

Diocesan Endowment Trust Ordinance 2016

(Reprinted under the Interpretation Ordinance 1985.)

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Long Title

An Ordinance to re-declare the trusts of the property held in the trust fund known as the Diocesan Endowment, and for purposes related thereto.

Preamble

A. Glebe Administration Board is the trustee of the property held on the trusts set out in the *Diocesan Endowment Ordinance 1984*.

B. By reasons of circumstances which have arisen after the creation of the trusts on which the property of the Trust is held, it is inexpedient to carry out and observe those trusts and it is expedient that the trusts of that property be re-declared.

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

Part 1 – Introduction

1. Name

This Ordinance is the *Diocesan Endowment Trust Ordinance 2016*.

2. Definitions

In this Ordinance –

“Board” means Glebe Administration Board, being the corporation incorporated under section 3(1) of the *Anglican Church of Australia (Bodies Corporate) Act 1938*.

“Custodian” means a custodian which is a corporation or wholly owned subsidiary of a corporation which normally carries on the business of banking or the provision of trustee or custodial services.

“Diocese” means the Diocese of Sydney.

“Existing Property” means the property held on the trusts set out in the Former Ordinance.

“Former Ordinance” means the *Diocesan Endowment Ordinance 1984*.

“Income” means the income earned from, or in connection with, the Property.

“Property” means such of the Existing Property as is held by the Trustee from time to time as property of the Trust, and such other property as may be paid to applied or acquired by the Trustee to be held as property of the Trust.

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

“Synod” means the Synod of the Diocese.

“Trust” means the Diocesan Endowment Trust.

“Trustee” means the Board or such other person or corporation who or which, from time to time, is the trustee of the Trust.

3. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property and the income from the Existing Property are held, it is inexpedient to carry out and observe those trusts and it is expedient to re-declare the trusts upon which the Existing Property is held and to provide for the application of the income from the Existing Property.

Part 2 – Trusts

4. Trusts of the Property

(1) The Property is held on trust for the purposes of the Anglican Church of Australia in the Diocese of Sydney.

(2) As trustee of the Trust, the Trustee is to act in a way which –

- (a) preserves the real value of the Property, and
- (b) subject thereto, enables distributions to be paid in accordance with clause 6.

5. Income of the Property

Subject to clause 6, the income of the Property is to be reinvested.

6. Distributions from the Property

(1) Each year, the Trustee is to advise the Standing Committee of the amount which prudently may be distributed from the Property during the year which follows the year in which the advice is given, having regard to paragraph 4(2)(a).

(2) The Trustee must provide the advice referred to in subclause 6(1) no later than 30 April in the year in which the advice is given.

(3) The Trustee is to pay the Standing Committee the amount referred to in subclause 6(1) during the year which follows the year in which the advice is given, at such time or times as the Standing Committee determines from time to time.

(4) The amount paid by the Trustee under subclause 6(3) is to be applied by the Standing Committee in accordance with the determination or direction of the Synod.

Part 3 – Powers of the Trustee

7. Powers of the Trustee

(1) Subject to this Ordinance, the Trustee has such powers as are necessary or desirable to enable it to fulfil its duties as trustee of the Trust.

(2) The Trustee may invest the Property in one or more of the following investments –

- (a) investments for the time being allowed by law of the State of New South Wales for investment of trust funds, and
- (b) the purchase of real or leasehold estate situated within Australia, and
- (c) loans, whether secured or unsecured, to –
 - (i) any parish, provisional parish or assisted provisional parish constituted or recognised as such under the *Parishes Ordinance 1979*, or
 - (ii) any organisation constituted by or under any ordinance of the Synod or the Standing Committee of the Synod of the Diocese of Sydney, or
 - (iii) any individual or organisation not referred to in subparagraph (i) or (ii) approved by the Trustee, and
- (d) debentures issued by any city, municipal or shire council in Australia or other corporation approved by the Trustee, and
- (e) deposits with or loans to any authorised deposit taking institution or other corporation approved by the Trustee, and
- (f) bills of exchange accepted or endorsed by an authorised deposit taking institution, and

- (g) the purchase or other acquisition of shares, units or other interests and securities where such shares, units, interests or securities are not those of a corporation or trust which carries on a business which the Synod or the Standing Committee may by resolution disapprove, and
 - (h) derivative instruments such as forwards, futures, options, warrants, swaps, share ratios, but not limited to such instruments, provided that such instruments are not used to gear the portfolio or create net short positions, and
 - (i) such other investments as may be approved from time to time by resolution of the Standing Committee.
- (3) The Trustee also 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 Trustee 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 one or more Custodians, and fix its or their remuneration, to perform one or more of the following actions in the name of the Trustee or at the direction of the Trustee in its own name as nominee for the Trustee –
 - (i) purchase or sell investments and execute all transfers and assurances necessary for that purpose, and
 - (ii) receive and hold on behalf of the Trustee any investment, any dividend or other interest accruing in respect of it and any document of title to it in safe custody in the country of purchase, and
 - (iii) procure registration of investments, and
 - (iv) receive, hold and disburse moneys, and
 - (v) perform all actions incidental to any of the powers specified in this clause, and
 - (vi) exercise any other power of the Trustee as the Trustee may authorise, and
 - (d) to authorise a Custodian appointed under paragraph (b) to appoint one or more corporations as a sub-Custodian.
- (4) The Trustee also has the following powers –
- (a) subject to clause 8, to borrow or raise money, and
 - (b) to receive money on deposit or loan, and
 - (c) subject to clause 8(3), to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments, and
 - (d) to institute, defend and compromise legal proceedings in respect of the Property, including arbitrations and investigations, and
 - (e) to give guarantees and indemnities for the payment of money or the performance of contracts or obligations by Sydney Diocesan Secretariat or of any other person or corporation and to secure the same on the Property or part thereof, and
 - (f) to create any security interest in respect of the Property, and
 - (g) to effect insurance policies in relation to the Property and in respect of its functions as trustee of the Trust under this Ordinance.
 - (h) to fetter discretions, such as by the granting of options.
- (5) No purchaser, mortgagee, lessee, lender or other person on any sale, exchange, mortgage, lease from or any loan or provision of other financial accommodation to or in relation to the Trustee shall be concerned to see or enquire into –
- (a) the purpose, necessity or propriety thereof, or
 - (b) the power of the Trustee in relation thereto or the mode of exercising the same, or
 - (c) the application or disposition of any purchase, mortgage or other money or rent paid by him.

8. Liabilities of the Trustee

- (1) The Trustee remains and continues to be solely responsible for all liabilities incurred by it or on its behalf as trustee of the Trust.

(2) The Trustee is not to represent to any person, persons or corporation that the Archbishop or the Synod or the Standing Committee 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 incorporated under the *Anglican Church of Australia (Bodies Corporate) Act 1938*, will 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 Trustee or for the purposes of the Trust.

(3) The Trustee 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 Trustee's bank unless the following provision, or a provision to the effect of the following provision, is included therein without qualification –

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that [name of Trustee] 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 [name of Trustee] may be able to pay to that party in the event of the Diocesan Endowment Trust constituted under the *Diocesan Endowment Ordinance 2016* being wound up."

(4) If a person or corporation (a "Former Trustee") ceases to be Trustee each subsequent Trustee will assume any debts or other liabilities incurred by a Former Trustee as trustee of the Trust in accordance with the terms upon which those debts or other liabilities were incurred.

Part 4 – General

9. Trustee Fees

The Trustee is entitled to be paid from time to time, from the Property, a fee approved by the Standing Committee by resolution to recompense it for the reasonable costs and expenses incurred by it in, or in connection with, performing its functions under this Ordinance.

10. Indemnity

(1) In this clause, "Indemnified Party" means each of –

- (a) a person or corporation who is, or has been, the Trustee or a Trustee, and
- (b) where a corporation is the Trustee or a Trustee, or has been the Trustee or a Trustee – each person who is, or has been, a member of that corporation.

(2) Each Indemnified Party is entitled, to the extent permitted by law, to be indemnified against any liability which results directly or indirectly from facts or circumstances relating to the Party serving or having served as Trustee or as a Trustee, or serving or having served as a member of a corporation which is the Trustee or a Trustee, or has been the Trustee of a Trustee –

- (a) to another person, corporation or entity which does not arise out of conduct involving a lack of good faith on the part of the Indemnified Party, or
- (b) for costs and expenses incurred by that Indemnified Party –
 - (i) in defending proceedings, whether civil or criminal, in which judgement is given in favour of that Party or in which that Party is acquitted, or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to that Party under the *Corporations Act 2001*.

11. Accounts and Reports

The Trustee will comply with the provisions of the *Accounts, Audits & Annual Reports Ordinance 1995* as if the Trustee, in its capacity as trustee of the Trust, was an organisation for the purposes of that Ordinance.

12. Not-for-profit and dissolution of the Trust

(1) The Property 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 Trust or on its winding up or dissolution.

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

13. Repeal

(1) Subject to subclause 13(2), the Former Ordinance is repealed without invalidating any action taken by the Trustee under the Former Ordinance prior to the commencement of this Ordinance.

(2) If, at the time of the commencement of this Ordinance, the Board has provided advice to the Standing Committee under clause 5(1) of the Former Ordinance but has not paid the amount referred to in that advice under clause 5(3) of that ordinance then, notwithstanding the repeal of the Former Ordinance, the Board is to pay that amount at such time or times as the Board would have been required to pay that amount if the Former Ordinance had not been repealed.

14. Commencement

This Ordinance commences on the date of assent.

Note

The original form of ordinance was assented to on 1 June 2016.

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2 June 2016