

Sydney Diocesan Services Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

The Sydney Diocesan Secretariat Ordinance 1973 as amended by the Sydney Diocesan Secretariat Ordinance 1973 Amendment Ordinance 2017, the Sydney Diocesan Secretariat (Change of Name) Ordinance 2019 and the Sydney Diocesan Services Ordinance 2017 Amendment Ordinance 2020.

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Long Title

An Ordinance to provide a constitution for the body known as the Sydney Diocesan Services.

Preamble

Whereas it is expedient that the central administration of the affairs of the Anglican Church of Australia within the Diocese of Sydney be regulated by a body of persons appointed by the Standing Committee 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. Sydney Diocesan Services

There shall be a body known as the Sydney Diocesan Services.

2. Name of Ordinance

This ordinance is the *Sydney Diocesan Services Ordinance 2017*.

3. Definitions and Interpretation

(1) In this Ordinance –

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

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

“Chair” means the chair appointed under clause 10.

“Diocese” means the Diocese of Sydney.

“member” means a member of SDS.

“Regional Bishop” means an Assistant Bishop who has the episcopal oversight of a part of the Diocese designated as a region under the Regions Ordinance 1995.

“SDS” means the Sydney Diocesan Services.

“Secretary” means the Secretary of SDS appointed under clause 11.

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

“Synod” means the Synod of the Diocese.

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

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

Part 2 – Purpose of SDS

4. Purpose

The purpose of SDS is to advance the purposes of the Anglican Church of Australia in the Diocese of Sydney through the regulation of the central administration of the affairs of the Diocese.

Part 3 – Membership of SDS

5. Membership of SDS

(1) SDS is to consist of nine members elected by the Standing Committee and one member appointed by the Archbishop.

(2) At least two of the members are to be ordained clergy licensed in the Diocese of Sydney or are to be persons with at least a three year theological degree from Moore Theological College or another college that is endorsed by the Archbishop for the purposes of this clause.

(3) A person is disqualified from being elected or 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) has at any time during the preceding 12 months been 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 a subsisting recommendation from the Diocesan or Disciplinary Tribunal of the Diocese (or from a comparable tribunal or body in another diocese or church) that they be prohibited from holding the office of member (or a comparable office in the other diocese or church), or
- (g) is employed by SDS, or any entity which, or a self-employed person who, provides services (for a fee) to SDS or is a partner of such an entity.

(4) Every member must, upon being appointed or elected as, or otherwise becoming, a member, sign the "Statement of Personal Faith" set out in the Synod Governance Policy, and deliver it to the Secretary within 28 days of the date of that person becoming a member. If a person fails to do so, the person is disqualified from being, and automatically ceases to be, a member.

(5) A person is not eligible to be re-elected or re-appointed as a member if such re-election or 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.

6. Duration of office of members

(1) At the first meeting of the Standing Committee next following each ordinary session of the Synod, one third of the persons who are members elected by the Standing Committee for the time being or, if the number of such members is not a multiple of 3, then the nearest number to one third (rounded upwards), 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 the member appointed by the Archbishop is to retire.

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

(4) The members elected by the Standing Committee who are to retire are those members who have been in office longest since their last election. As between persons who were elected as members on the same day, those to retire (unless they otherwise agree among themselves) are to be determined by lot.

(5) No vacancy in the office of member affects the authority or powers of SDS and, subject to clauses 13 and 14, that authority and those powers may be exercised by the members holding office from time to time.

7. 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 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) 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 a recommendation from the Diocesan or Disciplinary Tribunal of the Diocese (or from a comparable tribunal or body in another diocese or church) that they be prohibited from holding the office of member (or a comparable office in the other diocese or church) or that they be removed from such office, or

- (i) is absent without the leave of SDS for 3 consecutive meetings of SDS and SDS resolves that the person's membership should cease, or
- (j) becomes an employee of SDS or any entity which, or a self-employed person who, provides services (for a fee) to SDS or becomes a partner of such an entity, or
- (k) fails to disclose his or her actual material conflict of interest in any matter brought for the consideration of SDS which, in the opinion of SDS, resulted in a resolution of SDS which would not have been made if the actual material conflict of interest had been disclosed, and SDS resolves by at least three-quarters majority that the person's membership should cease as a result of this failure.

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

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

(1) A casual vacancy among the members elected by the Standing Committee may be filled by the Standing Committee.

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

(3) 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.

9. Members not to be remunerated

(1) A member is not to be remunerated for their service as a member.

(2) Nothing in clause 9(1) prevents a member from being reimbursed for reasonable out of pocket expenses incurred in performing their duties as a member.

Part 4 – Meetings of the Members

10. 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 chair under subclauses (1)(b), (c) or (d) may be reappointed for a further term.

(3) A person cannot serve as the Chair of SDS for more than nine consecutive years.

(4) A person cannot be the Chair of SDS if a member of the person's immediate family is employed by SDS, unless SDS has considered the circumstances and unanimously agreed to it by secret ballot.

11. Secretary

(1) The members are to appoint a person to be the Secretary of SDS.

(2) A person is not required to be a member to be appointed as Secretary.

(3) A person cannot serve as Secretary of SDS for more than nine consecutive years.

12. Meetings of members

(1) The members are to meet at such times as they may determine.

(2) In addition, a meeting of the members is to be convened by the Secretary upon request in writing made by –

- (a) the Chair, or
- (b) any 3 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 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 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.

13. Quorum

A quorum for a meeting of the members is 5 members.

14. Decisions of the members

- (1) Usually, the members will make decisions by resolution passed at a meeting of the members.
- (2) If a document contains a statement that the signatories to it are in favour of a resolution set out in the document or otherwise identified in the document and the document is signed by all members (other than members who are, at that time, overseas or have leave of absence), a resolution in those terms will be taken to have been passed at a meeting of 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 14(2) –
- (a) 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members will be taken together to constitute 1 document containing a statement in those terms signed by those 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 member will be taken to be a document signed by that member at the time of receipt of the email message by the Secretary.

15. President

- (1) The Archbishop is President of SDS.
- (2) The President may attend any meeting of SDS and may address SDS on any pastoral or policy issue concerning the Anglican Church of Australia as it applies to SDS including the appointment of the Chief Executive Officer.
- (3) If the President requests, the Secretary will send him a copy of the agenda for the meeting of SDS referred to in the request.
- (4) The President is not a member of SDS, and so is not entitled to vote on any question or proposal being considered by SDS.
- (5) The President is permitted to appoint a nominee to exercise his entitlements as President on his behalf.

16. Common Seal

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

Part 5 – Function and Powers of SDS

17. Function of SDS

- (1) The function of SDS is to regulate the central administration of the affairs of the Diocese and to manage and control the property of which it is the trustee from time to time.
- (2) The function of SDS may include the provision of administrative and related services to Anglican entities outside the Diocese and organisations which are affiliated with the Diocese if the provision of such services is incidental to or facilitates the functions under subclause (1).

18. Powers of SDS

- (1) Subject to this Ordinance and the terms of the trusts on which any property is held by SDS as trustee, SDS has the powers necessary to enable it to fulfil its function.
- (2) Without limiting the generality of clause 18(1) and the powers granted to SDS under the Act, SDS 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 SDS and to revoke any such appointment,
 - (b) to appoint and remove officers, employees, agents and attorneys, to fix their remuneration, if any, and to delegate authority to incur expenses and undertake expenditure on its behalf,
 - (c) to appoint any committee comprised of one or more persons nominated by SDS (which may include persons who are not members of SDS if at least one half of the members of the committee are members of SDS), and delegate to that committee the exercise of any of the powers of SDS (other than approving the affixing of the common seal of SDS),
 - (d) to revoke the appointment of a committee appointed under paragraph (c),
 - (e) to act as agent or otherwise exercise any of its powers, authorities, duties and functions for any trustee holding church trust property (as defined in the Anglican Church of Australia Trust Property Act 1917) and for any person, persons or corporation having the management or control of any such property if authorised so to act by such trustee, person, persons or corporation,
 - (f) subject to clause 21, to borrow or raise money or create any security interest in respect of the property of SDS,
 - (g) to invest the property of SDS (and other property received by SDS in providing services, acting as agent or otherwise exercising any of its powers, duties, authorities and functions that is not immediately required) in accordance with the *Investment of Church Trust Property Ordinance 1990*,
 - (h) to institute, defend and compromise legal proceedings in respect of the property of SDS, including arbitrations and investigations,
 - (i) to enter into and take out policies of insurance, and
 - (j) to lend or advance money or give credit to any person or company.
- (3) SDS may pool or combine any church trust property held by it with other church trust property held by it (and permit church trust property to be held on a pooled or combined basis by any custodian acting on behalf of SDS).
- (4) SDS in providing services, acting as agent or otherwise exercising any of its powers, authorities, duties and functions is not obliged to pay interest on money which is church trust property and held or received by it in so doing.
- (5) Any trustee of church trust property and any other body, whether incorporated or not, constituted for the purpose of governing and controlling the management and use of such property may engage or authorise SDS to provide services, act as agent or otherwise exercise any of its powers, authorities, duties and functions.

19. Chief Executive Officer

- (1) SDS may appoint a Chief Executive Officer (who is to report directly to SDS) for such period, for such remuneration and on such terms as SDS may resolve and, subject to those terms and the law, may revoke such appointment.
- (2) Prior to the beginning of the selection process for a new Chief Executive Officer, the Chair is to inform the Archbishop of the process and the Archbishop, or a Regional Bishop nominated by him, is to be invited to be a part of the interview process, and the Archbishop is to be informed of the names on the final list prior to any offer being made for the position.
- (3) A person is not eligible to be appointed as the Chief Executive Officer unless he or she has first given the Chair a signed copy of the Statement of Personal Faith set out in the Synod Governance Policy.
- (4) The Chief Executive Officer is responsible to SDS for the implementation of the strategy, policies and decisions of SDS and for the general administration and daily operation of SDS.
- (5) SDS may –
 - (a) give the Chief Executive Officer powers, discretions and duties,
 - (b) withdraw, suspend or vary any of the powers, discretions and duties given to the Chief Executive Officer, and
 - (c) authorise the Chief Executive Officer to delegate any of the powers, discretions and duties given to the Chief Executive Officer.

20. 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 SDS and to further the purpose of SDS, 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 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 or perceived conflict of interest arises without the approval of the other members,
- (g) ensure that the financial affairs of SDS are managed in a responsible manner, and
- (h) not allow SDS to operate while insolvent.

21. Liabilities of SDS

- (1) SDS remains and continues to be solely responsible for all liabilities incurred by it or on its behalf.
- (2) 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 SDS.
- (3) SDS 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 SDS'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 the Sydney Diocesan Services 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 Sydney Diocesan Services may be able to pay to that party in the event of the Sydney Diocesan Services being wound up."

Part 6 – General

22. Records, Auditor and Reports

- (1) SDS is to comply with the *Accounts, Audits & Annual Reports Ordinance 1995*.
- (2) SDS must identify in its records all church trust property held by it (or by a custodian on behalf of SDS).

23. Reporting to the Standing Committee

- (1) SDS is to report to the Standing Committee from time to time about its affairs and is to cause minutes of its meetings to be tabled at a meeting of the Standing Committee at least once every quarter.
- (2) SDS is to provide the Standing Committee with such information about its affairs as the Standing Committee requests from time to time.
- (3) Any member of the Standing Committee may during a meeting of the Standing Committee ask a question or questions on any matter relating to the affairs of SDS. If the question cannot be answered at the meeting, the Secretary of the Standing Committee shall notify the question to the Secretary of SDS and SDS will ensure that an answer is supplied to the Secretary of the Standing Committee before the next ordinary meeting of the Standing Committee.

24. Indemnity

- (1) To the extent permitted by law, SDS 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 SDS or a related body corporate) 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) SDS need not indemnify a person under clause 24(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.
- (3) To the extent permitted by law, SDS 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 SDS,
 - (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 SDS, 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 SDS.
- (4) To the extent permitted by law, SDS 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.

25. Not-for-profit and dissolution of SDS

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

(2) If SDS 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.

Table of Amendments

The Sydney Diocesan Secretariat Ordinance 1973 was amended by a number of Ordinances prior to Ordinance No 19, 2017. These amending Ordinances are no longer relevant since Ordinance No 19, 2017 amended completely the terms of the 1973 Ordinance.

Title	Amended by Ordinance No 2, 2019.
Table of Provisions	Amended by Ordinance No 2, 2019.
Long Title	Amended by Ordinance No 2, 2019.
Clause 1	Amended by Ordinance No 2, 2019.
Clause 2	Amended by Ordinance No 2, 2019.
Clause 3	Amended by Ordinance Nos 2, 2019; 15, 2020.
Clause 5	Amended by Ordinance No 15, 2020.
Clause 7	Amended by Ordinance No 15, 2020.
Clause 10	Amended by Ordinance No 15, 2020.
Clause 11	Amended by Ordinance No 15, 2020.
Clause 15	Amended by Ordinance No 15, 2020.
Clause 19	Amended by Ordinance No 15, 2020.
Clause 21	Amended by Ordinance No 2, 2019.
Schedule	Amended by Ordinance No 2, 2019. Deleted by Ordinance No 15, 2020.

STEVE LUCAS

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Senior Legal Counsel

Diocesan Secretary

7 May 2020