

# The Relay Anglican Aid Endowment Ordinance 2023

No 52, 2023

## Long Title

An Ordinance to re-declare the trusts of the property held in an ACPT client fund as the Anglican Aid Endowment Trust, and for purposes related thereto.

## Preamble

A. The Anglican Church Property Trust Diocese of Sydney is the trustee of the property held in ACPT Client Fund 0760 (the "Existing Property").

B. The Existing Property is held on trust for the purposes of The Archbishop of Sydney's Anglican Aid, though there are no written trusts.

C. By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property is held, it is inexpedient to carry out and observe those trusts and it is expedient that the trusts of the Existing Property be re-declared.

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

## Part 1 – Introduction

### 1. Name

This Ordinance is *The Relay Anglican Aid Endowment Ordinance 2023*.

### 2. Definitions

In this Ordinance –

"ACPT" means the Anglican Church Property Trust Diocese of Sydney.

"Anglican Aid" means The Archbishop of Sydney's Anglican Aid constituted under the *The Archbishop of Sydney's Anglican Aid Ordinance 2011*.

"Diocese" means the Anglican Church Diocese of Sydney.

"Existing Property" means the property held in ACPT Client Fund 0760 at the date of commencement of this Ordinance.

"Grassroots Theological Education" means the program of this name approved by the Archbishop of Sydney and administered by Anglican Aid through the Overseas Ministry Fund.

"Income" means the income earned from, or in connection with, the Property.

"Overseas Ministry Fund" means The Archbishop of Sydney's Overseas Ministry Fund constituted by deed dated 21 March 2005, as amended or reconstituted from time to time.

"Property" means such of the Existing Property as is held by the Trustee from time to time as property of the Trust, and such other property as may be paid to applied or acquired by the Trustee, or earned on its investment, to be held as property of the Trust.

"Standing Committee" means the Standing Committee of the Synod.

"Synod" means the Synod of the Diocese and also includes the Standing Committee.

"Trigger Date" means the date that the capital of the Trust first reaches \$1 million.

"Trust" means The Relay Anglican Aid Endowment Trust comprised of the Property.

"Trustee" means the ACPT or such other person or corporation who or which, from time to time, is the trustee of the Trust.

### 3. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property and the income from the Existing Property are held, it is inexpedient to carry out and observe those trusts and it is expedient to re-declare the trusts upon which the Existing Property is held and to provide for the application of the capital and income of the Trust.

## Part 2 – Trusts

### 4. Trusts of the Property

(1) The Property is held on trust for the purpose of the Anglican Church of Australia in the Diocese of Sydney to make distributions to Anglican Aid as trustee for the Overseas Ministry Fund

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for the purposes of the program known as 'Grassroots Theological Education' and the associated reasonable administrative and support costs of that program.

- (2) As trustee of the Trust, the Trustee is to act in a way which –
  - (a) is consistent with an investment objective to distribute the capital and income of the Property over a 30-year period until it is exhausted, and
  - (b) subject thereto, enables distributions to be paid in accordance with clause 6.

### 5. Income of the Property

Subject to clause 6, the income of the Property is to be reinvested.

### 6. Distributions from the Property

- (1) Subject to subclause 6(3), on 31 January each year after the Trigger Date, the Trustee is to distribute an amount from the Trust to Anglican Aid as trustee for the Overseas Ministry Fund in accordance with the following formula –

Distribution = the total value of the capital and income of the Trust as at 31 December of the prior year divided by the number determined according to the following formula:

$$\frac{1 - \left( \frac{1}{(1+r)^n} \right)}{r}$$

Where:

r = 4.5%

n = 30 minus the number of 12 month periods that have elapsed since the Trigger Date.

- (2) The amount paid by the Trustee under subclause 6(1) is to be applied by Anglican Aid as trustee for the Overseas Ministry Fund in a manner that is consistent with the trusts set out in clause 4(1).
- (3) If the Trustee –
  - (a) is, at any time, not satisfied that Anglican Aid is applying any distributions made under this clause in accordance with clause 6(2), or
  - (b) Anglican Aid fails to comply with the requirements of clause 7 in any year,

the Trustee may cease making further distributions under clause 6(1) until such time as it is satisfied that any inconsistency or non-compliance has been remedied or rectified.

### 7. Acquittal by Anglican Aid

- (1) Anglican Aid is to provide to the Trustee, by no later than 31 March of each year after the Trigger Date, assurance in the form of a written confirmation that the distributions received under clause 6 in the prior year have been applied in accordance with clause 6(2).
- (2) On the request of the Trustee, Anglican Aid is to provide such evidence of expenditure in the prior year as the Trustee may reasonably require and in the case of any unspent distributions, Anglican Aid is to provide documented plans for the use of those distributions.

## Part 3 – Powers of the Trustee

### 8. 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 Trust.
- (2) The Trustee is to invest the Property in accordance with the *Trustee Act 1925 (NSW)* provided that the Trustee must do so in accordance with any ethical investment policy approved by the Synod or Standing Committee for the purposes of the investment of the Property.

### 9. Liabilities of the Trustee

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

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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 Anglican Aid Endowment Trust constituted under the *Anglican Aid Endowment Ordinance 2023* 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 4 – General**

#### **10. Amendment of this Ordinance**

Any amendment to the ordinance can only be made with the concurrent agreement of the Archbishop of Sydney and a majority of members of Anglican Aid from time to time.

#### **11. Trustee Fees**

The Trustee is entitled to be paid from time to time, from the Property, a fee approved by the Standing Committee by resolution to recompense it for the reasonable costs and expenses incurred by it in, or in connection with, performing its functions under this Ordinance.

#### **12. 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 of 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*.

#### **13. Accounts and Reports**

The Trustee will comply with the provisions of the *Accounts, Audits & Annual Reports Ordinance 1995* as if the Trustee, in its capacity as trustee of the Trust, is a Category Three organisation for the purposes of that Ordinance.

#### **14. Not-for-profit and dissolution of the Trust or Anglican Aid**

(1) The Property 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 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 as the Synod may determine which are similar to the purposes set out in this Ordinance.

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(3) If Anglican Aid or the Overseas Ministry Fund is wound up or dissolved, the Synod is to determine by resolution another organisation or fund (as the case may be) of the Diocese which has purposes that are the most similar to those of Anglican Aid or the Overseas Ministry Fund and is best able to fulfill the purposes of the Grassroots Theological Education Program, and in such event references to 'Anglican Aid' and 'Overseas Ministry Fund' in this Ordinance are deemed to be references to that organisation or fund instead.

### **15. Commencement**

This Ordinance commences on the date of assent.

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

R TONG  
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 11 December 2023.

B BOUNDS  
Secretary

I Assent to this Ordinance.

KANISHKA RAFFEL  
Archbishop

11/12/2023