

# Endowment of the See Variation of Trusts and Amendment Ordinance 2019

No 11, 2019

## Long Title

An Ordinance to re-declare the trusts on which certain property is held and for purposes incidental thereto.

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

### 1. Name of Ordinance

This Ordinance is the *Endowment of the See Variation of Trusts and Amendment Ordinance 2019*.

### 2. Amendments

(1) The *Endowment of the See Expenditure Ordinance 2012* (the "Principal Ordinance") is amended as follows –

- (a) delete the Title and insert instead "*Endowment of the See Trust Ordinance 2019*",
- (b) delete the Long Title and insert instead –

"An ordinance to re-declare the trusts or which part of the property comprising the Endowment of the See is held, and for purposes related thereto",
- (c) substitute the recitals in the Preamble with the following –
  - A. The Endowment of the See Committee is the trustee of certain property held on the trusts set out in the *Endowment of the See Expenditure Ordinance 2012 (the "Expenditure Fund")*.
  - B. The Anglican Church Property Trust Diocese of Sydney is the trustee of certain property held under the *Endowment of the See Capital Ordinance 2012 (the "Capital Fund")*.
  - C. Upon the commencement of the *Endowment of the See Variation of Trusts and Amendment Ordinance 2019* the trusts of the Expenditure Fund and that part of the Capital Fund comprising investments in the Diocesan Cash Investment Fund will be varied to create the Endowment of the See Trust.
  - D. By reason of circumstances which have arisen after the creation of the trusts on which the property referred to in Recital C is held it is inexpedient to carry out and observe those trusts.", and
- (d) clauses 1 to 21 are deleted and the matter in the Schedule is inserted instead.

(2) The *Bishopscourt Sale Ordinance 2012* is amended as follows –

- (a) delete "paid to the Property Trust to be held as part of the fund established by the *Endowment of the See Capital Ordinance 2012 (the 'Capital Fund')*" in clause 4 and insert instead –

"held as part of the fund established by the *Endowment of the See Trust Ordinance 2019 (the 'EOS Fund')*",
- (b) delete the "Property Trust is authorised, with the approval of the Archbishop-in-Council, to apply an amount of up to the Prescribed Amount from the Capital Fund" in subclause 5(1) and insert instead –

"the trustee of the EOS Fund is authorised, with the approval of the Archbishop-in-Council to apply an amount up to the Prescribed Amount from the EOS Fund", and
- (c) delete subclause 5(3).

(3) The *Endowment of the See Capital Ordinance 2012* is amended as follows –

- (a) insert the words "part of" before "the property" in the Long Title,
- (b) in clause 2 –
  - (i) the definition for "EOS Committee" is deleted and the following new definition

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is inserted instead –

“EOS Corporation” means the body corporate constituted under the Endowment of the See Corporation Ordinance 2019.’,

- (ii) the definition for “Expenditure Fund” is deleted and the following new definition is inserted instead –

“EOS Fund” means the fund established by the Endowment of the See Trust Ordinance 2019’,

- (iii) the definition for “Expenditure Ordinance” is deleted and the following new definition is inserted instead –

“EOS Trust Ordinance” means the Endowment of the See Trust Ordinance 2019’,

- (c) all instances of the words “EOS Committee” are substituted with the words “EOS Corporation” where they appear,
- (d) all instances of the words “Expenditure Fund” are substituted with the words “EOS Fund” where they appear,
- (e) all instances of the words “Expenditure Ordinance” are substituted with the words “EOS Trust Ordinance” where they appear, and
- (f) in clause 4 the matter “clause 4” is deleted and the matter “clause 3” is inserted instead, and
- (g) delete the matter “5(1)(c)” in paragraph 8(1)(c) and insert instead the matter “5(1)(b)”.
- (4) The *St Andrew’s House Trust Ordinance 2015* is amended as follows –
- (a) insert the following new definition in clause 2 after the definition for “Building” –  
“*Endowment of the See Fund*” means the property held on the trusts set out in the *Endowment of the See Trust Ordinance 2019*.’, and
- (b) delete the word “Expenditure” in subclause 5(4).
- (5) The *Accounts, Audits and Annual Reports Ordinance 1995* is amended as follows –
- (a) delete the matter “Endowment of the See Committee – Expenditure Fund” in the Second Schedule, and
- (b) insert the words “Endowment of the See Corporation as trustee of the Endowment of the See Trust” in the Third Schedule as a new row below “Campbelltown Anglican Schools Council”.
- (6) References to the “Endowment of the See Expenditure Fund” in other Ordinances are deemed to be references to the “Endowment of the See Trust” on and from the date of commencement of this Ordinance.

### 3. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the property of the Endowment of the See Expenditure Fund and that part of the Endowment of the See Capital Fund comprising units in the Diocesan Cash Investment Fund is held it is inexpedient to carry out and observe those trusts and it is expedient that the trusts be varied so that this property is henceforth held as part of the Fund under the *Endowment of the See Trust Ordinance 2019*.

### 4. Saving Provision

Nothing in this Ordinance invalidates anything validly done under, or pursuant, to the Principal Ordinance prior to the date of commencement of this Ordinance.

### 5. Transitional

(1) Notwithstanding Part 3 of the Principal Ordinance (as amended by this Ordinance), the persons who, immediately before the commencement of this Ordinance, were members of the Endowment of the See Committee under the Principal Ordinance will, subject to the terms of the Principal Ordinance (as amended), be the members of the board of the Endowment of the See Corporation under the Endowment of the See Corporation Ordinance 2019.

(2) For the purposes of subclauses 5(1) and 5(5) of the *Endowment of the See Corporation Ordinance 2019* each of the following persons are taken to have been first elected and last elected as a member by the electing or appointing body as follows –

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Name	Date first appointed or elected	Date last elected or appointed	Electing or appointing body
Mr Robert Bradfield	1 November 2006	4 December 2017	Standing Committee
Mr Clive Ellis	1 November 2014	4 December 2017	Standing Committee
Mrs Amanda Garlato	1 November 2013	4 December 2017	Standing Committee
The Rev Antony Barraclough	10 September 2014	4 December 2017	Standing Committee
The Rev Stuart Milne	24 June 2013	24 June 2016	Archbishop
Dr Erica Sainsbury	2 October 2017	2 October 2017	Archbishop

### 6. Commencement

This Ordinance commences on 1 June 2019.

#### Schedule

##### Part 1 - Introduction

#### 1. Name

This Ordinance is the Endowment of the See Trust Ordinance 2019.

#### 2. Definitions and Interpretation

(1) In this Ordinance –

“Capital” means the property of the Fund other than the Income.

“Fund” means the Endowment of the See Trust.

“Initial Income” means the balance of the Expenditure Fund held under the *Endowment of the See Expenditure Ordinance 2012* immediately prior to the commencement of this Ordinance.

“Income” means –

- (a) the remaining balance from time to time and the Initial Income,
- (b) distributions to the Fund from the Endowment of the See Capital Fund,
- (c) distributions to the Fund from the St Andrew’s House Trust,
- (d) distributions to the Fund from the Diocesan Cash Investment Fund, and
- (e) any income earned from the Real Property.

“Invested Property” means that part of the Capital which is not the Real Property.

“Real Property” means that part of the Capital Fund which is real property.

“Trustee” means the Endowment of the See Corporation or such other person or corporation who or which, from time to time, is trustee of the Fund.

(2) The definitions in or which apply pursuant to the Interpretation Ordinance 1985 apply unless the contrary intention appears.

(3) In this Ordinance, a reference to the singular includes the plural, and vice versa.

##### Part 2 – Trusts

#### 3. Trusts of the Fund

## **Endowment of the See Expenditure Fund Variation of Trusts and Amendment Ordinance 2019**

The Fund is held on trust for the following purposes of the Anglican Church of Australia in the Diocese of Sydney –

- (a) To pay the stipend of the Archbishop of Sydney, the expenses of his official residence and travelling, and the provision of other benefits and allowances.
- (b) To pay the stipends of the assistant bishops and the archdeacons, and the costs of, or associated with, the provision of their housing, travel and other benefits and allowances.
- (c) To pay the salaries and provide other benefits to the staff of the Archbishop's Registry and Diocesan Archives, and other staff engaged to support or assist the Archbishop, the assistant bishops and archdeacons in undertaking their functions.
- (d) To pay the expenses and other costs incurred to enable the Archbishop, the assistant bishops, archdeacons and the staff referred to in paragraph (c) to fulfil their functions including, without limiting the generality of the foregoing –
  - (i) office rent and occupancy costs, and
  - (ii) management fees charged by any organisation engaged to support the Archbishop, the assistant bishops, archdeacons and staff referred to in paragraph (c).
- (e) To pay the costs and expenses incurred by the Trustee in performing its functions under this Ordinance including, without limiting the generality of the foregoing, management fees charged by an organisation engaged to support the Trustee in performing its functions.
- (f) To provide for the payment of such other amounts in connection with the Diocese of Sydney as may be determined by the Standing Committee and approved by the Archbishop.
- (g) In respect to that part comprising the Real Property, to provide housing for the Archbishop of Sydney and such other senior clergy of the Diocese as he may determine.

### **Part 3 – Investment**

#### **4. Investment of the Capital**

- (1) The Trustee is to invest, manage and administer that part of the Fund comprising the Capital and, in connection therewith, is to –
  - (a) maintain the real value of the Invested Property unless relieved of this obligation or as otherwise directed by Ordinance of the Standing Committee, and
  - (b) care for, repair, renovate and refurbish the Real Property to an appropriate standard having regard to the age and use of the Real Property.
- (2) The Trustee is to capitalise an appropriate amount (if any) from the Income each year to fulfil the obligations in paragraph 4(1)(a).
- (3) For the purposes of paragraph 4(1)(a) –
  - (a) “real value” is to be measured having regard to the movement of the value of the Invested Property and the corresponding movement in the CPI All Groups Index published by the Australian Bureau of Statistics, and
  - (b) the objective specified in that paragraph is to be measured over rolling 10 year periods, the first such period to commence on the date of commencement of this Ordinance.

### **Part 4 – Powers and Liabilities of the Trustee**

#### **5. Powers of the Trustee**

- (1) Subject to this Ordinance, the Trustee has such powers as are necessary or desirable to enable it to fulfil its duties as trustee of the Fund.
- (2) The Trustee may invest the Fund in one or more of the investments permitted under subclause 7(2) of the *Diocesan Endowment Trust Ordinance 2016*.

#### **6. Liabilities of the Trustee**

- (1) The Trustee remains and continues to be solely responsible for all liabilities incurred by it

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or on its behalf as trustee of the Trust.

(2) The Trustee is not to represent to any person, persons or corporation that the Archbishop or the Synod or the Standing Committee 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 incorporated under the *Anglican Church of Australia (Bodies Corporate) Act 1938*, will 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 Trustee or for the purposes of the Trust.

(3) The Trustee 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 the Trustee's bank unless the following provision, or a provision to the effect of the following provision, is included therein without qualification –

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that [name of Trustee] 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 [name of Trustee] may be able to pay to that party in the event of the Endowment of the See Fund constituted under the *Endowment of the See Trust 2019* being wound up."

(4) If a person or corporation (a "Former Trustee") ceases to be Trustee each subsequent Trustee will assume any debts or other liabilities incurred by a Former Trustee as trustee of the Trust in accordance with the terms upon which those debts or other liabilities were incurred.

### Part 5 - General

#### 7. Indemnity

(1) In this clause, "Indemnified Party" means each of –

- (a) a person or corporation who is, or has been, the Trustee or a Trustee, and
- (b) where a corporation is the Trustee or a Trustee, or has been the Trustee or a Trustee – each person who is, or has been, a member of that corporation.

(2) Each Indemnified Party is entitled, to the extent permitted by law, to be indemnified against any liability which results directly or indirectly from facts or circumstances relating to the Party serving or having served as Trustee or as a Trustee, or serving or having served as a member of a corporation which is the Trustee or a Trustee, or has been the Trustee or a Trustee –

- (a) to another person, corporation or entity which does not arise out of conduct involving a lack of good faith on the part of the Indemnified Party, or
- (b) for costs and expenses incurred by that Indemnified Party –
  - (i) in defending proceedings, whether civil or criminal, in which judgement is given in favour of that Party or in which that Party is acquitted, or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to that Party under the Corporations Act 2001.

#### 8. Reporting

(1) The Trustee will comply with the provisions of the *Accounts, Audits and Annual Reports Ordinance 1995* as if the Trustee, in its capacity as trustee of the Trust, was an organisation for the purposes of that Ordinance.

(2) As soon as practicable after the end of each calendar year, the Trustee must provide to the Standing Committee –

- (a) a copy of the financial statements for the Fund,
- (b) the report of the auditor, and
- (c) a report indicating whether the real value of the Invested Property has been maintained in accordance with clause 4.

#### 9. Not-for-profit and dissolution of the Trust

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

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winding up or dissolution.

(2) If the Trust is wound up or dissolved, the Property, after satisfaction of all its liabilities, must be applied for such purposes of the Diocese as the Synod may determine.

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 20 May 2019.

D GLYNN  
Secretary

I Assent to this Ordinance.

GN DAVIES  
Archbishop

20/05/2019