

# Anglican Provident Fund Ordinance 1990 Amendment Ordinance 2005

No 28, 2005

## Long Title

An Ordinance to enable the transfer of members and assets of the Anglican Provident Fund to a successor fund.

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

### 1. Name

This Ordinance is the Anglican Provident Fund Ordinance 1990 Amendment Ordinance 2005.

### 2. Amendment to the Ordinance

The Ordinance is amended as follows –

- (a) Insert in alphabetical order in clause 2(1) the following new definitions –

“Complying Superannuation Fund” has the same meaning given to that term in Section 42 of the *Superannuation Industry (Supervision) Act 1993*;

“Contributor” has the same meaning as in the Regulations to this Ordinance;

“Officer” means a person who is not a Director but who makes, or participates in making, decisions that affect the whole or a substantial part of the actions of the Body Corporate;

“Participation Agreement” means any agreement entered into between the Body Corporate (on behalf of the Contributor) and Transferor Trustee in respect of participation in the Transferee Fund in accordance with the applicable provisions of the Superannuation Industry (Supervision) Act 1993 concerning successor fund transfers and described in Regulation 6.29(c) of the SIS Regulations;

“Policy Committee” has the meaning given to that term in Section 10 of the *Superannuation Industry (Supervision) Act 1993*;

“SIS Regulations” means the *Superannuation Industry (Supervision) Regulations*;

“Standing Committee” means the Standing Committee of the Synod unless otherwise stated.

“Transfer Date” means the date agreed between the Board and the Transferee Trustee in respect of any successor fund transfer from the Fund to the Transferee Fund in relation to a successor fund transfer and subsequent successor fund transfer to a subsequent Transferee Trustee.

“Transfer Deed” means any deed or agreement entered into by the Body Corporate and the Transferee Trustee in relation to the transfer of members and assets of the Fund to the Transferee Fund as required in accordance with Regulation 6.29(c) of the SIS Regulation concerning any successor fund transfer;

“Transferee Fund” means the sub-plan of the fund of which the Transferee Trustee referred to in Clause 47(3) is the trustee;

“Transferee Trustee” means the trustee of any Complying Superannuation Fund other than the Body Corporate.

- (b) delete the definition of “Responsible Authority” and substitute the following definition therefore –

“Responsible Authority” means the Australian Prudential Regulatory Authority, the Commissioner of Taxation (including a Deputy Commissioner of Taxation) or any federal government authority

## Anglican Provident Fund Ordinance 1990 Amendment Ordinance 2005

responsible for administering the laws, regulations or any other regulations applying to the operation of superannuation or similar funds.

- (c) Insert the following words immediately after the word “the Board” where it appears in the first line of Clause 17(3):

“on behalf of the Body Corporate...”
- (d) delete Clause 17(3)(l) and insert instead the following –
  - “(l) enter into such agreements as it may deem desirable in relation to any other superannuation or provident fund including any Participation Agreement and/or Transfer Deed.”
- (e) insert new clauses 17(3)(p) and (q) as follows –
  - “(p) on and from the Transfer Date if required by the Superannuation Law appoint members of the Board as representatives on any Policy Committee for the purposes of management of any plan established in the Transferee Fund for the benefit of former members of the Fund and agree the number of representatives and the manner in which the number may change and the terms of appointment of representatives on any Policy Committee and the appointment of any replacement representatives following retirement or other termination of representatives of any Policy Committee;
  - (q) the powers granted to the Body Corporate and the Board in relation to the Fund shall continue on and from the Transfer Date in relation to and compliance with any Statutory Requirements including but not limited to the winding up of the Fund, the payment of any liabilities of the Fund which arose prior to the Transfer Date and which are not subject of indemnity from the Transferee Fund and in respect of any other matters which the Body Corporate or the Board determines.”
- (f) delete the words in brackets in Clause 17A(1)(d)(ii) without replacement.
- (g) insert a new clause 17A(2) as follows –
  - “(2) The Board shall in addition to the powers granted to it pursuant to this Clause 17A be authorised on and from the Transfer Date to grant approval or otherwise to amendments to the Participation Agreement (including any plan rules) and/or be involved in the appointment of any consultants and investment managers pursuant to the terms of any Participation Agreement.”
- (h) the existing Clause 17A(2) shall be renumbered as Clause 17A(3).
- (i) insert a new Clause 18(4) as follows:
  - “(4) the Board shall ensure that on and from the Transfer Date any Participation Agreement or other documents in relation to investment of assets of the Fund by the Transferee Trustee shall be subject to the same or similar limitation in relation to investments as contained in Clause 18(1)(g) and (h) of this Ordinance and the Board shall use its best endeavours to procure that any transfer deed and/or other agreement entered into by the Transferee Trustee with any trustee of any Complying Superannuation Fund relating to a subsequent successor fund transfer from the Transferee Fund to another Complying Superannuation Fund shall contain the same limitation in relation to investments.”
- (j) insert a new Clause 47(3) –
  - “(3) Notwithstanding the preceding provisions of this Clause 47, the Board may, without the consent of a Member and on such conditions as the Board may determine and which are consistent with the

## Anglican Provident Fund Ordinance 1990 Amendment Ordinance 2005

requirements of Regulation 6.29(c) of the SIS Regulations, agree with the Transferee Trustee on behalf of the Body Corporate to pay or transfer to the Transferee Fund all of the assets of the Fund but not more than the value of the aggregate amount of –

- (a) the total amount of each Member's account maintained by the Board pursuant to Regulation 5(2) of this Ordinance as at the Transfer Date to be credited to the member in the Transferee Fund; and
- (b) any other amount in addition to the total amount referred to in paragraph (a) which is not allocated to a Member's account as at the Transfer Date to be applied in such manner which is not inconsistent with the terms of the Ordinance as the Board shall agree with the Transferee Trustee.

The receipt of the Transferee Trustee given in respect to the total amount so paid or transferred from the Fund to the Transferee Fund is a sufficient discharge to the Board of its liability in respect of all of the Members of the Fund in respect of that amount. Neither the Board nor any Contributor is in any way responsible or liable for the payment or disposal by the Transferee Trustee or any other person of the benefit of the Member or any other amount so paid or transferred.”

- (k) Insert a new Regulation 4A in the Regulations as follows –
  - “4A. For the purposes of Regulations 1-4 inclusive a reference to a Member shall include a member of the Fund or any Transferee Fund.”

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

P G KELL  
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 26 September 2005.

R WICKS  
Secretary

I Assent to this Ordinance.

PETER F JENSEN  
Archbishop of Sydney  
27/9/2005