

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

No 20, 2018

Long Title

An Ordinance to provide a constitution for the body known as the Sydney Anglican (National Redress Scheme) Corporation.

Preamble

A. The Council of the Sydney Church of England Investment Trust was declared a body corporate on 19 May 1967 by publication of the Order of the Governor following passage of the *Sydney Church of England Investment Trust Incorporation Ordinance 1967* and was constituted pursuant to the *Sydney Church of England Investment Trust Constitution Ordinance 1965*.

B. The Corporation was renamed as the "Sydney Anglican Church Investment Trust" pursuant to the *Sydney Anglican Church of England Investment Trust (Change of Name) Ordinance 1983* and the name of the constituting ordinance of the Corporation was changed to the *Sydney Anglican Church Investment Trust Corporation Ordinance 1965*.

C. It is expedient to repeal the *Sydney Anglican Church Investment Trust Corporation Ordinance 1965*, to provide a new constitution for the Corporation and to rename the Corporation as the "Sydney Anglican (National Redress Scheme) Corporation".

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

1. Sydney Anglican (National Redress Scheme) Corporation

The Corporation is continued but is renamed the "Sydney Anglican (National Redress Scheme) Corporation".

2. Name of Ordinance

This Ordinance is the *Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018*.

Part 1 - Interpretation

3. Definitions and Interpretation

(1) In this Ordinance –

"Administration Costs" means the costs of and incidental to the Corporation undertaking its functions, other than Membership Liabilities.

"Aggregate Funding Contribution" means, in any quarter, the aggregate of:

- (a) the funding contribution (if any) of the Anglican Church Diocese of Sydney as a member of the Anglican Participating Group;
- (b) (in the case of the Anglican Church Diocese of Sydney) the funding contributions (if any) in respect of claims against the Anglican Church Diocese of Sydney's Specified Institutions under the National Redress Scheme:
 - (i) to the extent not included in the funding contribution of the Anglican Church Diocese of Sydney as a member of the Anglican Participating Group referred to in paragraph (a); and
 - (ii) even though they may not be liable for those funding contributions under the National Redress Scheme Act.

"Anglican Church Diocese of Sydney" means the body of that name that is a Participating Institution in the National Redress Scheme.

"Anglican Participating Group" means the participating group which is represented by the Company under the National Redress Scheme Act.

"Applicant" means a person who has made an application under the National Redress Scheme.

"Chair" means the person appointed under clause 19.

"Claim" means a claim made under the National Redress Scheme.

"Company" means Anglican Representative (National Redress Scheme) Limited (ACN 627 850 828).

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

“Corporation” means the Sydney Anglican (National Redress Scheme) Corporation.

“Defunct” means no longer in existence.

“Defunct Body” means an Institution that is Defunct (but is not a Parochial Unit), and in relation to which a declaration is in force under clause 8.

“Diocese” means the Diocese of Sydney.

“Institution” means any entity, body, group of persons or organisation (whether or not incorporated) but does not include a family or an individual.

“Membership Liabilities” means in respect of the Anglican Church Diocese of Sydney or a Specified Institution (as the case may be), all financial obligations, at any time, under:

- (a) the National Redress Scheme; and
- (b) the Constitution and By-laws of the Company,

including payment of its Aggregate Funding Contributions.

“National Redress Scheme Act” means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

“National Redress Scheme” means the National Redress Scheme for Institutional Child Sexual Abuse established under the National Redress Scheme Act.

“Operating Body” means any Institution that is not a Defunct Body, and in relation to which a declaration is in force under clause 8.

“Parochial Unit” means a past or present parish or provisional parish recognised under the *Parishes Ordinance 1979* (or a prior ordinance which regulated the establishment of parochial units), a recognised church or a provisional recognised church under the *Recognised Churches Ordinance 2000*, the Cathedral Church of St Andrew Sydney and fellowships established under the *Evangelism and New Churches Ordinance 2010*.

“Participating Institution” means an Institution that is participating in the National Redress Scheme through the Anglican Participating Group and is a member of the Company.

“Property Trust” means the Anglican Church Property Trust Diocese of Sydney.

“Property Trust Funds” means funds identified by the Standing Committee from time to time by resolution for the purposes of this Ordinance and which are held by the Property Trust on trusts which permit indemnity under this Ordinance.

“Specified Institution” means, for the Anglican Church Diocese of Sydney:

- (a) an Institution comprising part of the Anglican Church Diocese of Sydney under this Ordinance for the purposes of the National Redress Scheme; or
- (b) an Institution (which is not part of the Anglican Church Diocese of Sydney) in relation to which a declaration is in force under clause 8(b).

“Standing Committee” means the Standing Committee of the Synod.

“Synod” means the Synod of the Diocese.

“Synod Funds” means funds that are under the control of the Synod and identified by the Standing Committee from time to time by resolution for the purposes of this Ordinance.

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

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

Part 2 – Purpose of the Corporation

4. Purpose

The purpose of the Corporation is to act on behalf of the Anglican Church Diocese of Sydney and certain other Institutions declared by the Standing Committee in respect to the provision of redress for Applicants under the National Redress Scheme through membership of the Anglican Participating Group.

Part 3 – Function and Powers of the Corporation

5. Function of the Corporation

The function of the Corporation is to act on behalf of the Anglican Church Diocese of Sydney and Specified Institutions by -

- (a) agreeing to be responsible for ensuring the performance of their obligations under the Constitution and the By-laws of the Company (including being jointly and severally liable for their Membership Liabilities),
- (b) authorising the Company to act on behalf of the Anglican Church Diocese of Sydney and Specified Institutions in the same circumstances as are set out in the form of the power of attorney to be provided under the By-Laws of the Company,
- (c) handling requests and notifications from the Operator (defined in the National Redress Scheme Act) in relation to the Anglican Church Diocese of Sydney and Specified Institutions, and
- (d) such other things as are incidental and conducive to the attainment of these functions.

6. Powers of the Corporation

Subject to this Ordinance and the terms of the trusts on which any property is held, the Corporation has all the powers necessary to enable it to perform its functions.

Part 4 – Anglican Church Diocese of Sydney

7. Ambit of the Anglican Church Diocese of Sydney as a Participating Institution

For the purposes of its participation in the National Redress Scheme, the Anglican Church Diocese of Sydney is comprised of Operating Bodies and Defunct Bodies declared under clause 8(1)(a) and Parochial Units, and does not include any other Institutions.

8. Declared Bodies

(1) Subject to subclause (2), for the purposes of a body's participation in the National Redress Scheme, the Standing Committee may declare by resolution -

- (a) that an Institution that is unincorporated or Defunct is part of the Anglican Church Diocese of Sydney, or
- (b) that the Corporation may separately act on behalf of an Institution,

for the purposes of the Institution's participation in the National Redress Scheme.

(2) A declaration may only be made under subclause (1) with respect to an Institution that is not defunct if its governing body –

- (a) consents to the declaration being made,
- (b) provides an undertaking to meet its funding obligations under clause 10(1), and
- (c) complies with any other conditions precedent required by the Standing Committee.

Part 5 – Funding

9. Application of Part

Membership Liabilities and the Administration Costs of the Corporation are to be funded in accordance with this Part.

10. Funding the Corporation

(1) An Operating Body must indemnify the Corporation in respect to Membership Liabilities and the Corporation's Administration Costs to the extent a Claim concerns abuse where the

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

contact between the perpetrator and the Applicant arose in or as a consequence of the activities of the Operating Body.

(2) The Property Trust must indemnify the Corporation from the Property Trust Funds in respect to the Membership Liabilities and the Corporation's Administration Costs to the extent a Claim concerns abuse where the contact between the perpetrator and the Applicant arose in or as a consequence of the activities of –

- (a) a Parochial Unit, or
- (b) a Defunct Body, if those activities were undertaken under the oversight of the Rector of a Parochial Unit.

(3) The Standing Committee must indemnify the Corporation from the Synod Funds, in respect to Membership Liabilities and the Corporation's Administration Costs to the extent a Claim concerns abuse where the contact between the perpetrator and the Applicant arose in or as a consequence of the activities of a Defunct Body (other than where clause 10(2)(b) applies).

(4) The Administration Costs of the Corporation that are not attributable to a particular Claim are to be met by the Property Trust and the Standing Committee in equal shares.

11. Authority to draw down funds

The Corporation may direct –

- (a) the Property Trust to draw down an amount or amounts from the Property Trust Funds, and
- (b) the Sydney Diocesan Secretariat to draw down an amount or amounts from the Synod Funds,

for the purpose of the Corporation being indemnified for –

- (c) Membership Liabilities and the Corporation's Administration Costs under subclauses 10(2) and 10(3), and
- (d) the general Administration Costs of the Corporation under clause 10(4).

12. Assurance of Funding

Notwithstanding any other provision of this Ordinance, the Standing Committee is required to exercise its powers in respect to church trust property to ensure the Corporation has funds available to meet all of its financial obligations, including to the Company and the National Redress Scheme, and the indemnity in clause 28.

Part 6 – Membership of the Corporation

13. Membership of the Corporation

(1) The Corporation is to consist of –

- (a) one person appointed by the Archbishop,
- (b) one person appointed by the Standing Committee, and
- (c) one person appointed by the Property Trust.

(2) A person is disqualified from being appointed as a member if the person –

- (a) is an insolvent under administration, or
- (b) is of unsound mind or whose person or estate is liable to be dealt with in any way under any law relating to mental health, or
- (c) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*, or
- (d) is or has been at any time during the preceding 12 months disqualified from being a responsible person by the Commissioner of the Australian Charities and Not-for-profits Commission, or
- (e) has been convicted of a crime or an offence punishable by imprisonment for more than 12 months, or
- (f) is subject to an order or subsisting recommendation issued or recognised under an Ordinance of the Synod which prohibits them from holding the office of member, or
- (g) is an employee of the Corporation.

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

(3) A person is not eligible to be appointed as a member unless the person has first given the Diocesan Secretary a signed copy of the Statement of Personal Faith set out in the Schedule.

(4) A person is not eligible to be re-appointed as a member if such re-appointment would, in the ordinary course, result in that person being a member for a continuous period of 14 years or more. For the purposes of this clause, 2 or more periods of service as a member will be taken to be one continuous period of service unless they were separated by a continuous period of at least 12 months during which the person was not a member.

14. Duration of office of members

(1) At the first meeting of the Standing Committee next following the first ordinary session of each Synod, the person who is a member appointed by the Archbishop is to retire from office.

(2) At the first meeting of the Standing Committee next following the first ordinary session of each Synod, the person who is a member appointed by the Standing Committee is to retire from office.

(3) At the first meeting of the Property Trust next following each ordinary session of the Synod, the person who is a member appointed by the Property Trust is to retire from office.

(4) Subject to this Ordinance, a retiring member is eligible for re-appointment, and a retiring member remains a member until his or her successor is elected or appointed.

(5) No vacancy in the office of member affects the authority or powers of the Corporation and, subject to clauses 22 and 23, that authority and those powers may be exercised by the members holding office from time to time.

15. Casual vacancies in the office of member

(1) A person also ceases to be a member if the person –

- (a) dies, or
- (b) resigns as a member by written notice to the Diocesan Secretary and such resignation takes effect from the date of receipt of the notice by the Diocesan Secretary, or
- (c) becomes an insolvent under administration, or
- (d) becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under any law relating to mental health, or
- (e) is disqualified from managing a corporation within the meaning of the *Corporations Act 2001*, or
- (f) is disqualified from being a responsible person by the Commissioner of the Australian Charities and Not-for-profits Commission, or
- (g) is convicted of a crime or an offence punishable by imprisonment for more than 12 months, or
- (h) is subject to an order or subsisting recommendation issued or recognised under an Ordinance of the Synod which prohibits them from holding the office of member or requires that they be removed from such office, or
- (i) is absent without the leave of the Corporation for three consecutive meetings of the Corporation and the Corporation resolves that the person's membership should cease, or
- (j) becomes an employee of the Corporation.

(2) A person who is a member appointed by the Archbishop ceases to be a member if the Archbishop so determines. A person who is a member appointed by the Standing Committee ceases to be a member if the Standing Committee so resolves. A person who is the member appointed by the Property Trust ceases to be a member if the Property Trust so resolves. The Archbishop, the Standing Committee and the Property Trust are not required to give reasons.

16. Filling of a casual vacancy in the office of member

(1) A casual vacancy in the office of the member appointed by the Archbishop may be filled by the Archbishop.

(2) A casual vacancy among the members appointed by the Standing Committee may be filled by the Standing Committee.

(3) A casual vacancy in the office of the member appointed by the Property Trust may be filled by the Property Trust.

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

(4) A person elected to fill a casual vacancy holds office for the balance of the term of the member whose place that person has taken.

17. Duties of members

Each member must –

- (a) in performing their functions exercise the care and diligence that a reasonable individual would exercise as a member,
- (b) act in good faith in the best interests of the Corporation and to further the purpose of the Corporation, and
- (c) not misuse their position as a member,
- (d) not misuse information obtained in the performance of their duties as a member,
- (e) promptly disclose at a meeting of members, any actual or potential conflict of interest they have as a member and any circumstances which might reasonably be perceived as a conflict of interest,
- (f) not participate in discussions, or vote on any matter, in which an actual, potential or perceived conflict of interest arises without the approval of the other members,
- (g) manage the financial affairs of the Corporation in a responsible manner, and
- (h) not allow the Corporation to operate while insolvent.

18. Members not to be remunerated

- (1) A member is not to be remunerated for their service as a member.
- (2) Nothing in clause 18(1) prevents a member from being reimbursed for reasonable out of pocket expenses incurred in performing their duties as a member.

19. Chair

- (1) The members are to appoint one of their number to be chair for a term which ends on the first to occur of –
 - (a) the date the Chair ceases to be a member,
 - (b) the date (if any) specified in the resolution,
 - (c) the 3rd anniversary of the resolution of appointment, and
 - (d) the date on which the appointment is revoked by resolution of the members.
- (2) A member who retires as the Chair under subclauses 19(1)(b), (c) or (d) may be reappointed for a further term.

20. President

- (1) The Archbishop is President of the Corporation.
- (2) The President may attend any meeting of the Corporation and may address the Corporation on any pastoral or policy issue concerning the Anglican Church of Australia as it applies to the Corporation.
- (3) The President is entitled, upon request, to receive the board papers for any meeting of the Corporation.
- (4) The President is not a member of the Corporation, and so is not entitled to vote on any question or proposal being considered by the Corporation.

Part 7 – Meetings of the Members

21. Meetings of members

- (1) The members are to meet at such times as they may determine.
- (2) In addition, a meeting of the members may be convened by –
 - (a) the Chair, or
 - (b) any two members.
- (3) 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

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

this clause are as valid and effective as if they had been conducted at a meeting at which those members were physically present.

(4) If the Chair is not present at a meeting or is unable or unwilling to chair the meeting, or part of a meeting, the members present may elect another member then present to chair that meeting or part of the meeting.

(5) At a meeting of the members, the Chair has a deliberative vote but does not have a casting vote.

(6) The members must cause minutes to be made of each meeting of the members which record –

- (a) the names of the members present,
- (b) the name of the person or names of the persons who chaired the meeting, or any part of the meeting,
- (c) all disclosures made by a member of any actual, potential or perceived conflicts of interest, and
- (d) all resolutions of the members passed at the meeting or taken to have been passed at a meeting.

(7) The minutes of each meeting are to be signed by the chair of that meeting, or by the chair of the next meeting of the members.

(8) Subject to this Ordinance, the members may regulate the proceedings of their meetings in such manner as they determine.

22. Quorum

A quorum for a meeting of the members is two members.

23. Decisions of the members

(1) Usually, the members will make decisions by resolution passed at a meeting of the members.

(2) A resolution of the Corporation will be passed without a meeting if –

- (a) a copy of the proposed resolution is sent to all members at the request of the Chair and a reasonable timeframe within which members may indicate their support for or objection to the proposed resolution being passed is specified,
- (b) at least two of members 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.

Part 8 – General

24. Common Seal

(1) The common seal of the Corporation is not to be affixed to a document except with the authority of a resolution of the members.

(2) The affixing of the common seal is to be witnessed by two members.

25. Liabilities of the Corporation

(1) Subject to the provisions of this Ordinance -

- (a) the Corporation remains and continues to be solely responsible for all liabilities incurred by it or on its behalf, and
- (b) 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 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 the Corporation.

(2) The Corporation 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 Corporation's bank unless the following clause, or a clause to that effect, is included therein without qualification.

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that the Sydney Anglican (National Redress Scheme) Corporation 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 the Corporation may be able to pay to that party in the event of the Corporation being wound up."

26. Records, Auditor and Reports

The Corporation is to comply with the *Accounts, Audits & Annual Reports Ordinance 1995* as if it was listed in Schedule 3 of that Ordinance.

27. Reporting to the Standing Committee and Property Trust

- (1) The Corporation is to provide an annual report to the Standing Committee and the Property Trust in relation to the performance of its functions over the previous 12 months.
- (2) The Corporation is also to provide the Standing Committee and the Property Trust with such other information about its affairs as the Standing Committee and Property Trust request from time to time.
- (3) The reports provided under this clause are to be provided subject to appropriate confidentiality about the names of Applicants.

28. Indemnity

- (1) To the extent permitted by law, the Corporation 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 the Corporation) 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) The Corporation need not indemnify a person under clause 28(1) for a liability to the extent that the person receives a payment for that liability under a contract of insurance or under any other ordinance.
- (3) To the extent permitted by law, the Corporation 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 Corporation,
 - (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 Corporation, 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 Corporation.
- (4) To the extent permitted by law, the Corporation 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.

29. Not-for-profit and dissolution of the Corporation

- (1) The property of the Corporation 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 Corporation or on its winding-up or dissolution.

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

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

Part 9 –Repeal

30. Repeal

The *Sydney Anglican Church Investment Trust Corporation Ordinance 1965* is repealed, without invalidating anything validly done under, or pursuant, to that ordinance prior to the date of commencement of this Ordinance.

Schedule – Statement of Personal Faith

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 by 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 of the Sydney Anglican (National Redress Scheme) Corporation in accordance with its Christian ethos and its constituting ordinance.

4. I agree that my continuance as a member of Sydney Anglican (National Redress Scheme) Corporation is dependent upon my continuing agreement with this statement and I undertake to resign if this ceases to be the case.

.....
(signature)

.....
Name

.....
Date

Sydney Anglican (National Redress Scheme) Corporation Ordinance 2018

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 27 August 2018.

D GLYNN
Secretary

I Assent to this Ordinance.

GN DAVIES
Archbishop
27/08/2018