

Finance and Loans Board Ordinance 1957

(Reprinted under the Interpretation Ordinance 1985.)

The Sydney Church of England Finance and Loans Board Ordinance 1957 as amended by the Finance and Loans Board Ordinance 1957 Amendment Ordinance 2017 and the Governance Omnibus Amendment Ordinance 2022.

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XXXXXXXXXX

Long Title

An Ordinance to provide certain finances for parochial and other purposes in connection with the Anglican Church of Australia in the Diocese of Sydney, to constitute an authority to administer such Ordinance and for purposes incidental thereto.

Preamble

A. It is expedient to provide a method of financing the activities of the Anglican Church of Australia in the Diocese of Sydney without the necessity of executing formal securities.

B. It is expedient to constitute an authority to investigate certain applications for loans and administer the provisions of this Ordinance.

1. Name of Board

There shall be constituted a body known as the Finance and Loans Board (hereinafter called “the Board”).

2. Object

The object of the Board is to advance the purposes of the Anglican Church of Australia in the Diocese of Sydney by financing the activities of the Diocese without the necessity of executing formal securities.

3. President

The Archbishop shall be President of the Board.

4. Membership

- (1) The members of the Board are –
 - (a) 3 members of the clergy licensed in the Diocese of Sydney elected by the Synod;
 - (b) 6 lay persons elected by the Synod; and
 - (c) 1 person appointed by the Archbishop.
- (2) The membership of the Board shall include at least two members with at minimum a three-year theological degree from Moore Theological College or another college that is endorsed by the Archbishop for the purpose of this clause, noting that the requirements of subclause 4(1)(a) and this subclause may be met by the same people.

5. Election of Members

- (1) At each ordinary session of the Synod –
 - (a) 1 of the members of the Board referred to in clause 4(1)(a) will retire from office; and
 - (b) 2 of the members of the Board referred to in clause 4(1)(b) will retire from office.
- (2) Members will retire in rotation according to the length of their time in office. If members have held office for an equal length of time, the member or members to retire shall be determined by lot by the Chair.
- (3) The member of the Board referred to in clause 4(1)(c) holds office, subject to clause 6, until the first day of the ordinary session of the Synod which next follows his or her appointment, but is eligible to be reappointed.
- (4) A person whose term of office ends under clause 5(1) is not eligible to be re-elected as a member during the period of 12 months commencing from the date on which their term of office ends if they have served as a member for a continuous period of 14 years or more ending on the date on which their term of office ends. 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.

6. Casual Vacancies

- (1) A member of the Board ceases to hold office if he or she –
 - (a) dies;
 - (b) resigns from office by written notice to –
 - (i) the Diocesan Secretary, in the case of a member referred to in clause 4(1)(a) or 4(1)(b); or
 - (ii) to the Archbishop, in the case of a member referred to in clause 4(1)(c); or
 - (c) is absent without leave for 3 consecutive meetings of the Board and the Board resolves that the person's membership should cease.
- (2) A person ceases to be a member of the Board, and is ineligible to be elected or appointed as a member of the Board, 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) 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
 - (e) has been convicted of a crime or an offence punishable by imprisonment for more than 12 months, or
 - (f) is subject to a subsisting 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
 - (g) is employed by the Board, or any entity which provides services (for a fee) to the Board, or
 - (h) fails to sign the “Statement of Personal Faith” set out in the Synod Governance Policy or declares that he or she is no longer able to subscribe to the statement, or
 - (i) fails to disclose his or her actual material conflict of interest in any matter brought for the consideration of the Board which, in the opinion of the Board, resulted in a resolution of the Board which would not have been made if the actual material conflict of interest had been disclosed, and the Board resolves by at least a three-quarters majority that the person’s membership should cease as a result of this failure.
- (3) A person is not eligible to be elected as a member unless the person has first signed the “Statement of Personal Faith” set out in the Synod Governance Policy.
- (4) A vacancy in the office of a member of the Board referred to in clause 4(1)(a) or 4(1)(b) –
- (a) arising under subclause (1) or (2); or
 - (b) existing because it is not filled at an election conducted by the Synod;
- may be filled by the Standing Committee.
- (5) A casual vacancy arising in the office of a member of the Board referred to in clause 4(1)(c) may be filled by the Archbishop.
- (6) Subject to subclauses (1) and (2), a person elected or appointed under this clause to fill a vacancy holds office –
- (a) where the vacancy arose under subclause (1) or (2), for such time as the previous occupant of that office would have held office but for the occurrence of the vacancy; or
 - (b) where the vacancy exists because it was not filled at an election conducted during the Synod, at such time as that person would have held office if they had been elected by the Synod at that election.

7. The Chair and Other Officers

- (1) The Board must appoint, from time to time a Chair, who will chair meetings of the Board in the absence of the President.(2) The Board may appoint such other officers as it may determine.
- (3) The Chair and other officers referred to in subclauses (1) and (2) shall not hold office for a term exceeding 3 years. Such persons are eligible to stand for re-election but shall not serve in the same office for more than 9 consecutive years.
- (4) A person is not eligible to be appointed as the Chair unless he or she has first signed the “Statement of Personal Faith” set out in the Synod Governance Policy.
- (5) A person shall not be the Chair if a member of the person’s immediate family is employed by the Board, unless the Board has considered the circumstances and unanimously agreed to it by secret ballot.
- (6) The Chair has a deliberative vote and in the case of an equality of votes does not have a casting vote.

8. Meetings of the Board

- (1) The Board is to meet at such time as it may determine, and is to meet at least once in every 3 month period.
- (2) A meeting of the Board may be convened by -

- (a) the Chair of the Board, or
- (b) any 4 members of the Board.

(3) A meeting of the Board may be called or held using any technology consented to by all the members of the Board provided that all members taking part in such a meeting can hear and be heard by one another. Any member of the Board who is absent from the place assigned for a meeting may attend that meeting by using any technology consented to by all members of the Board provided that absent members can hear and be heard by, not only one another, but also the other members present at the place of meeting. All proceedings conducted with the aid of technology under this subclause are as valid and effective as if they had been conducted at a meeting at which all of those members were physically present.

(4) A quorum for a meeting of the Board is five members.

(5) The Board must cause minutes to be made of –

- (a) the names of the persons present at all Board meetings and meetings of Board committees,
- (b) all disclosures of perceived or actual material conflicts of interest, and
- (c) all resolutions made by the Board and Board committees.

(6) Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body following an agreed resolution to do so. If so signed the minutes are conclusive evidence of the matters as between the members stated in such minutes.

9. Attendance of the Archbishop and other persons at meetings of the Board

(1) If the Archbishop requests, the Board will send him a copy of the agenda for the meeting or meetings of the Board referred to in the request.

(2) The Archbishop may attend any meeting of the members of the Board and may -

- (a) put before the members any question or proposal for their consideration, or
- (b) express his views on any question or proposal being considered by the members of the Board, and
- (c) to address the Board on any pastoral or policy issue concerning the Anglican Church of Australia as it applies to the Board, and
- (d) receive board papers at his request.

(3) The Board may invite any person who is not a member of the Board to be present for the whole or part of any meeting of the Board.

10. Resolutions without a meeting

(1) The members of the Board may pass a resolution without a meeting of the members being held if –

- (a) a document setting out the proposed resolution and containing a statement that a member is in favour of the proposed resolution is provided or sent to each member either personally or at the last postal or electronic mailing address provided by the member for the purpose of receiving material in connection with meetings of the Board, and
- (b) all members who would be entitled to vote on a motion for the resolution at a meeting of the Board notify the person who provided or sent the statement that they are in favour of the proposed resolution by returning to that person a signed copy of the statement or otherwise confirming the statement to that person by electronic means.

(2) Separate copies of a document may be used for the purposes of this clause if the wording of the resolution and statement is identical in each copy. A resolution passed under this clause is to be recorded in the minutes of the next meeting of the Board.

11. Conflicts of Interest

A member of the Board who has a material conflict of interest in a matter that relates to the affairs of the Board must disclose that interest to the Board and should not participate in any

consideration of that matter at a meeting of the Board unless the Board, by resolution, notes the interest and permits the member to participate.

12. Functions, Duties and Powers of the Board

- (1) The functions of the Board shall be –
 - (a) to govern, control and manage such funds, securities and assets as shall be committed to it for the purpose by this or any other ordinance of Synod, and
 - (b) to investigate and, if thought fit, approve applications for loans for such purposes authorised by this Ordinance as the Board may approve from funds under its control by parochial units in the Diocese of Sydney and organisations of the Anglican Church of Australia in such Diocese which are subject to the control of Synod.
- (2) The Board has power to do all things necessary and desirable to fulfil its object and, without limiting the generality of the foregoing, has the following duties and powers -
 - (a) to investigate all applications to the Board for loans for parochial or other purposes,
 - (b) subject to clause 15, to authorise loans from the funds under the control of the Board on such terms as may be determined by it to such parochial units and organisations in the Diocese of Sydney for the purposes hereinbefore set out,
 - (c) to report quarterly to the Standing Committee, or any committee designated by the Standing Committee, on –
 - (i) all loans authorised by the Board;
 - (ii) the purposes of such loans; and
 - (iii) the uncommitted funds of the Board,
 - (d) to investigate any case where default shall be made by any such parochial unit or other organisation in meeting its obligations in respect of any advance made to it under the provisions of this Ordinance or in respect of any advances made prior thereto and to make at its discretion any further advance to remedy such default or other arrangements as it may deem necessary and if it think fit to report to Synod or the Standing Committee and recommend what action should be taken,
 - (e) to invest any funds under its control as provided by the Investment of Church Trust Property Ordinance 1990 or any ordinance amending or taking the place of the same,
 - (f) to appoint and remove officers, servants, agents and fix their remuneration, if any, to acquire and provide such accommodation and equipment for its operations and to defray the costs of and incidental to the purposes aforesaid from funds under its control,
 - (g) to make such rules and regulations governing applications made to the Board for advances whether to be made by the Board or by a bank or other lending body as Standing Committee may from time to time by resolution approve,
 - (h) to delegate any of its duties and powers (except those contained in this paragraph) to any person or committee of persons nominated by the Board provided any such committee is chaired by a Board member and reports the exercise of its delegated functions to the next Board meeting and to revoke any such delegation,
 - (i) to authorise any person or persons on its behalf to sign and execute any contract or security and to sue for and recover any moneys due to it under any contract or security,
 - (j) to exercise the powers and discharge the duties of the Board with the degree of care and diligence that a reasonable individual would exercise if they were a member of the Board,
 - (k) to act in good faith in the best interests of the Board and to further the purposes of the Board,
 - (l) not to misuse their position as a member of the Board,
 - (m) not to misuse information obtained in the performance of their duties as a member of the Board,

- (n) to ensure that the financial affairs of the Board are managed in a responsible manner, and
 - (o) not to allow the Board to operate while insolvent.
- (3) Board members must not be remunerated for their service as Board members except by way of reimbursement for reasonable out-of-pocket expenses.
- (4) The Board must maintain records of applicable eligibility criteria for Board membership and conflicts of interest disclosed by Board members.

13. Borrowing by the Board

For the purpose of performing or exercising its duties and powers the Board may borrow or raise money whether on the security of property held on trust by the Board or part thereof, or otherwise as it considers necessary.

14. Liabilities

(1) The Board must not offer its property as security for any liability other than a liability of the Board or a body controlled by the Board. (2) Any mortgage, charge, debenture or other negotiable instrument given by the Board over its property (other than a cheque drawn on a bank account held by the Board) shall include a provision limiting the liability of the Board to the amount available to be paid in the event it is wound up.

15. Subordinated loans

In exercising its duties and powers under clause 12(2)(b), the Board –

- (a) is not to authorise a loan to a parochial unit or organisation which has an existing loan secured by any legal or equitable mortgage over any real or personal property unless the Standing Committee by resolution approves the authorisation of the loan either generally or in a particular case, and
- (b) is to include in the terms on which each loan to a parochial unit or organisation is authorised a provision which –
 - (A) prohibits the parochial unit or organisation entering into an agreement to borrow moneys which are to be secured by any legal or equitable mortgage over any real or personal property unless the Standing Committee by resolution approves the agreement, and
 - (B) makes the balance of the loan from the Board immediately due and repayable in the event that the parochial unit or organisation enters into such agreement without such approval.

16. Review of Proposals for Mortgaging Resolutions

The Board shall, before passing a resolution referred to in subsection (2) of section 27A of the *Anglican Church of Australia Trust Property Act 1917* as amended, submit all such details of the proposal to the Standing Committee for such further action as the Standing Committee may determine from time to time.

17. Action on Loans in Default

In the event of the Board reporting to the Synod or Standing Committee any case of default pursuant to clause 12(2)(d), the Synod or Standing Committee shall take such action by ordinance or otherwise to cause the same to be rectified as it may think fit.

18. Notice of an Application for a Loan

- (1) A notice shall be posted for a continuous period including two consecutive Sundays at the main entrance of the principal church of each parochial unit intending to apply for a loan pursuant to the provisions of this Ordinance and of each other church of the parochial unit which may be specially affected by the loan and the attention of the congregation shall be specially drawn to such notice at the services of public worship held in such churches on such Sundays.
- (2) Every such notice shall state the intention of the wardens or parish council to apply for such loan and the general purposes of the loan and shall also contain a notification that any objections to the loan must be lodged with the Board within the time stated in the notice. Such time shall be not less than seven days after the date of the second Sunday on which such notice is posted as aforesaid.

19. Indemnity

(1) Subject to subclause (2) each member of the Board is indemnified out of the assets of the Board against all loss or liability which a member of the Board or any of the members of the Board may have incurred for or on behalf of the Board and which they or any of them may be subject through being a member of the Board.

(2) A member of the Board is not entitled to be indemnified under subclause (1) against any loss or liability that -

- (a) is owed to the Board, or
- (b) did not arise out of conduct undertaken in good faith.

20. When the provisions of this Ordinance do not apply

The provisions of this Ordinance shall not apply to any advance which is to be secured by any legal or equitable mortgage over any real or personal property.

21. Compliance with Synod Ordinances and Policies

The Board shall comply with all applicable ordinances and policies of the Synod (as amended from time to time) including, as applicable –

- (a) the *Investment of Church Trust Property Ordinance 1990*, and
- (b) the *Accounts, Audits and Annual Reports Ordinance 1995*.

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

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

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

23. Definitions

“Archbishop” means the Archbishop for the time being or, in his absence, his Commissary or if the See of Sydney is vacant, the Administrator of the Diocese.

“Synod Governance Policy” means the policy for Diocesan Organisations made by the Synod on 20 October 2014, as amended from time to time.

24. Name of Ordinance

This Ordinance is the Finance and Loans Board Ordinance 1957.

Table of Amendments

The Sydney Church of England Finance and Loans Board Ordinance 1957 was amended by a number of Ordinances prior to Ordinance No 22, 2017. These amending Ordinances are no longer relevant since Ordinance No 22, 2017 amended completely the terms of the 1957 Ordinance.

Clause 4	Amended by Ordinance No 7, 2022.
Clause 6	Amended by Ordinance No 7, 2022.
Clause 7	Amended by Ordinance No 7, 2022.
Clause 8	Amended by Ordinance No 7, 2022.
Clause 9	Amended by Ordinance No 7, 2022.
Clause 12	Amended by Ordinance No 7, 2022.
Clause 14	Inserted by Ordinance No 7, 2022.
Clause 21	Amended by Ordinance No 7, 2022.
Clause 23	Amended by Ordinance No 7, 2022.
Schedule	Deleted by Ordinance No 7, 2022.

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