

The Archbishop of Sydney's Anglican Aid Ordinance 2011 Amendment Ordinance 2021

No 18, 2021

Long Title

An Ordinance to update the governance arrangements for the Archbishop of Sydney's Anglican Aid by amending *The Archbishop of Sydney's Anglican Aid Ordinance 2011*.

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

1. Name of ordinance

This Ordinance is The Archbishop of Sydney's Anglican Aid Ordinance 2011 Amendment Ordinance 2021.

2. Amendment

The Archbishop of Sydney's Anglican Aid Ordinance 2011 is amended as follows –

- (a) insert the following new definition in subclause 2(1) –
“Synod Governance Policy” means the Governance policy for Diocesan Organisations made by the Synod on 20 October 2014, as amended from time to time.’
- (b) in the definition of “Chief Executive Officer” in subclause 2(1) substitute the number 20 for the number 19, and
- (c) delete clauses 4 to 25 and the entirety of the Schedule and insert instead the matter in the Schedule of this ordinance.

Schedule

4. Object

(1) The object of Anglican Aid is to further the purposes of the Anglican Church of Australia in the Diocese of Sydney by proclaiming the love of God as shown in Christ in promoting and conducting activities of a social welfare, pastoral and charitable nature, to be executed by charitable and humanitarian work for the relief of poverty, sickness, suffering, distress, misfortune and helplessness.

(2) Anglican Aid is to fulfil its object by such means as it considers expedient including –

- (a) continuing its work of a public benevolent nature as the Archbishop of Sydney's Community Care and Development Program,
- (b) acting as trustee for the Archbishop of Sydney's Overseas Relief and Aid Fund,
- (c) acting as trustee for the Archbishop of Sydney's Overseas Ministry Fund, and
- (d) doing such other things as are incidental or conducive to the attainment of this object.

5. Powers

(1) Anglican Aid has power to do all things necessary and desirable to fulfil its object and, without limiting the generality of the foregoing, may –

- (a) acquire property by purchase, donation or otherwise,
- (b) act as trustee of a charitable fund,
- (c) use any money paid to or properly vested in Anglican Aid,
- (d) enter into contracts, employ persons and do all things that are necessary or incidental to fulfilling its object,
- (e) open and operate bank accounts and determine the persons by whom cheques and other banking documents shall be signed or endorsed,
- (f) raise or borrow money for the purposes of Anglican Aid provided that a resolution of Anglican Aid to borrow must be approved by resolution of the Standing Committee before action is taken upon it,
- (g) pay all costs charges and expenses of and incidental to the management, administration and control of the property of Anglican Aid, and

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(h) undertake any business incidental to any of the objects of Anglican Aid.

(2) Anglican Aid may delegate the exercise of any of its functions under subclause (1) to one or more committees provided any such committee is chaired by a member and reports the exercise of its delegated functions to the next meeting of Anglican Aid.

6. Investment Powers of Anglican Aid

(1) Anglican Aid may invest or use the whole or any part of the property and moneys held by it in any one or more of the following investments or purposes –

- (a) investments for the time being allowed by law in Australia for the investment of trust funds,
- (b) purchase within Australia of real or leasehold estate or land held pursuant to rights created by any statute of the Commonwealth of Australia or of any State or Territory thereof,
- (c) first mortgage of land situated within Australia,
- (d) funds, stocks, securities, bonds, debentures or treasury bills of or guaranteed by the Commonwealth of Australia or of any State thereof,
- (e) deposits with any authorised deposit-taking institution (except branches of foreign banks),
- (f) charge or charges upon any church lands within Australia or future rents profits or other income of such lands,
- (g) construction, repair and alteration of buildings and any other improvements on land of Anglican Aid,
- (h) shares, stocks, notes, options, debentures or other securities of any corporation whose shares or a class of whose shares are listed on a recognised Australian Stock Exchange and which does not carry on as its main or one of its main or principal businesses a business of a kind which is disapproved for investment purposes by resolution of the Synod or the Standing Committee,
- (i) units in any managed investment scheme –
 - (i) which is registered under the *Corporations Act 2001*, and
 - (ii) for which there is a disclosure document lodged with the Australian Securities and Investments Commission under the *Corporations Act 2001*,

except where the scheme conducts as its main business or one of its main businesses a business which the Synod or the Standing Committee has by resolution declared to be a disapproved business or the scheme mainly invests in the securities of a corporation or scheme which conducts such business as its main business or one of its main businesses,

- (j) placement on short call deposits with any corporation or organisation constituted by ordinance of the Synod or of the Standing Committee,
- (k) investment in any security authorised by an ordinance of the Synod or the Standing Committee as an investment for church property,
- (l) such business, commercial trading or other project venture activity or investment of which the Standing Committee may by resolution approve for the purpose of investment.

(2) Anglican Aid may from time to time realise or vary any of the investments made pursuant to this clause 6.

(3) Anglican Aid may retain any real or personal property the subject of any gift, devise or bequest to Anglican Aid in the same form and condition and invest it in the same manner as existed at the time such gift, devise or bequest was made or received and may, subject to the limitations contained in subclauses (1)(h) and (i), reinvest it in the same manner.

(4) Without limiting the generality of the foregoing powers, Anglican Aid may –

- (a) appoint any corporation to hold, on behalf of Anglican Aid, any property or moneys referred to in subclause (1) or investments made pursuant to the

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powers conferred on Anglican Aid by that clause and of which Anglican Aid is the trustee, and

- (b) appoint the same or any other corporation to manage and advise on the investment, realisation and reinvestment of all or any of such property or moneys, and
- (c) delegate to that corporation all or any one or more of the powers conferred upon Anglican Aid by subclause (1), and

any such appointment or appointments may be made on such terms and conditions at such remuneration as Anglican Aid may consider appropriate.

(5) Since the property of Anglican Aid is church trust property within the meaning of the Anglican Church of Australia Trust Property Act 1917, it must not as a matter of law be distributed for the private benefit of individuals, either during the operation of Anglican Aid or on its winding up.

7. Seal of Anglican Aid

The common seal of Anglican Aid is not to be affixed to any instrument except in accordance with a resolution of Anglican Aid. Every instrument to which the common seal is so affixed is to be signed by 2 members of Anglican Aid.

Part 3 – Governance of Anglican Aid

8. Anglican Aid governed by its members

Anglican Aid is governed by its members who may exercise all the powers of Anglican Aid for the purpose of fulfilling its object.

9. Membership

- (1) The members of Anglican Aid are –
 - (a) 3 persons appointed by the Archbishop, and
 - (b) 6 persons elected by the Synod.
- (2) At least two of the members are to be ordained clergy licensed in the Diocese of Sydney or are to be persons with at least a three year theological degree from Moore Theological College or another college that is endorsed by the Archbishop for the purposes of this clause.
- (3) Every member must, upon being elected or appointed as, or otherwise becoming, a member, sign the "Statement of Personal Faith" set out in the Synod Governance Policy and deliver it to the Chair of Anglican Aid within 28 days of the person's election or appointment. A person who fails to sign and deliver the declaration within this time is disqualified from being, and automatically ceases to be, a member.
- (4) A copy of the statement referred to in subclause (2) is to be retained by Anglican Aid in its records.

10. Duties and remuneration of Members

- (1) Members are subject to and must comply with the following duties –
 - (a) to exercise the powers and discharge the duties of Anglican Aid with the degree of care and diligence that a reasonable individual would exercise if they were a board member of a diocesan organisation, and
 - (b) to act in good faith in the best interests of Anglican Aid and to further the purposes of Anglican Aid, and
 - (c) not to misuse their position as a member, and
 - (d) not to misuse information obtained in their performance of their duties as a member, and
 - (e) to promptly disclose any actual material conflicts of interest and any circumstance which might reasonably be perceived as a conflict of interest, and
 - (f) to ensure that the financial affairs of Anglican Aid are managed in responsible manner, and

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(g) not to allow Anglican Aid to operate while insolvent.

(2) A Member who has an actual or perceived conflict of interest in a matter that relates to the affairs of Anglican Aid must disclose that interest to the Members and should not participate in any consideration of that matter by the Anglican Aid unless the Members, by resolution, note the interest and permit the member to participate.

(3) Members should not be remunerated for their service to Anglican Aid except by way of reimbursement for reasonable out-of-pocket expenses.

11. Terms of office of members

(1) On the first day of each ordinary session of the Synod, 2 members of Anglican Aid elected by the Synod are to retire.

(2) The members of Anglican Aid to retire under subclause (1) are those who have held office the longest since last being elected but, in the case of competition, is to be determined by the members concerned. If those members cannot agree, the order of retirement is to be determined by lot.

(3) A member of Anglican Aid appointed by the Archbishop under clause 9(1)(a) is to retire on the first day of the first ordinary session of the Synod which next follows the appointment provided that the Archbishop may revoke the appointment at any time before that day.

(4) A person is not eligible to be re-elected or re-appointed as a member such re-election or re-appointment would, in the ordinary course result in that person being a member for a continuous period of 14 years or more, unless a resolution is passed by the members by a two thirds majority, with the concurrence of the Archbishop, that the member is deemed eligible for re-election, beyond 14 consecutive years of service. For the purpose of this clause, years are consecutive unless they are broken by a continuous period of at least 12 months during which the person was not a member.

(5) Each retiring member of Anglican Aid is eligible for re-appointment or re-election, as the case may be, in accordance with this clause.

12. Casual vacancies

(1) A casual vacancy arises in the office of a member of Anglican Aid if the member –

(a) dies,

(b) resigns in writing to –

(i) the Archbishop (if the member was appointed by the Archbishop under clause 9(1)(a)), or

(ii) the Chair of Anglican Aid or to the Diocesan Secretary (if the member was elected by the Synod under clause 9(1)(b),

(c) becomes an insolvent under administration,

(d) becomes of unsound mind or whose person or estate is liable to be dealt with in any way under the laws relating to mental health or is otherwise incapable of acting,

(e) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*,

(f) is disqualified from being a responsible person by the Commissioner of the Australian Charities and Not-for-profits Commission,

(g) is convicted of an offence punishable by imprisonment for 12 months or longer,

(h) is subject to a 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 or should be removed from office as a member of Anglican Aid,

(i) is absent without leave for 3 consecutive meetings of the members and the members resolve by a three-quarters majority that the person's membership should cease,

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- (j) declares that he or she is no longer able to subscribe to the "Statement of Personal Faith" set out in the Synod governance Policy,
- (k) fails to disclose his or her actual material conflict of interest in any matter brought for the consideration of the members which, in the opinion of the members, resulted in a resolution of Anglican Aid which would not have been made if the actual material conflict of interest had been disclosed, and the members resolve by at least a three-quarters majority that the person's membership should cease as a result of this failure, or
- (l) becomes an employee of Anglican Aid.

(2) If any of the circumstances referred to in subclauses 11(1) (c) – (h), (j) and (l) apply to a person, that person is disqualified from being elected or appointed as a member of Anglican Aid.

13. Filling of casual vacancies

(1) A casual vacancy in the office of a member of Anglican Aid appointed by the Archbishop is to be filled by the Archbishop.

(2) A casual vacancy in the office of a member of Anglican Aid elected by the Synod is to be filled by the Synod, or by the Standing Committee if the Synod is not in session.

(3) Subject to clause 12(1), a person elected to fill a casual vacancy holds office until the day on which the person whose vacancy he or she fills would have retired had the vacancy not occurred.

Part 4 – President of Anglican Aid

14. President

(1) The Archbishop is the President of Anglican Aid.

(2) The President may attend any meeting of Anglican Aid and may address Anglican Aid on any pastoral or policy issue concerning the Anglican Church of Australia as it applies to Anglican Aid including the appointment of the Chief Executive Officer.

(3) If the President requests, the Chair of Anglican Aid must arrange for him to be sent a copy of the agenda for the meeting of Anglican Aid referred to in the request.

(4) The President is not a member of Anglican Aid, and so is not entitled to vote on any question or proposal being considered by Anglican Aid.

(5) The President is permitted to appoint a nominee to exercise his entitlements as President on his behalf.

Part 5 – Meetings of Anglican Aid

15. Chair of Anglican Aid

(1) The members of Anglican Aid are to appoint one of their number to be Chair of Anglican Aid.

(2) The Chair may be elected by members for a term not exceeding 3 years. The Chair is eligible to stand for re-election, but cannot not serve for more than 9 consecutive years, unless a resolution is passed by the members by a two thirds majority, with the concurrence of the Archbishop, that the Chair is deemed eligible for re-election beyond 9 consecutive years.

(3) In the absence of the Chair of Anglican Aid or if the Chair is unable or unwilling to chair the meeting, the meeting is to appoint one of its number then present to be Chair of that meeting of Anglican Aid.

(4) A person should not be the Chair of Anglican Aid if a member of the person's immediate family is employed by Anglican Aid, unless the Members have considered the circumstances and unanimously agreed to it by secret ballot.

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16. Meetings of Anglican Aid

- (1) Anglican Aid is to meet at such time as it may determine, and is to meet at least once in every 3 month period.
- (2) A meeting of Anglican Aid may be convened by –
 - (a) the President, or
 - (b) the Chair of Anglican Aid, or
 - (c) any 3 members.
- (3) A quorum for a meeting of Anglican Aid is 5 members.
- (4) Members must cause minutes to be made of –
 - (a) the names of the persons present at all Member meetings and meetings of member committees,
 - (b) the name of the person who chaired the meeting,
 - (c) all disclosures of perceived or actual material conflicts of interest, and
 - (d) all resolutions made by Anglican Aid and member committees.
- (5) Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body following an agreed resolution to do so. If so signed the minutes are conclusive evidence of the matters as between the members stated in such minutes.
- (6) Anglican Aid should maintain records of applicable eligibility criteria for membership and conflicts of interest disclosed by Members.

17. Attendance of other persons at meetings of Anglican Aid

Anglican Aid may invite any person who is not a member of Anglican Aid to be present at the whole or part of any meeting of Anglican Aid.

18. Meetings held other than in person

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

19. Decisions of the members

- (1) Usually, the members will make decisions by resolution passed at a meeting of the members.
- (2) If a document containing a statement that the signatories to it are in favour of a resolution in the terms identified in the document has been signed by all the members of Anglican Aid, a resolution in those terms is to be taken to have been passed at a meeting of the members of Anglican Aid held on the day on which and at the time at which the document was signed by the last member.
- (3) For the purposes of subclause (2) –
 - (a) the Chief Executive Officer may specify in the document referred to in subclause (1) a reasonable timeframe within which members are to indicate whether or not they are in favour of the proposed resolution, and
 - (b) 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members together are to be taken to be 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents, and
 - (c) an electronic message, whether a facsimile, email or otherwise, which is received by the Chief Executive Officer on behalf of Anglican Aid and is expressed to have been sent by a member is to be taken to be a document signed by that member at the time of the receipt of the Chief Executive Officer.

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Part 6 – Miscellaneous matters

20. Chief Executive Officer

- (1) Anglican Aid may appoint (or remove) a person to be the Chief Executive Officer of Anglican Aid on such terms and upon such conditions as Anglican Aid thinks fit.
- (2) The Chief Executive Officer is responsible to Anglican Aid for the implementation of plans and strategies and for the operation and management of Anglican Aid.
- (3) A person is not to be appointed as the Chief Executive Officer of Anglican Aid until they have signed and delivered to Anglican Aid a signed copy of the "Statement of Personal Faith" set out in the Synod Governance Policy. A copy of the statement so signed and delivered is to be retained by Anglican Aid in its records.
- (4) The Chief Executive Officer has the right to attend and speak at board meetings unless the board determines that he or she should not be present for a particular meeting, or part thereof.

21. Liabilities of Anglican Aid

- (1) Anglican Aid remains and continues to be solely responsible for all liabilities incurred by it or on its behalf.
- (2) The members are not to represent to any person or corporation that the Archbishop, the Synod or the Standing Committee or any person or corporation holding church trust property for the Anglican Church of Australia in the Diocese or any other corporation incorporated under the *Anglican Church of Australia (Bodies Corporate) Act 1938 Act* will or may meet or discharge all or any part of any liability which have been or may or will be incurred wholly or partly by or on behalf of Anglican Aid.
- (3) Anglican Aid is not to execute or deliver any mortgage, charge, debenture, guarantee, indemnity or promissory note or bill of exchange or other negotiable instrument other than a cheque drawn on Anglican Aid's bank unless the following clause, or a clause to that effect, is included therein without qualification –

'Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that Anglican Aid is not 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 Aid may be able to pay to that party in the event of Anglican Aid being wound up.'

22. Indemnity

- (1) To the extent permitted by law, Anglican Aid is to indemnify each person who is, or has been, a member against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served as a member –
 - (a) to another person (other than Anglican Aid 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 those proceedings, in which the court grants relief to that person under the *Corporations Act 2001* or the *Australian Charities and Not-for-Profits Commission Act 2012*.
- (2) Anglican Aid need not indemnify a person under clause 21(1) for a liability to the extent that the person is entitled to an indemnity for that liability under a contract of insurance or under any other ordinance.
- (3) To the extent permitted by law, Anglican Aid 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 –

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- (a) a wilful breach of duty to Anglican Aid,
- (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 Anglican Aid, 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 Anglican Aid.

(4) To the extent permitted by law, Anglican Aid 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.

23. Reporting by Anglican Aid

Anglican Aid must at least once in every year present a report on its proceedings to the Synod and must furnish such other information as may be required from time to time by resolution of the Synod or the Standing Committee.

24. Compliance with Synod Ordinances and Policies

Anglican Aid must comply with all applicable ordinances and policies of the Synod (as amended from time to time) including as applicable –

- (a) the provisions of the *Accounts, Audits and Annual Reports Ordinance 1995*,
- (b) the *Investment of Church Trust Property Ordinance 1990*,
- (c) the *Sydney Anglican Use of Property Ordinance 2018*, and
- (d) the *Safe Ministry Ordinance 2020*.

25. Dissolution or Winding Up

(1) Where Anglican Aid has been endorsed as a public benevolent institution and deductible gift recipient under item 4.1.1 of section 30-45 of the *Income Tax Assessment Act 1997 (Commonwealth)* (as amended), then where the institution is wound up, or the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Commonwealth)* is revoked, then any surplus assets of the institution remaining after payment of all liabilities must be transferred to a fund or institution that –

- (a) in the case of a fund, comprises church trust property, and
- (b) in the case of an institution has been established by ordinance for governing and controlling the management and user of church trust property, and

which has objects similar to those set out in clause 4 of this Ordinance and is endorsed as a public benevolent institution.

(2) Where Anglican Aid has been endorsed as a deductible gift recipient in relation to a fund that it operates under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Commonwealth)* (as amended), then where the fund is wound up, or its endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Commonwealth)* is revoked, then any surplus assets of the fund remaining after payment of all liabilities must be transferred to a fund or institution that –

- (a) in the case of a fund, comprises church trust property, and
- (b) in the case of an institution has been established by ordinance for governing and controlling the management and user of church trust property, and

which has objects similar to those set out in clause 4 of this Ordinance and is an endorsed deductible gift recipient pursuant to the requirements of section 30 of *Income Tax Assessment Act 1997 (Commonwealth)*.

(3) If any property remains upon the winding up or dissolution of Anglican Aid (after the satisfaction of all its liabilities and the operation of subclauses (1) and (2) above), such property must be applied for such purposes of the Diocese, as the Synod may determine, including purposes which are similar to the purposes of Anglican Aid.

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

R TONG AM
Chair of Committee

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 17 May 2021.

D GLYNN
Secretary

I Assent to this Ordinance.

P HAYWARD
Administrator of Sydney

17/05/2021