

# Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amending Ordinance 1993

No 58, 1993

## Long Title

An Ordinance to vary the constitution of Anglican Retirement Villages Diocese of Sydney.

## Preamble

Whereas it is expedient that amendments be made to the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961.

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.

## Citation

1. This ordinance may be cited as "Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amending Ordinance 1993".

## Amendments to Original Ordinance

2. The Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 is amended so as to be identical to the form of ordinance which constitutes the schedule to this ordinance.

3. All persons holding office as a member of the Anglican Retirement Villages Diocese of Sydney continue to hold office subject to the Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 as amended by this ordinance. For the purposes of clause 6 -

- (a) Mr N.K. Brunson, Dr R. Clark and Miss D. Thomson are Elected Members;
- (b) there are 3 casual vacancies among the Elected Members; and
- (c) Bishop P.R. Watson is the person appointed by the Archbishop.

Clause 6(1)(b) does not apply unless and until the chief executive officer delivers a declaration in accordance with the last sentence of clause 6(2).

## Schedule

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

### Definitions

1. 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)(d);
- (b) a person appointed to be a Member under clause 9; and
- (c) each person elected to be a member by the Standing Committee under paragraph 6(1)(f).

"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.

### Interpretation

2. 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.

# Anglican Retirement Villages Diocese of Sydney Constitution Ord 61 Amd Ord 93

## Interpretation Ordinance

3. The Interpretation Ordinance 1985 applies.

## Citation

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

## Part 2 - Constitution

### Constitution

5. 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

### Membership

6. (1) The Members are -
  - (a) the Archbishop;
  - (b) the person who is the chief executive officer of the Body Corporate;
  - (c) the person who is the chief executive officer of Sydney Diocesan Secretariat or his nominee;
  - (d) 4 persons elected by the Synod;
  - (e) 1 person appointed by the Archbishop; and
  - (f) such persons (not being more than 2) which the Standing Committee may elect.
- (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.

### Disqualification

7. A person may not be elected or appointed if that person is a person described in subclause 8(6).

### Duration of Office

8. (1) The person who, from time to time, is the chief executive officer of Sydney Diocesan Secretariat is a Member for so long as that person holds that office and either -
  - (a) has not appointed a nominee; or
  - (b) if that person has appointed a nominee, has revoked that appointment and has not appointed another nominee.
- (2) The chief executive officer of Sydney Diocesan Secretariat, by notice given to the Body Corporate at its principal office, at any time and from time to time, may -
  - (a) appoint a person to be his nominee; and
  - (b) revoke that appointment.

A person so appointed is a Member, subject to subclause 8(6), until the appointment is revoked.
- (3) An Elected Member holds office, subject to subclauses 8(6) and 8(7), until -
  - (a) the commencement of the first ordinary session of each Synod; and
  - (b) if the successor to that person is not elected at that session, until the successor is elected.
- (4) The Archbishop, by notice given to the Body Corporate at its principal office, at any time and from time to time, may -
  - (a) appoint a person to be a Member; and
  - (b) revoke that appointment.

A person so appointed is a Member, subject to subclause 8(6), until the appointment is revoked.
- (5) Subject to this ordinance, a retiring Member is eligible for re-election or re-appointment.
- (6) A person ceases to be a Member if that person -
  - (a) dies;
  - (b) attains the age of 72 years;
  - (c) resigns the office of Member by writing 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 writing;
  - (d) becomes bankrupt or signs an authority under section 188 of the Bankruptcy Act 1966 or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with or assigns his property for the benefit of his creditors;
  - (e) becomes an incapable person, a patient, a protected person or a voluntary patient under any statute relating to mental health; or

## Anglican Retirement Villages Diocese of Sydney Constitution Ord 61 Amd Ord 93

- (f) is convicted of a crime or an offence punishable by imprisonment for more than 12 months.
- (7) An Elected Member 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.

### Casual Vacancies

- 9. 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.

## Part 4 - Proceedings

### President

- 10. The Archbishop is president of the Board.

### Chairman

- 11. (1) The Archbishop is chairman of all meetings of the Board at which he is present and is willing to act.
- (2) If the Archbishop is not present at a meeting of the Board or is not willing to act as chairman of a meeting-
  - (a) if the Board has appointed a Member to be chairman, that Member will act as chairman;
  - (b) if the Board has not appointed a Member to be chairman or that Member is not present and willing to act, the Members present must choose one of their number to act as chairman.
- (3) The Board shall from time to time -
  - (a) appoint a Member to be chairman of the Board; and
  - (b) revoke any such appointment.

### Chairman's Vote

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

### Quorum

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

### Meetings

- 14. (1) A meeting of the Board may be convened by -
  - (a) the Archbishop;
  - (b) a person appointed to be Chairman pursuant to paragraph 11(2)(a); 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.

### General

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

## Part 5 - Objects

### Objects

- 16. 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

### General

- 17. (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.

### Specific Powers

- 18. 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;

## Anglican Retirement Villages Diocese of Sydney Constitution Ord 61 Amd Ord 93

- (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 1978, 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
- (k) vary or realise any Property.

### Part 7 - Limitation on Powers

#### Limitation as Regards Property

19. 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.

#### Liabilities

20. (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 -

## Anglican Retirement Villages Diocese of Sydney Constitution Ord 61 Amd Ord 93

"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

#### Indemnity

21. Each Member shall be indemnified out of the assets of the Body Corporate against all loss or liability which they or any of them may have properly incurred for or on behalf of the Body Corporate and to which they or any of them may be subject by reason of his or her being or having been a Member other than those occasioned by the wilful act or neglect of that Member.

#### Reporting

22. 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 Ordinance 1975.

#### Discontinuance

23. 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 : \_\_\_\_\_

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

N.M. Cameron  
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 13 December 1993.

W.G.S. Gotley  
Secretary

I Assent to this Ordinance.

R.H. Goodhew  
Archbishop of Sydney  
20/12/1993