welfare of older men and women, irrespective of creed, and in special circumstances for the maintenance and welfare of younger people with disabilities, with preference being given, so far as is practicable, to people in Australia who are in necessitous circumstances and to bring all such persons under the pastoral care of the Anglican Church of Australia.

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 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) The Members are –
 - (a) 6 persons elected by the Synod, and
 - (b) up to 3 persons appointed by the Archbishop, and
 - (c) up to 2 persons appointed by the Board.

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(2) Every Member must, upon being elected or appointed, sign the declaration specified in the Schedule and deliver it to the Chairman of the Board within 4 weeks of the date of that person's election or appointment.

9. Ineligibility

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

- (a) is the Chief Executive Officer, or
- (b) is a disqualified individual under the *Aged Care Act 1997*, or
- (c) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*, or
- (d) 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*, or
- (e) is an insolvent under administration, or
- (f) 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
- (g) has been convicted of an offence punishable by imprisonment for 12 months or longer, or
- (h) is subject to a recommendation from a tribunal or body under the Discipline Ordinance 2006 (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.

10. Duration of Office

(1) At each ordinary session of the Synod, 2 of the Elected Members are to retire. Subject to this ordinance, a retiring Member –

- (a) is eligible for re-election, and
- (b) remains a Member until their successor is elected.

(2) The Elected Members to retire are those who have been longest in office since their last election. Where 2 or more 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 Members or, failing agreement, will be determined by lot.

(3) Subject to this ordinance, the term of office of those Members appointed by the Archbishop or by the Board is to be not more than 3 years but they are eligible for re-appointment.

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

- (a) is appointed as the Chief Executive Officer, or
- (b) dies, or
- (c) resigns as a Member by written notice addressed to the Chairman and, in such a case, unless the notice specifies a later date, the resignation is effective when the Chairman receives the notice, or
- (d) becomes a disqualified individual under the *Aged Care Act 1997*, or
- (e) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*, or
- (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*, or
- (g) becomes an insolvent under administration, or
- (h) 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, or

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- (i) is convicted of an offence punishable by imprisonment for 12 months or longer, or
- (j) is subject to a recommendation from a tribunal or body under the Discipline Ordinance 2006 (or from a comparable tribunal or body in any other diocese or church) that he or she be prohibited from holding office or should be removed from office as a Member,
- (k) is absent without leave for 3 consecutive meetings of the Board and the Board resolves that the person's membership should cease, or
- (l) fails to sign the declaration required under clause 8(2) or declares that he or she is no longer able to subscribe to the applicable declaration, or
- (m) is in breach of clause 19(1) and the Board resolves by at least three-quarters of its Members that the person should cease to be a Member, or
- (n) being a Synod elected Member, has their membership ended by resolution of the Synod, or
- (o) being an Archbishop appointed member, has their appointment revoked by the Archbishop, or
- (p) being a Board appointed Member, has their appointment revoked by the Board.

(5) A Member ceases to be a Member at the end of 14 consecutive years of service as a Member. For the purpose of this subclause, years are consecutive unless they are broken by a period of at least 12 months.

11. Casual Vacancies

(1) A vacancy among the Elected Members may be filled by the Synod. 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 clause 10(2) only, the person appointed to fill the vacancy 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.

Part 5 – The Board

12. 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.

13. President

- (1) The Archbishop is the President of the Body Corporate.
- (2) The President may attend any meeting of the Board and may –
 - (a) receive board papers, and
 - (b) 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.
- (3) The President is not a Member of the Board, and so is not entitled to vote on any question or proposal being considered by the Board.

14. Chairman

- (1) The Members of the Board are to appoint one of their number to be Chairman 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 Chairman, and
 - (d) the date on which the appointment is revoked by resolution of the Board.

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(2) A Member who ceases to be Chairman 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.

15. Chairman's Vote

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

16. Quorum

At meetings of the Board, 5 Members present constitute a quorum.

17. Meetings

(1) A meeting of the Board may be convened by –

- (a) the Archbishop;
- (b) the Chairman; 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.

18. 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) or 5 Members (whichever is greater) 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.

19. Material Conflict of Interest

(1) A Member who has a perceived or actual material conflict of interest in a matter that is to be considered by the Board –

- (a) must disclose that interest to the Board before it is considered by the Board;
- (b) must not vote on the matter or be present while the matter is being considered by the Board; and
- (c) must not be counted in a quorum in relation to that matter.

(2) Subclause (1) does not apply to an interest that the Member has as a Member in common with the other Members.

(3) Without limiting the situations in which a Member could have a material conflict of interest, a Member has a material conflict of interest in any transaction or proposed transaction under which the Body Corporate provides or could provide a material financial benefit to the Member or to a related person (being the Member's spouse, children, grandchildren, parents, siblings or spouse of any of them) or to any entity in which the Member or a related person has an interest.

(4) The obligations under this clause do not limit in any way the obligations on Members under the law.

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(5) A contravention by a Member of this clause does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

Part 6 – Chief Executive Officer

20. 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, may revoke such appointment.

(2) Before being appointed as Chief Executive Officer, a person must sign the declaration specified in the Schedule and deliver it to the Chairman of the Board;

(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, within Board policy, employ such people as he or she deems necessary, 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.

Part 7 – Income, Property and Liabilities

21. 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 of remuneration to any employee of the Body Corporate or to any Member or other person in return for any services actually rendered to the Body Corporate;
- (b) the payment to a Member of 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 a Member as an employee of the Body Corporate where the terms of employment have been approved by the Board;
- (e) 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;
- (f) the payment to Members of reasonable market rent for premises leased by any Member to the Body Corporate.

22. Liabilities

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

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(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 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.

Part 8 – General

23. 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 Law.

(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.

24. Reporting

The Board shall furnish to the Synod any information as to the affairs of the Body Corporate which it may be requested so to do in pursuance of a resolution of Synod and must at least once in each year report its proceedings to the Synod and must comply with the Accounts, Audits and Annual Reports Ordinance 1995.

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25. Discontinuance

(1) 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 (NSW).

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

(2) If the Body Corporate’s endorsement as a deductible gift recipient is revoked –

- (a) any gifts of money or property for the Body Corporate’s objects;
- (b) any contributions made in relation to an eligible fundraising event held for the Body Corporate’s objects; or
- (c) any money received by the Body Corporate because of such gifts and contributions, must first be used to pay all debts and liabilities of the Body Corporate. Any balance then remaining must be given to some institution or institutions selected by the Synod and –
 - (d) whose objects are in the opinion of the Synod the same or similar to the objects of the Body Corporate; and
 - (e) which is endorsed as a deductible gift recipient under Subdivision 30-B and 30-BA of the *Income Tax Assessment Act 1997*.

(3) 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 any transfer required by the previous paragraph and after payment of all the Body Corporate’s debts and liabilities, there remains any surplus property, such property must not be distributed among the Members but must be given to some institution or institutions selected by the Synod, provided such other institution or institutions –
 - (i) have objects similar to the Body Corporate’s objects; and
 - (ii) prohibit the distribution of income and property among its or their members to an extent at least as great as is imposed on the Body Corporate under clause 21; and
 - (iii) are endorsed as deductible gift recipients under Subdivision 30-B and 30-BA of the *Income Tax Assessment Act 1997*.

(4) Such institution or institutions 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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Schedule

Declaration

1. I believe and hold to the truth of the Christian faith as set forth in the Nicene Creed, as well as the Apostles' Creed as set out below –

I believe in God, the Father Almighty,
maker of heaven and earth;
and in Jesus Christ, his only Son our Lord,
who was conceived of the Holy Spirit,
born of the virgin Mary, suffered under Pontius Pilate,
was crucified, dead and buried.
He descended into hell.
The third day he rose again from the dead.
He ascended into heaven,
and is seated at the right hand of God the Father almighty;
from there he shall come to judge the living and the dead.
I believe in the Holy Spirit;
the holy catholic church;
the communion of saints;
the forgiveness of sins;
the resurrection of the body,
and the life everlasting.

2. In particular I believe –

- (a) that God's word written, the canonical Scriptures of the Old and New Testaments, is the supreme authority in all matters of faith and conduct;
- (b) there is only one way to be reconciled to God which is through his Son, Jesus Christ, who died for our sins and was raised for our justification; and
- (c) that we are justified before God by faith only.

3. I shall endeavour to fulfil my duties as a Member / the Chief Executive Officer of Anglican Retirement Villages Diocese of Sydney in accordance with its Christian ethos and its constituting ordinance.

4. I agree that my continuance as a Member / the Chief Executive Officer of Anglican Retirement Villages Diocese of Sydney is dependent upon my continuing agreement with this statement and I undertake to resign if this ceases to be the case.

Signed : _____

Date : _____

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

R TONG
Chair of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 16 November 2015.

R WICKS
Secretary

I Assent to this Ordinance.

GN DAVIES
Archbishop of Sydney
18/11/2015