

Sydney Anglican Home Mission Society Council (Merger with Anglican Retirement Villages Diocese of Sydney) Ordinance 2016

No 9, 2016

Long Title

An Ordinance to provide for the merger of Sydney Anglican Home Mission Society Council with Anglican Retirement Villages Diocese of Sydney and to provide for a variation to the *Sydney Anglican Home Mission Society Ordinance 1981* (the **Principal Ordinance**).

Preamble

A. Sydney Anglican Home Mission Society Council (**SAHMS**) holds assets as church trust property for the purposes of carrying out the objects and undertaking of SAHMS (the **SAHMS Charitable Objects**), including –

- (1) the land set out in Schedule 1; and
- (2) all assets used in connection with the SAHMS Charitable Objects immediately before the Commencement Date including those assets set out in Schedule 2,

(collectively, the **Assets**).

B. By reason of circumstances which have arisen after the creation of the trusts on which the Assets are held it is inexpedient to continue to carry out and observe those trusts and it is inexpedient to deal with or apply the Assets for the same or like purposes as the trusts on which they are currently held.

C. It is expedient for the Assets to be used for the purposes of carrying out the charitable objects and undertaking of Anglican Retirement Villages Diocese of Sydney (**ARV**) and for the Assets to be held on trust for the purposes of ARV (the **Merger**).

D. As part of the Merger, the Assets are to be vested in ARV as the new trustee of the Assets to be held and used by ARV for the purpose of undertaking the charitable objects of ARV set out in the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961* as amended to provide for the Merger by the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016*.

E. As part of the Merger, the name of ARV is to be changed to Anglican Community Services (**ACS**), and the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961* (as amended by the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016*) is to be renamed the Anglican Community Services Constitution Ordinance 1961 (the **ACS Ordinance**).

F. In order to effect the vesting described in Recital D, by resolution of the Standing Committee, the office of trustee of the Assets will be declared vacant by reason of the matters specified in that resolution, and it will be resolved to elect ACS to the office of trustee of the Assets in place of SAHMS, such vacancy and election in the office of trustee to take effect on the Commencement Date (**Resolution**).

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

1. Name

This Ordinance is the *Sydney Anglican Home Mission Society Council (Merger with Anglican Retirement Villages Diocese of Sydney) Ordinance 2016*.

2. Interpretation Ordinance

The *Interpretation Ordinance 1985* applies to this Ordinance.

3. Continuation of SAHMS

- (1) SAHMS will continue to operate –
 - (a) for its purposes as set out in the Principal Ordinance as amended by this Ordinance; and
 - (b) in accordance with the *Anglican Church of Australia (Bodies Corporate) Act 1938* to perform the Objects of SAHMS, to discharge the duties of SAHMS and to give effect

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to the provisions of this Ordinance and any specific trust imposed by any gift, devise or bequest.

(2) SAHMS will continue to be responsible for the management and settlement of its liabilities and for dealing with –

- (a) claims under the Pastoral Care and Assistance Scheme operated by SAHMS at the Commencement Date or any replacement or amended scheme approved by the Standing Committee from time to time, and
- (b) other claims in connection with the indemnity described in clause 5 of the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016*.

4. Amendments to the Principal Ordinance

The Principal Ordinance is amended as follows –

- (a) clause 5 is deleted and the following inserted instead –

“5. Objects of the Council

The objects of the Council shall be –

- (a) to further the work of the Anglican Church of Australia within the Diocese of Sydney by proclaiming the love of God as shown in Christ in promoting and conducting activities of a pastoral, social welfare and charitable nature to be executed by the relief of poverty or other charitable means; and
 - (b) in accordance with the terms of the *Sydney Anglican Home Mission Society Council (Merger with Anglican Retirement Villages Diocese of Sydney) Ordinance 2016* –
 - (i) subject to any more particular trust, to hold all future property, gifts, bequests or devises on trust for the purposes of Anglican Community Services, other than future property, gifts, bequests or devises received for the specific purpose of administering the Pastoral Care and Assistance Scheme (or any replacement or amended scheme approved by the Standing Committee from time to time) or for the specific purpose of management and settlement of its liabilities;
 - (ii) to carry on the continuing undertaking of the Council;
 - (iii) to ensure the proper management and settlement of its liabilities and the administration of –
 - (A) claims under the Pastoral Care Assistance Scheme or any replacement or amended scheme approved by the Standing Committee from time to time; and
 - (B) other claims made in connection with the indemnity described in clause 5 of the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016*; and
 - (c) to do all matters and take all actions incidental or ancillary to these objects.”
- (b) clause 6(1) is deleted and the following inserted instead –
 - “(1) The members and chairman of the Council are the members and chairman of the board of Anglican Community Services. A person who becomes or who ceases to be a member or chairman of the board of Anglican Community Services shall thereby become or cease to be (as the case may be) a member or chairman of the Council.”; and

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- (c) clauses 7, 8, 9, 10, 11 and 12 are deleted;
- (d) clause 14 is substituted with the following –
 - “14. Meetings of the Council**
 - (1) The Council is to meet at such times as it may determine.
 - (2) A special meeting of the Council may be convened by –
 - (a) the Archbishop, or
 - (b) the Chairman, or
 - (c) any 4 members of the Council
 - by giving written notice to all members of the Council of their intention to convene the meeting, the purpose of the meeting and the date, place and appointed time.
 - (3) A quorum for a meeting of the Council is 6 members.”; and
- (e) in clause 24 –
 - (i) delete the first occurrence of the word “Synod” and insert instead “Standing Committee”, and
 - (ii) delete the words “Synod or”;
- (f) clause 25 is deleted; and
- (g) Schedule 2 is deleted.

5. Amendment to the Standing Committee Ordinance 1897

The *Standing Committee Ordinance 1897* is amended by deleting the words “and the Executive Director of the Sydney Anglican Home Mission Society” in clause 1A(1)(a).

6. Amendment to the Accounts, Audits And Annual Reports Ordinance 1995

The Third Schedule of the *Accounts, Audits and Annual Reports Ordinance 1995* is amended by –

- (a) deleting the matter “Anglican Retirement Villages: Diocese of Sydney” and inserting instead the matter “Anglican Community Services”; and
- (b) deleting the matter “Sydney Anglican Home Mission Society Council (Anglicare)”.

7. Variation of trusts

- (1) By reason of circumstances which have arisen after the creation of the trusts on which the Assets are held it is inexpedient to carry out and observe those trusts and it is inexpedient to deal with or apply the Assets for the same or like purposes as the trusts on which they are held.
- (2) Subject to the terms of this Ordinance, the Assets are held on trust for the purpose of undertaking the objects of ACS as set out in the ACS Ordinance.

8. Merger of ARV and SAHMS

- (1) Upon the election of ACS as the new trustee of the Assets pursuant to the Resolution, the Assets shall by virtue of such election become vested in ACS to be held and applied by ACS for the purpose of undertaking the objects of ACS set out in the ACS Ordinance.
- (2) At least 10 days prior to the Commencement Date, SAHMS must procure that ARV makes offers of employment to all employees of SAHMS who are engaged in functions directly connected to the transferred Assets on terms and conditions that, when considered on an overall basis are substantially similar and no less favourable than the terms of the employee's employment by SAHMS.
- (3) A person who immediately before the Commencement Date holds a licence or authority issued by or on behalf of the Archbishop for an office that applies to or remains valid for the term of the person's appointment with SAHMS or ARV is taken to hold, and continues to hold, from the Commencement Date that licence or authority as if it applied to or remained valid for the term of the person's appointment with ACS.

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- (4) From the Commencement Date –
- (a) SAHMS is taken not to be an organisation declared by the Standing Committee as a Nominated Organisation under clause 24 of the Synod Membership Ordinance 1995, and
 - (b) any declaration under clause 24 then in force for ARV is taken to be a declaration in force for ACS.

9. Gifts, devises, bequests

Any gifts, devises and bequests which are received or vested in SAHMS after the Commencement Date that take the form of a gift, devise or bequest to, or for the purposes of SAHMS, other than gifts, devises or bequests received for the specific purpose of administering the Pastoral Care and Assistance Scheme or for the specific purpose of management and settlement of its liabilities, may be transferred to ACS to be applied for the objects of ACS as amended from time to time subject to any more particular trust attached to such gift, devise or bequest.

10. Commencement

(1) Except for this clause and clause 8(2) and subject to subclause (2), the provisions of this Ordinance commence on the first moment in time on the date (the **Commencement Date**) determined by the Archbishop with the advice of the Chancellor and the Registrar, such advice to be given after the Chief Executive Officers of ARV and SAHMS have given the Chancellor and Registrar a certificate –

- (a) that the conditions precedent for the merger of SAHMS with ARV have been satisfied, or
- (b) if not all conditions have been satisfied, stating which conditions have been satisfied and which have not been satisfied and, in the case of those conditions which have not been satisfied, stating the reasons why the Chief Executive Officers consider that those conditions are not required to be satisfied before the merger takes effect,

provided that the Chief Executive Officers cannot give any certificate under this clause until ARV has fulfilled its obligations under clause 5 of the *Anglican Retirement Villages Diocese of Sydney Constitution Ordinance 1961 Amendment Ordinance 2016*.

(2) The amendments in clauses 4(f) and 6(b) have effect in relation to all financial years ending after 30 June 2016.

(3) In this clause “Archbishop” means the Archbishop of Sydney or, in his absence, the Archbishop’s Commissary.

Schedule 1

Real Property

Freehold properties			
Suburb	Address	Certificate of Title	Lot & Deposited Pan
BEECROFT	146 Beecroft Road	15/6280, Volume 2574 Folio 198, AUTO CONSOL 2578-196	Lot 15 DP6280, Lot 34 DP6280, Lots 16-17 DP6280
BLACKTOWN	15 Allawah Street	Volume 12904 Folio 110	Lot 13 DP579513
BLACKTOWN	15 Paul Street	Volume 7571 Folio 125	Lot 10 DP28384
JANNALI	15 Lenna Place	1/713922	Lot 1 DP713922
MALABAR	31 Raglan Street	5/240952	Lot 5 DP240952
FAIRY MEADOW	29a McGrath Street	1/869553	Lot 1 DP869553
FAIRY MEADOW	29 McGrath Street	2/869553	Lot 2 DP869553
NOWRA	189 Old Southern Road	2/714802	Lot 2 DP714802

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Freehold properties			
Suburb	Address	Certificate of Title	Lot & Deposited Pan
NOWRA	47 West Street	Volume 12208 Folio 171	Lot 2 DP562802
ORAN PARK	Cobbitty Road	16/1153031	Lot 16 DP1153031
RICHMOND	360 Windsor Road	A/164200	Lot A DP164200
ROOTY HILL	24 Westminster Street	11/869096	Lot 11 DP869096
ST CLAIR	6 Shearer Street	324/261741	Lot 324 DP261741
TELOPEA	17 Gibbons Street	Volume 14391 Folio 224	Lot A DP420509
TELOPEA	19a Gibbons Street	1/1201342	Lot 1DP1201342
TERRIGAL	14 Ocean View Road	Volume 3113 Folio 70	Lot 51 DP8854
WINMALEE	364 Hawkesbury Road	34/221951	Lot 34 DP221951
WOLLONGONG	152 Keira Street	1/1018353	Lot 1 DP1018353
WOONONA	20 Alice Street	102/872253	Lot 102 DP872253
SUMMER HILL	20 Sloane Street	AUTO CONSOL 15444-91	Lot 18 Section 5 DP1025
SUMMER HILL	20 Sloane Street		Lot 1 DP914136
SUMMER HILL	20 Sloane Street		Lot 1 DP915238
FRENCHS FOREST	Units 21-27, 14 Rodborough Road	22, 23, 24, 25, 26, 27, 28 / SP62775	Lots 22-28 INC. SP62775
LIVERPOOL (Proposed to be sold to a third party, due to complete May 2017)	9 Northumberland Street	9/38602	Lot 9 DP38602
PENRITH	10-12 Hemmings Street	1/1196232	Lot 1 DP1196232

Properties occupied under long term leases			
Suburb	Address	Certificate of Title	Lot & Deposited Plan
RICHMOND (21 year lease to expire 2021)	113 Londonderry Road	1/1051798	Lot 1 DP1051798
CABRAMATTA (25 year lease to expire 2028)	Cumberland Street	1/1024742	Lot 1 DP1024742

Schedule 2

Assets

- (a) **(goodwill)** the goodwill of any business conducted by SAHMS;
- (b) **(trade debts)** each amount (or receivable) owing to SAHMS from a debtor immediately before the Commencement Date for goods or services supplied to the debtor by SAHMS in conducting its activities;

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- (c) **(Contracts)** the rights of SAHMS under any arrangement, contract, covenant, deed, instrument, lease, licence, security, trust, understanding or undertaking (including for any use of intellectual property of any person) not yet fully performed immediately before the Commencement Date which SAHMS entered into in connection with its activities.
- (d) **(business IP)** all intellectual property rights (including names) owned by SAHMS and used in connection with its activities;
- (e) **(owned plant and equipment)** the plant, equipment, facilities, computers, machinery, vehicles, fixtures and fittings owned by SAHMS and used in connection with its activities;
- (f) **(Records)** the rights of SAHMS in all documents and records relating to the operation of its activities;
- (g) **(other assets)** any other assets recorded on the balance sheet of SAHMS or owned by SAHMS and held or used in connection with its activities immediately before the Commencement Date.

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

R TONG
Chair of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 30 May 2016.

R WICKS
Secretary

I Assent to this Ordinance.

PL HAYWARD
Commissary
01/06/2016