

Anglican National Superannuation Board Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

Sydney Diocesan Superannuation Fund Ordinance 1961 as amended by the Sydney Diocesan Superannuation Fund Ordinance 1961 Amendment Ordinance 2017, and the Miscellaneous Amendments Ordinance 2019.

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Long Title

An Ordinance to provide a constitution for the body known as the Anglican National Superannuation Board, and to provide for the management, administration and control of the superannuation fund known as “Anglican National Super” (formerly known as The Anglican Super Fund 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 – Introduction

1. Name of Ordinance

This Ordinance is the Anglican National Superannuation Board Ordinance 2017.

2. Definitions and Interpretation

(1) In this Ordinance –

“Access Period” means the period from the date when the Board Member was appointed to the Board and ending on the later of:

- (a) seven years after the Cessation Date, or
- (b) where an Action is commenced prior to the date referred to in paragraph (a), the date of final determination of the Action.

“Act” means the *Anglican Church of Australia (Bodies Corporate) Act 1938*.

“Action” means any actual, threatened or reasonably apprehended action, Proceeding, investigation, inquiry, examination, subpoena, notice to produce a document or notice requiring disclosure of information brought against or by or likely to involve a Board Member in his or her capacity as a Board Member.

“Archbishop” means the person appointed as the archbishop of the Dioceses from time to time.

“Board” means Anglican National Superannuation Board, a body corporate incorporated under the Act.

“Board Member” means a member of the Board.

“Cessation Date” means the date on which a Board member ceases to be a Board Member and is not re-appointed to the Board pursuant to clause 5 or clause 7.

“Chair” means the chair appointed under clause 9.

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

“Current Trustee” means AMP Superannuation Limited.

“Diocese” means the Diocese of Sydney.

“Fund” means the superannuation fund known as “Anglican National Super”.

“Fund Members” means the persons who from time to time are the members of the Fund.

“Participation Agreement” means –

- (a) the Participation Agreement dated 9 December 2004 made between the Current Trustee and the Board, as amended or substituted from time to time, and
- (b) any agreement subsequently made between the Board and a Transferee Trustee for the participation of the Fund in a Transferee Fund in accordance with the *Superannuation Industry (Supervision) Act 1993* concerning successor fund transfers as described in regulation 6.29(2) of the SIS Regulations.

“Participating Organisation” means –

- (a) an unincorporated organisation constituted by Ordinance of the Synod or the Standing Committee,
- (b) a corporation constituted pursuant to the Act at the instance of the Synod or the Standing Committee,
- (c) any other organisation approved by the Synod or the Standing Committee engaged in ministry or other work for or related to the work of the Anglican Church of Australia,

declared by the Board, with the approval of the Trustee, to be a Participating Organisation for the purposes of this Ordinance.

“Plan Principles” means the principles set out in Schedule 2.

“Plan Rules” means the rules agreed by the Trustee and the Board for the operation of the Fund, including without limiting generality of the following, rules as to –

- (a) membership of the Fund, and any categories of membership,
- (b) contributions to the Fund,
- (c) the investment of the Fund,
- (d) accounts to be maintained,
- (e) insurance arrangements, and
- (f) benefits to be provided to Fund Members.

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

“Proceeding” means any civil, criminal, administrative, judicial or arbitral proceeding, investigation or hearing and any mediation or other form of alternative dispute resolution.

“Secretary” means the Secretary of the Board appointed under clause 10.

“SIS Regulations” means the Superannuation Industry (Supervision) Regulations.

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

“Successor Fund Transfer” has the meaning described in paragraph (b) of the definition of “Participation Agreement”.

“Superannuation Authority” means any person or body appointed under any Superannuation Law who is empowered under that legislation or other legislation to exercise any discretion, give any consent or approval or otherwise give effect to and administer the Superannuation Law.

“Superannuation Law” means the *Superannuation Industry (Supervision) Act 1993*, , the *Income Tax Assessment Act 1936*, *The Income Tax Assessment Act 1997* and any other Acts of Parliament which govern the operation of superannuation funds, as they may be amended or re-enacted, and regulations made under those acts, and all other requirements, legislative or otherwise and including –

- (a) any administrative guidelines issued by a Superannuation Authority, and
- (b) statements of government advising proposed changes to Superannuation Law with which the Fund must comply (or which, in the reasonable opinion of the board, the Fund ought to comply to be a Complying Superannuation Fund.

“Synod” means the Synod of the Diocese.

“Transfer Date” means –

- (a) the date agreed between the Board and the Current Trustee in relation to a successor fund transfer from the Current Trustee to a Transferee Trustee, or
- (b) the date agreed between the Board and a Transferee Trustee in relation to a successor fund transfer from that Trustee to a subsequent Transferee Trustee.

“Transferee Fund” means a Complying Superannuation Fund of which the Transferee Trustee is trustee.

“Transferee Trustee” means the trustee of any Complying Superannuation Fund.

“Trustee” means the trustee from time to time of the Fund.

“Trustee Documents” means the following documents –

- (a) in relation to the Current Trustee –
 - (i) the Transfer Deed dated 9 December 2004 made between the Current Trustee and the Board as amended or replaced from time to time, and
 - (ii) the Participation Agreement dated 9 December 2004 made between the Current Trustee and the Board, as amended or replaced from time to time, and
 - (iii) any documents proposed or contemplated by the documents referred to in (i) or (ii), as amended or replaced from time to time, and
- (b) in relation to a Transferee Trustee – any documents entered into between the Board and the Transferee Trustee of the type referred to in (a),

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

Part 2 – Purpose of the Board

3. Purpose

The purpose of the Board is to advance the purposes of the Anglican Church of Australia in the Diocese by overseeing the management, administration and control of the Fund, including –

- (a) exercising the functions of the Board under the Trustee Document in force from time to time, and
- (b) terminating the Trustee Documents in regard to the Current Trustee and entering into new Trustee Documents with an entity to be appointed as the Trustee, and
- (c) appointing from time to time a Trustee of the Fund pursuant to a Successor Fund Transfer where the Board considers it in the interests of the Fund Members to do so, and

- (d) agreeing with the Trustee from time to time the Plan Rules which are to be in conformity with the Plan Principles, and
- (e) declaring from time to time, with the approval of the Trustee, an organisation to be a Participating Organisation, and
- (f) entering into agreements with a Participating Organisation in relation to the rights and responsibilities of that organisation under the Plan Rules, and
- (g) monitoring the performance of the Fund and the benefits provided to members of the Fund, and
- (h) recommending to the Trustee, from time to time, persons for appointment as members of a Policy Committee in respect of the Fund appointed by the Trustee.

Part 3 – Membership of the Board

4. Membership of the Board

- (1) The Board is to consist of 10 Board Members elected by the Synod comprising –
 - (a) 5 Board Members who are representatives of Participating Organisations, and
 - (b) 5 Board Members who are representatives of Fund Members.
- (2) A person is disqualified from being elected as a Board 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 a disqualified person for the purposes of Superannuation Law, or
 - (e) has at any time during the preceding 12 months been disqualified from being a responsible entity by the Commissioner of the Australian Charities and Not-for-profits Commission, or
 - (f) has been convicted of a crime or an offence punishable by imprisonment for more than 12 months, or
 - (g) is subject to a recommendation from the diocesan or disciplinary tribunal of the Diocese (or from a comparable tribunal or body in any other diocese or church) prohibiting them from holding an office of a type such as member of the Board, or
 - (h) is employed by the Board.
- (3) A person is not eligible to be elected as a Board Member unless the person has first given the electing body a signed copy of the Statement of Personal Faith set out in Schedule 1.
- (4) A person is not eligible to be re-elected or re-appointed as a Board Member if such re-election or re-appointment would, in the ordinary course, result in that person being a Board 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 Board Member.

5. Duration of office of Board Members

- (1) At each first and second ordinary session of Synod, 2 members who are representatives of Participating Organisations are to retire, and 2 members who are representatives of Fund Members are to retire; at each third ordinary session of Synod, 1 member who is a representative of a Participating Organisation is to retire, and 1 member who is a representative of Fund Members is to retire.
- (2) Subject to clause 4(4) –
 - (a) a retiring Board Member is eligible for re-election, and
 - (b) a retiring Board Member remains a Board Member until his or her successor is appointed.
- (3) The Board Members to retire are those members who have been in office longest since their last election. As between persons who were elected as Board Members on the same day those to retire (unless they otherwise agree among themselves) are to be determined by lot.

(4) No vacancy in the office of Board Member affects the authority or powers of the Board and, subject to clauses 12 and 13, that authority and those powers may be exercised by the Board Members holding office from time to time.

6. Casual vacancies in the office of Board Member

- (1) A person also ceases to be a Board Member if the person –
- (a) dies, or
 - (b) resigns as a Board Member by written notice addressed to the Secretary, and such resignation takes effect from the date of receipt of the notice by the 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) becomes a disqualified person for the purposes of Superannuation Law, or
 - (g) is disqualified from being a responsible entity by the Commissioner of the Australian Charities and Not-for-profits Commission, or
 - (h) is convicted of a crime or an offence punishable by imprisonment for more than 12 months, or
 - (i) is subject to a recommendation from a professional standards body of the Diocese (or from an equivalent body in any other diocese or church) that prohibits them from holding an office or should be removed from office as a Board Member, or
 - (j) is absent without the leave of the Board for 3 consecutive meetings of the Board and the Board resolves that the person's membership should cease, or
 - (k) becomes an employee of the Board.
- (2) A person also ceases to be a Board Member if the Standing Committee so resolves in which case the Standing Committee is not required to give reasons for so resolving.

7. Filling of a casual vacancy in the office of Board Member

- (1) A casual vacancy among the Board Members may be filled by the Standing Committee, provided that any such action by the Standing Committee shall be consistent with clause 4(1) in regard to the number of Board members who are representatives of the Participating Organisations and the Fund Members.
- (2) A person elected to fill a casual vacancy holds office for the balance of the term of the Board Member whose place that person has taken.

8. Board Members not to be remunerated

- (1) A Board Member is not to be remunerated for their service as a Board Member.
- (2) Nothing in clause 8(1) prevents a Board Member from being reimbursed for reasonable out of pocket expenses incurred in performing their duties as a Board Member.

Part 4 – Meetings of the Board Members

9. Chair

- (1) The Board 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 (if any) specified in the resolution, and
 - (b) the 3rd anniversary of the date of appointment, and
 - (c) the date on which the appointment is revoked by resolution of the Board Members.
- (2) Subject to clause 4(4) a Board Member who retires as chair under clause 9(1) may be reappointed for a further term.

10. Secretary

- (1) The Board Members are to appoint a person to be the Secretary of the Board.
- (2) A person is not required to be a Board Member to be appointed as Secretary.

11. Meetings of Board Members

- (1) The Board Members are to meet at such times as they may determine.
- (2) In addition, a meeting of the Board Members is to be convened by the Secretary upon request in writing made by –
 - (a) the Chair, or
 - (b) any 3 Board Members.
- (3) A meeting of the Board Members may be held by using any technology approved by the members. A Board 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 this clause are as valid and effective as if they had been conducted at a meeting at which those Board Members were physically present.
- (4) The Chair is to chair each meeting of the Board Members. If the Chair is not present at a meeting or is unable or unwilling to chair the meeting, or part of a meeting, the Board Members present may elect another member then present to chair that meeting or part thereof.
- (5) At a meeting of the Board Members, the Chair has a deliberative vote but does not have a casting vote.
- (6) The Board Members must cause minutes to be made of each meeting of the members which record –
 - (a) the names of the Board Members present, and
 - (b) the name of the person or names of the persons who chaired the meeting, or any part thereof, and
 - (c) all disclosures made by a Board Member of any actual or perceived conflicts of interest, and
 - (d) all resolutions of the Board 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 Board Members.
- (8) Subject to this Ordinance, the Board Members may regulate the proceedings of their meetings in such manner as they determine.

12. Quorum

A quorum for a meeting of the Board Members is 5 members of whom at least two must be representatives of Participating Organisations and at least two must be representatives of Fund Members.

13. Decisions of the Board Members

- (1) The Board Members will make decisions by resolution passed at a meeting of the Board Members. A resolution will be taken to have been passed only if approved by at least two-thirds of the Board Members present at the relevant meeting.
- (2) If a document contains a statement that the signatories to it are in favour of the resolution set out in the document or otherwise identified in the document and the document is signed by all Board Members, a resolution in those terms will be taken to have been passed at a meeting of Board Members held on the day and at the time at which the document was last signed by a member.
- (3) For the purposes of clause 13(2) –
 - (a) 2 or more separate documents containing statements in identical terms each of which is signed by 1 Board Member or more than 1 Board Member will be taken together to constitute 1 document containing a statement in those terms signed by those Board Members on the respective dates on which they signed the separate documents, and
 - (b) an email message which is received by the Secretary and is expressed to have been sent by a Board Member will be taken to be a document signed by that Board Member at the time of receipt of the email message by the Secretary.

14. Common Seal

- (1) The common seal of the Board is not to be affixed to a document except pursuant to a resolution of the Board Members.
- (2) The affixing of the common seal is to be witnessed by 2 Board Members.

Part 5 – Powers of the Board

15. Powers of the Board

- (1) Subject to this Ordinance, the Board has powers necessary to enable it to fulfil its purpose.
- (2) Without limiting the generality of clause 15(1) and the powers granted to the Board under the Act, the Board has the following powers –
 - (a) to appoint any corporation or person as its attorney to act for and in the name and on behalf of the Board and to revoke any such appointment, and
 - (b) to appoint and remove officers, employees, agents and attorneys and fix their remuneration, if any, and
 - (c) to appoint any committee comprised of persons nominated by the Board (which may include persons who are not Board Members if at least one half of the members of the committee are Board Members), and delegate to that committee the exercise of any of the powers of the Board (other than approving the affixing of the common seal of the Board), and
 - (d) to revoke the appointment of a committee appointed under paragraph (c).
- (3) The Board also has the following powers –
 - (a) subject to clause 17(3), to borrow or raise money, and
 - (b) to receive money on deposit or loan, and
 - (c) subject to clause 17(3) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments, and
 - (d) to invest the property of the Board (not being the property of the Fund or any trust of which the Board is trustee) in accordance with the *Investment of Church Trust Property Ordinance 1990*, and
 - (e) to institute, defend and compromise legal proceedings in respect of the property of the Board, including arbitrations and investigations, and
 - (f) to create any security interest in respect of its property,
 - (g) to fetter discretions, such as by the granting of options, and
 - (h) to enter into and take out policies of insurance.
- (4) The Board also has the following powers –
 - (a) to agree to amendments to any Trustee Document, and
 - (b) to exercise the functions of the Board set out in the Trustee Documents in force from time to time, and
 - (c) to terminate any Trustee Document, and
 - (d) to agree the Plan Rules with the Trustee from time to time, and
 - (e) to execute new Trustee Documents.

16. Duties of Board Members

Each Board Member must –

- (a) in performing their functions exercise the care and diligence that a reasonable individual would exercise as a Board Member, and
- (b) act in good faith in the best interests of the Board and to further the purpose of the Board, and
- (c) not misuse their position as a Board Member, and
- (d) not misuse information obtained in the performance of their duties as a Board Member, and

- (e) disclose any perceived or actual material conflict of interest they have as a member and not participate in discussion or vote on any matter, in which the conflict of interest arises without the approval of the other Board Members, and
- (f) ensure that the financial affairs of the Board are managed in a responsible manner, and
- (g) not allow the Board to operate while insolvent.

17. Liabilities of the Board

(1) The Board remains and continues to be solely responsible for all liabilities incurred by it or on its behalf.

(2) The Board 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 Board.

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

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that Anglican National Superannuation Board 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 Anglican National Superannuation Board may be able to pay to that party in the event of Anglican National Superannuation Board being wound up."

Part 6 – General

18. Reporting to the Standing Committee

(1) The Board is to report to the Standing Committee from time to time about its affairs.

(2) The Board is to provide the Standing Committee with such information about its affairs as the Standing Committee requests from time to time.

19. Access Indemnity and Insurance

(1) Subject to clause 19(2) during the Access Period the Board must upon receiving reasonable notice from a Board member allow the Board member or their legal representative at no cost to the Board member access to the Board papers and documents which relate to the Board Member's period of appointment as a Board Member and allow the Board Member or their representative to take copies of such documents

(2) Unless the Board agrees otherwise during the Access Period after the Cessation Date, the Board member will have the right to access and take copies of the documents referred to in clause 19(1) only if:

- (a) the Board Member is or is likely to be defending, involved in or appearing in an Action (including Proceedings that the Board Member reasonably proposes to commence); and
- (b) the Board Member requests access to the documents solely for the purpose of obtaining advice for, or in relation to, defending or preparing to defend, or appearing in that Action or preparing to commence proceedings .

(3) The Board will 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 Board Member –

- (a) to another person (other than the Board) which does not arise out of conduct involving a lack of good faith, or
- (b) for costs and expenses incurred by that person in defending an Action, in which judgement is given in favour of that person in a civil Proceedings or in which that person is acquitted in criminal Proceedings.

(4) The Board need not indemnify a person under clause 19(1) for a liability to the extent that the person is entitled to an indemnity for that liability under a contract of insurance or under any other ordinance.

(5) The Board may pay, or agree to pay, a premium for a contract insuring a person who is, or has been, a Board 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 Board, or
- (b) the improper use of information by the person, acquired by virtue of the person being, or having been, a Board Member to gain an advantage for that person or another person or to cause detriment to the Board, or
- (c) the improper use of the person's position as a Board Member to gain an advantage for himself or herself or for any other person or to cause detriment to the Board.

(6) The Board may pay, or agree to pay, a premium for a contract insuring a person who is, or has been, a Board 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 an Action, and whatever the outcome.

(7) For the purposes of this clause 19, the outcome of an Action is the outcome of the Action and any appeal in relation to the Action.

20. Not-for-profit and dissolution of the Board

(1) Any property of the Board will be 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 Board or on its winding-up or dissolution.

(2) If the Board 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.

Schedule 1 – 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 Board in accordance with its Christian ethos and its constituting ordinance.
4. I agree that my continuance as a member of the Board is dependent upon my continuing agreement with this statement and I undertake to resign if this ceases to be the case.

.....
(signature)

.....
Name

.....
Date

Schedule 2 – Plan Principles

The primary purpose of the Fund is to provide superannuation and other benefits (in accordance with Superannuation Law) for –

- (a) clergy and other persons licensed or appointed to a parish in the Diocese of Sydney, and
- (b) other persons employed by or serving with a Participating Organisation.

The Fund shall be invested in a manner which is consistent with any principles adopted by the Synod or the Standing Committee of the Diocese from time to time for the ethical investment of church trust property.

Notes

Pursuant to the Anglican Church of Australia (Bodies Corporate) Act 1938 the Board was incorporated under the name “Sydney Diocesan Superannuation Fund Board” by Order published in the Government Gazette on 1 June 1962.

Table of Amendments

The Sydney Diocesan Superannuation Fund Ordinance 1961 was amended by a number of Ordinances prior to Ordinance No 49, 2017. These amending Ordinances are no longer relevant since Ordinance No 49, 2017 amended completely the terms of the 1961 Ordinance.

Clause 5(1) Amended by Ordinance No 9, 2019

STEVE LUCAS
Legal Counsel & Corporate Secretary

DANIEL GLYNN
Diocesan Secretary

20 May 2019