



Anglican Retirement Villages Diocese of Sydney 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 Amending Ordinance 1993, the Accounts, Audits and Annual Reports Ordinance 1995, the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 1996, the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amending Ordinance 1997, the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 1999, the Diocesan Officers (Retirement) Repeal Ordinance 2001 and the Anglican Retirement Villages Diocese of Sydney Constitution Amendment Ordinance 2002.

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Long Title

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

Now the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod Hereby Ordains Declares Directs and Rules 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.

"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.

"Elected Member" means -

(a) a person elected to be a Member by the Synod under paragraph 6(1)(a), and

(b) a person appointed to be a Member under clause 9.

"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.

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. Citation

This ordinance may be cited as "Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961".

Part 2 - Constitution

5. Constitution

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

Part 3 - Members

6. Membership

(1) The Members are -

(a) 6 persons elected by the Synod, and

(b) 3 persons appointed by the Archbishop, and

(c) the person who is the Chief Executive Officer of the Body Corporate if that person is elected to be a Member by the Standing Committee at the request of the Board.

(2) Every person who is elected or appointed to the Board must, upon being elected or appointed and before becoming a member of the Board, sign the declaration specified in the Schedule and deliver the same to the secretary of the Board within 4 weeks of the date of that person's election or appointment. If a person fails to sign and deliver the declaration as required by this subclause the person will be deemed not to have been elected or appointed. A person may not be appointed chief executive officer of the Body Corporate unless that person has signed the declaration specified in the Schedule and has delivered the declaration to the secretary of the Board.

7. Disqualification

A person may not be elected or appointed if that person is a person described in subclause 8(4).

8. 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) remains a Member until their successor is appointed, and

(b) is eligible for re-election.

(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) The Archbishop, by notice given to the Body Corporate at its principal office, at any time from time to time, may -

(a) appoint 1, 2 or 3 persons to be Members, and

(b) revoke such appointment of a person as a Member.

A person so appointed is a Member, subject to subclause 8(4), until the appointment is revoked.

(4) A person ceases to be a Member if -

(a) they die, or

(b) they resign as a Member by written notice addressed to the Chairman and, in such a case, unless the writing specifies a later date, the resignation is effective when the Chairman receives the notice, or

(c) they become an insolvent under administration, or

(d) they become an incapable person, a patient, a protected person or a voluntary patient under any statute relating to mental health, or

(e) they are convicted of a crime or an offence punishable by imprisonment for more than 12 months.

(5) A Member (other than the Chief Executive Officer of the Body Corporate) ceases to be a Member at the end of 12 years of continuous service as a Member. For the purpose of this subclause, any 2 terms of continuous service as a Member will be taken to be one term of continuous service if the time between the end of the first term of continuous service and the commencement of the second term of continuous service is less than 3 years.

(6) An Elected Member also ceases to be a member if -

(a) the Standing Committee so resolves, or

(b) the Member, for a continuous period of 6 months, is absent without leave of the Board from all meetings of the Board held during that period.

9. Casual Vacancies

The 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 and, for the purposes of subclause 8(2), 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 4 - Proceedings

10. President

(1) The Archbishop is the President of the Body Corporate.

(2) The President may attend any meeting of the Board and may -

(a) put before the Members any question or proposal for their consideration, and

(b) express his views on any question or proposal being considered by the Members.

(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.

11. 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 1st anniversary of the appointment, and

(c) the date on which the appointment is revoked by resolution of the Board.

(2) A Member who ceases to be Chairman at the expiration of the term referred to in subclause 11(1) is eligible for re-appointment to that office.

12. Chairman's Vote

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

13. Quorum

At meetings of the Board, 4 Members present constitute a quorum.

14. Meetings

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

(a) the Archbishop;

(b) a person appointed to be Chairman pursuant to subclause 11(1); or

(c) any 3 Members.

(2) The Board must meet at least once in each Quarter.

(3) If the Board has appointed a secretary, the secretary must convene meetings of the Board as required by this clause.

15. General

Subject to this ordinance, the Board may regulate its affairs as it thinks fit.

Part 5 - Objects

16. 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 6 - Powers

17. 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.

18. Specific Powers

The Body Corporate has the following additional powers, authorities, duties and functions -

(a) to appoint the chief executive officer of the Board and to revoke that appointment at any time;

(b) to employ such other persons on such terms and conditions as it thinks fit;

(c) to manage and control all Property of the Body Corporate;

(d) to undertake any business incidental to any of the objects of the Body Corporate;

- (e) to cooperate with any organisation or other body corporate constituted by or at the instance of the Synod;
- (f) to act as trustee of any trust and to execute all the powers and discretions and perform all the duties of the trustee of any trust;
- (g) to sell, mortgage, lease, deal with or otherwise dispose of the whole or any part or parts of any Property of the Body Corporate;
- (h) to appoint or remove any person or corporation as investment manager of any funds of the Body Corporate or of any fund of which the Body Corporate is acting as trustee and manager or trustee or manager for such period or periods and subject to any such conditions as the Board may from time to time determine and delegate to and confer upon such investment manager such powers, discretions and authorities relating to the assets of the Board or any other funds of which the Board is acting as trustee and manager or trustee or manager as the Board thinks fit and to pay out of its assets or such other funds as it may think fit to any such investment manager such remuneration for his or its services as the Board considers proper;
- (j) to invest the moneys of the Body Corporate or any funds of which the Body Corporate is acting as trustee unless the Body Corporate is precluded from so doing by the trust deed or any other instrument which constitutes the Body Corporate as trustee of the fund in such manner as determined by the Board from time to time and, in addition, to investments authorised by the Investment of Church Trust Property Ordinance 1990, in -
 - (i) any investment authorised by the Trustee Act 1925 or any Act amending or replacing the same;
 - (ii) any debentures or securities issued by any city, municipality or shire council in Australia or in any foreign country;
 - (iii) deposits with a savings bank or trading bank authorised to carry on a banking business in Australia;
 - (iv) a charge or charges upon any land or future rent, profits and other income thereof;
 - (v) bills of exchange accepted or endorsed by a trading bank authorised to carry on a banking business in Australia;
 - (vi) a loan secured by letter of credit issued or confirmed by a trading bank authorised to carry on a banking business in Australia or secured by the guarantee of such bank;
 - (vii) the purchase of any Property;
 - (viii) constructing, repairing, altering and maintaining buildings and other improvements;
 - (ix) debentures of or preference or ordinary shares or stock in or notes (secured or unsecured) of any company or units in or notes of a trust where the company or trust is carrying on business in Australia or has a share or unit register in Australia or in any foreign country and options over the ordinary shares or stock of any company where the shares or stock are quoted on the recognised Australian Stock Exchange or on the recognised Stock Exchange in any foreign country provided that no such investments shall be made in any debentures, shares or stock of any company or units in or notes of a trust or any such options if the business, or one of the main businesses of the relevant company or trust is any of the following -
 - (A) the manufacture, sale or distribution of fermented or spiritous liquors, tobacco or of tobacco products or of gambling devices or armaments; or
 - (B) any other purpose or object specified by the Synod or the Standing Committee thereof as undesirable; and
 - (C) such other investments as may be determined from time to time by the resolution of the Standing Committee; and
 - (x) derivative instruments such as forwards, futures, options, warrants, swaps, share ratios but not limited to such investments, provided that such instruments are not used to gear the portfolio or create net short positions; and
 - (k) vary or realise any Property.

Part 7 - Limitation on Powers

19. Limitation as Regards Property

The Property of the Body Corporate must be applied solely for the objects of the Body Corporate and, failing that, must be applied in accordance with clause 23.

20. 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 of the Diocese of Sydney or the Standing Committee thereof 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) The Body Corporate shall not exercise any power to borrow moneys if the amount which it proposes to borrow, when added to the amount of all moneys borrowed by it prior thereto and not repaid prior thereto, exceeds one million dollars (\$1,000,000) or such other amount as may have been last approved by resolution of the Standing Committee. This subclause does not restrict the power of the Body Corporate to borrow moneys from any former, present or potential resident of a village operated by the Body Corporate. Further, in determining, for the purposes of this subclause, the amount of all moneys borrowed by the Body Corporate prior to any date and which have not been repaid prior thereto, regard shall not be had to moneys borrowed from such residents.

(4) The Body Corporate shall not execute or deliver and shall not have power to execute or deliver any mortgage, charge, debenture, guarantee, indemnity or promissory note unless the following clause is included herein -

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that Anglican Retirement Villages Diocese of Sydney shall not be liable to any other party hereto for any amount whatsoever whether by virtue of any express or implied obligation beyond such amount (if any) as Anglican Retirement Villages Diocese of Sydney may be able to pay to that party in the event of Anglican Retirement Villages Diocese of Sydney being wound up."

and such clause is not made subject to any qualification.

(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

21. 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.

22. Reporting

The Board shall furnish to the Synod or the Standing Committee of 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 or the Standing Committee 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.

23. Discontinuance

If the Body Corporate ceases to carry on the objects for which it was formed and constituted, the Property of the Body Corporate shall be sold and the proceeds (after complying with the Aged or Disabled Persons' Homes Act 1954, or other legislation under which retirement accommodation may be financed) used in carrying out some other charitable work of a public benevolent nature in assisting persons in the relief of distress, sickness, misfortune or poverty as shall meet the requirements of Section 78 of the Income Tax Assessment Act 1936.

Schedule

Declaration

1. I believe and hold the faith of the Christian Church and, in particular, as set forth in the creeds known as the Nicene Creed and the Apostles' Creed and the doctrine contained in the Thirty-nine Articles of Religion interpreted according to their plain and literal sense.

2. In particular I believe -

(a) that the canonical Scriptures of the Old and New Testaments are the ultimate rule and standard of faith given by inspiration of God and containing all things necessary to salvation; and

(b) that people are justified before God by faith only.

3. I shall endeavour to fulfil my duties as a member of the Board of Anglican Retirement Villages Diocese of Sydney ("Board") in accordance with this declaration and the ordinance by which the Board is constituted.

4. I undertake to resign from the Board forthwith if at any time I become unable conscientiously to subscribe to this declaration.

Signed : _____

Date : _____

Notes

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 of 1966 and further changed to "Anglican Retirement Villages Diocese of Sydney" by Ordinance No 31 of 1979.

Table of Amendments

Ordinance No 58 of 1993 amended completely the terms of the principal ordinance. This table only refers to amendments made by subsequent ordinances.

Clause 1	Amended by Ordinance No 31, 2002.
Clause 6	Amended by Ordinances Nos 8, 1996 and 31, 2002.
Clause 7	Amended by Ordinance No 31, 2002.
Clause 8	Amended by Ordinance No 59, 2001. New clause inserted by Ordinance No 31, 2002.
Clause 9	Amended by Ordinance No 31, 2002.
Clause 10	New clause inserted by Ordinance No 31, 2002.
Clause 11	New clause inserted by Ordinance No 31, 2002.
Clause 14	Amended by Ordinance No 31, 2002.
Clause 18	Amended by Ordinances Nos 2, 1997 and 31, 2002.
Clause 21	New clause inserted by Ordinance No 18, 1999.
Clause 22	Amended by Ordinance No 34, 1995.

ROBERT WICKS

Legal Officer

7 August 2002

MARK PAYNE

Diocesan Secretary