

Sydney Anglican Home Mission Society Ordinance 1981 Amendment Ordinance 2009

No 2, 2009

Long Title

An Ordinance to amend the Sydney Anglican Home Mission Society Ordinance 1981.

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 Ordinance 1981 Amendment Ordinance 2009.

2. Amendments

The Sydney Anglican Home Mission Society Ordinance 1981 (the "Principal Ordinance") is amended as follows –

- (a) delete the Preamble,
- (b) delete clause 2 and insert the following (with consequential renumbering of the remaining clauses) –

"2. Definitions

In this Ordinance, unless the context otherwise requires or indicates -

"Approved communications link" means a link established by means of any system of telephone, audio or audio-visual communication approved by the members of the Council and made known to each member for the purpose of any meeting of the members.

"Archbishop" means the Archbishop of the Diocese of Sydney, or in his absence his Commissary, or if the See be vacant the Administrator of the Diocese.

"Church Trust Property" has the same meaning as in the Anglican Church of Australia Trust Property Act 1917.

"Council" means the Sydney Anglican Home Mission Society Council, a body corporate constituted under the Anglican Church of Australia (Bodies Corporate) Act 1938.

"Chief Executive Officer" means the Chief Executive Officer of the Council appointed under clause 13.

"Property" means real and personal property.

"Society" means "The Church Society" as founded in 1856 and renamed as "The Home Mission Society" in 1911 henceforth to be known as the "Sydney Anglican Home Mission Society".

"Standing Committee" means the Standing Committee of the Synod constituted under the Standing Committee Ordinance 1897.

"Synod" means the Synod of the Diocese of Sydney.

3. Interpretation

In this Ordinance –

- (a) the singular includes the plural and vice versa, and
 - (b) the masculine includes the feminine and vice versa, and
 - (c) a reference to a person includes a reference to a body corporate, and vice versa."
- (c) substitute the word "Society" with the word "Council" where it appears in the renumbered clause 5 (including in the heading to both the Clause and Part),

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- (d) delete the renumbered clauses 6 - 18 and insert in their place those clauses in the Schedule in this Ordinance,
- (e) rename the existing Schedule as "Schedule 1", and
- (f) insert the following as a new Schedule 2 –

"Schedule 2

1. I believe and hold to the truth of the Christian faith as set forth in the Apostles' Creed.

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) 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;
- (b) that we are justified by faith only; and
- (c) that God's word, the Bible, is the one final authority in all matters of faith and conduct.

3. I shall endeavour to fulfil my duties as [a member of the Council/Chief Executive Officer] in accordance with this declaration and the ordinance by which the Council is constituted.

4. I agree that my continuance as [a member of the Council/Chief Executive Officer] is dependent upon my continuing agreement with this declaration and I undertake to resign if this ceases to be the case."

3. Transitional

Despite the amendments to the Principal Ordinance made by clause 2, the following transitional arrangements apply concerning the membership of the Council and other matters –

- (a) With the exception of Mr Michael Clancy, a person who is a member of the Council immediately prior to the date assent by virtue of having been elected as a member of the Council by the Synod continues to be a Synod elected member of the Council and is taken to have been elected as a member under clause 6(1)(c) when last elected irrespective of whether the requisite number of clergy under clause 6(1)(c) is reached.
- (b) Archdeacon Ken Allen is deemed to be a Synod elected member of the Council under clause 6(1)(c) on and from the date of assent to this Ordinance.
- (c) Bishop Robert Forsyth is deemed to be appointed as a member of the Council by the Archbishop under clause 6(1)(d) on and from the date of assent to this Ordinance.
- (d) Mr Michael Clancy is deemed to be appointed as a member of the Council by the Council under clause 6(1)(d) on and from the date of assent to this Ordinance.

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- (e) A person who is acting as Chairman of the Council immediately prior to the date of assent, having been appointed by the Archbishop, is taken to have been appointed as Chairman under clause 12(2).
- (f) A person holding office as Chief Executive Officer of the Council immediately prior to the date of assent is taken to have been appointed as Chief Executive Officer by the Council under clause 13.

Schedule

Part 4 – Membership of the Council

6. Members of the Council

- (1) The members of the Council are –
 - (a) the Archbishop, and
 - (b) the Chief Executive Officer, and
 - (c) 9 persons elected by the Synod, at least 3 of whom must be members of the clergy, and
 - (d) up to 2 persons appointed by the Archbishop, at least 1 of whom must be a member of the clergy and up to 1 person appointed by the other members of the Council.
- (2) The members of the Council are ex officio the members of the organisation known as the Church of England Homes (constituted under the Church of England Homes Ordinance 1984) and members of the Anglican Counselling Centre (constituted under the Anglican Counselling Centre Constitution Ordinance 1963).

7. Qualifications or restrictions on membership of the Council

- (1) A person is not eligible to be appointed or elected as a member of the Council under paragraph 6(1)(c) or (d) if the person –
 - (a) is an employee of the Council, or
 - (b) is the spouse of a permanent employee of the Council.
- (2) Upon being elected or appointed as a member, and before becoming a member, a person who is so elected or appointed is to sign the declaration specified in Schedule 2 and deliver it to the Council within 4 weeks of the person's election or appointment. A person who fails to sign and deliver the declaration within this time is to be taken not to have been elected or appointed as a member.
- (3) A copy of the declaration referred to in subclause 7(2) is to be retained by the Council in its records.

8. Term of office of members of the Council

- (1) Subject to clauses 9, 10 and 11, 3 members of the Council elected by the Synod are to retire on the first day of each ordinary session of the Synod.
- (2) The members of the Council to retire under subclause 8(1) are those who have held office the longest since last being elected but, in the case of competition, are to be determined by the members concerned. If those members cannot agree, the order of retirement is to be determined by lot.
- (3) Subject to clause 10, a member of the Council appointed by the Archbishop holds office for a period of three (3) years and remains in office until the expiry of that period.
- (4) Subject to clause 10, a member of the Council elected by the other members holds office for a period of 3 years, but is eligible for re-election.

9. Further provisions regarding term of office

Subject to clause 10, a retiring member of the Council elected by the Synod is eligible for re-election.

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10. Casual vacancies

(1) A casual vacancy in the office of member of the Council elected by the Synod arises in a circumstance set out in rule 7.1(2) of the Schedule to the Synod Elections Ordinance 2000.

(2) A casual vacancy in the office of member of the Council appointed by the Archbishop arises –

- (a) if the person holding that office resigns by notice in writing to the Archbishop, or
- (b) if a circumstance set out in rule 7.1(2)(a) (except rule 7.1(2)(a)(i)) of the Schedule to the Synod Elections Ordinance 2000 occurs in respect of that person.

(3) A casual vacancy in the office of member of the Council appointed by the other members arises –

- (a) if the person holding that office resigns by notice in writing to the Council, or
- (b) if a circumstance set out in rule 7.1(2)(a) (except rule 7.1(2)(a)(i)) of the Schedule to the Synod Elections Ordinance 2000 occurs in respect of that person.

11. Filling of casual vacancies

(1) A casual vacancy in the office of a member of the Council elected by the Synod is to be filled by the Synod, or by the Standing Committee if the Synod is not in session.

(2) A person elected to fill a casual vacancy in the office of a member of the Council elected by the Synod holds office until the day on which the person whose vacancy they fill would have retired had the vacancy not occurred.

Part 5 – Officers of the Council

12. Chairman of the Council

(1) Subject to clause 12(2), the Archbishop is the Chairman of the Council.

(2) The Archbishop, from time to time, may appoint another member of the Council to act in his place as Chairman of the Council and may revoke any such appointment.

(3) The Chairman of the Council is to be chairman of meetings of the Council.

(4) If the Chairman of the Council is absent from a meeting of the Council, the remaining members of the Council then present are to appoint another of their number to be chairman of the meeting of the Council.

13. Chief Executive Officer of the Council

(1) The Council may appoint a person to be the Chief Executive Officer of the Council on such terms and conditions as the Council thinks fit and revoke that appointment at any time.

(2) A person is not to be appointed as the Chief Executive Officer of the Council until they have signed and delivered to the Council a signed copy of the declaration specified in Schedule 2. A copy of the declaration so signed and delivered is to be retained by the Council in its records.

Part 6 – Meetings of the Council

14. Meetings of the Council

(1) The Council is to meet at such times as it may determine, and is to meet at least once in each 3 month period.

(2) A special meeting of the Council may be convened by –

- (a) the Archbishop, or

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- (b) any person appointed for the time being by the Archbishop as the Chairman of the Council under clause 12(2), or
- (c) any 4 members of the Council

by giving the Chief Executive Officer written notice of their intention to convene the meeting, the purpose of the meeting and the date, place and appointed time. The Chief Executive Officer must convene the meeting of the Council on being given notice to do so under this clause.

(3) A quorum for a meeting of the Council is 6 members.

15. Meetings by way of an approved communications link

- (1) If –
 - (a) one or more members of the Council is absent from the place of meeting, and
 - (b) through an approved communications link such member or members can hear and be heard by not only one another (if more than one) but also the other members present at the place of meeting,

then such of those absent members and the other members present at the place of meeting as can hear and be heard by one another are to be taken to be assembled together at a meeting held at that place.

(2) All proceedings conducted with the aid of the approved communications link are to be as valid and effectual as if they had been conducted at a meeting at which all of those members were present.

16. “Circular” resolutions

(1) If a document containing a statement that the signatories to it are in favour of a resolution in the terms identified in the document has been signed by all the members of the Council, a resolution in those terms is to be taken to have been passed at a meeting of the members of the Council held on the day on which and at the time at which the document was signed by the last member.

- (2) For the purposes of subclause 16(1) –
 - (a) 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members together are to be taken to be 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents, and
 - (b) an electronic message, whether a facsimile, email or otherwise, which is received by the Chief Executive Officer on behalf of the Council and is expressed to have been sent by a member is to be taken to be a document signed by that member at the time of the receipt of the Chief Executive Officer.

17. Attendance of other persons at meetings of the Council

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

Part 7 – Powers of the Council

18. Powers of the Council

(1) For the purposes of its objects the Council has power to receive, manage and control all property of the Council together with the income derived therefrom. It also has power to use and apply the capital and income of such property for the purposes of its objects, subject to the terms of any specific trusts of that property.

(2) Without prejudice to the generality of the powers specified in subclause 18(1), the Council may do all or any of the following –

- (a) Appoint, employ and remove agents and servants as the Council considers necessary to carry on its objects and determine their powers and duties and fix from time to time their remuneration, fees, salaries or emoluments.

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- (b) Establish a bank account or bank accounts and determine in what manner and by whom such accounts may be operated.
- (c) Delegate from time to time such of its powers on such terms and conditions as it may deem fit to committees consisting of such member or members of the Council or other persons as it may appoint.
- (d) Borrow money, either without security or secured, on all or any property of the Council subject to the specific trusts of that property. However the Council may not exercise any power to borrow moneys if the amount which it proposed to borrow when added to the amount of all moneys previously borrowed and not repaid exceeds \$75,000,000 or such other amount as may have been last approved by resolution of the Standing Committee.
- (e) Sell, lease exchange or otherwise dispose of or deal with all or any of the property of the Council for such consideration and on such terms as the Council considers appropriate.
- (f) Pay all costs charges and expenses of and incidental to the management, administration and control of the property of the Council.
- (g) Undertake any business incidental to any of the objects of the Council.

19. Investment Powers of the Council

(1) The Council may invest the whole or part of its assets in any one or more of the following investments –

- (a) investments for the time being allowed by law in Australia for investment of trust funds,
- (b) investments can be held within Australia or overseas,
- (c) In real property including –
 - (i) real,
 - (ii) leasehold,
 - (iii) first mortgage,
 - (iv) held pursuant to rights created by any statute,
 - (v) charges or charges upon any church lands within Australia,
 - (vi) charge or charges on future rents, profits or other income thereof, or
 - (vii) construction, repair/and and alteration of buildings and other improvements on land being part of property of the Council,
- (d) on call, deposit or loan, with or without security including –
 - (i) issued by or guaranteed by the Commonwealth of Australia or any State or Territory thereof,
 - (ii) recognised overseas government or local authority,
 - (iii) approved deposit taking institutions,
 - (iv) corporation securities which are listed on a recognised stock exchange,
 - (v) corporations or organisations constituted by ordinance of Synod,
 - (vi) cash deposits with authorised dealers on short term money markets, or
 - (vii) bills of exchange accepted or endorsed by a trading bank authorised to carry on banking business in Australia,
- (e) investment in any such security authorised by an ordinance as an investment for church trust property,

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- (f) such business, commercial trading or other project venture, activity or investment which the Standing Committee may by resolution approve for the purpose of investment,
 - (g) investments in shares, stocks, notes, options, debentures or other securities of any corporation listed on a recognised stock exchange, or
 - (h) investments in hedging contracts, future contracts or other financial instruments provided that such instruments are not used to gear the portfolio or to have uncovered positions.
- (2) Such investments in clause 19(1) can be held in pools, trusts or common funds.
- (3) Such investments in clause 19(1) are to exclude any investment which does carry on as its main or one of its main or principal businesses a business of a kind which is disapproved for investment purposes by resolution of Synod or the Standing Committee.
- (4) The Council may from time to time realise or vary any of its investments, subject to approval of Standing Committee of any investment nominated in clause 19(1)(f) of this ordinance.
- (5) The Council may appoint a committee to administer the activities of the investments in accordance with this ordinance and may revoke the appointment of a member or members of the committee or dissolve the committee as and when it sees fit.
- (6) The Council may retain any assets that are the subject of any gift or bequest to the Council in the same form and condition and reinvest it in the same manner as existed at the time of such gift or bequest subject to the limitations contained in clause 19(3).

20. Pooling of Property for Investment

- (1) Without prejudice to the generality of the power specified in subclause 19(1) the Council may place Property, whether or not subject to separate trusts, into a pool for investment.
- (2) For the purposes of the pooled Property the Council may average gains, losses and interests and deal with all matters and do all things incidental to such pooling.
- (3) Subject to the provisions of this Ordinance, balances to the credit of the pool referred to in subclause 20(1) are to be held for investment as provided in clause 19.
- (4) Any income derived from the investment of the pool is to be credited to an account to be called the Income Suspense Account and is to be allocated therefrom in the following manner –
- (a) On all capital balances on current account forming part of the pool.
 - (b) On income balances on current account forming part of the pool where in the opinion of the Council such income should earn interest. Interest allowed in respect of income balances is to be computed from such date as the Council may determine.
 - (c) Interest, income and profits from time to time held in the Income Suspense Account are to be credited at such rate and at such time or times as the Council may determine.
 - (d) If after allowing interest as provided in this clause a surplus of interest income and profits remains within the Income Suspense Account the surplus or so much of the surplus as the Council determines may be applied for the general purposes of the Council in such manner as the Council may decide.

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21. Seal of the Society

The common seal of the Council is not to be affixed to any instrument except in accordance with a resolution of the Council. Every instrument to which the common seal is so affixed is to be signed by 2 members of the Council.

22. Liabilities of the Council

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

(2) Neither the Council nor any member of the Council may represent to any person that –

- (a) the Archbishop, or
- (b) the Synod, or
- (c) the Standing Committee, or
- (d) any person holding church trust property for the Anglican Church of Australia in the Diocese of Synod, or
- (e) any other corporate body constituted by or pursuant to 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 Council.

(3) The Council does not have power 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 Council's bank unless the following clause is included therein –

“Notwithstanding anything contained herein to the contrary each of the parties hereto acknowledge and agree that the Sydney Anglican Home Mission Society Council 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 Anglican Home Mission Society Council may be able to pay to that party in the event of the Council being wound up”.

and such clause is not made subject to any qualification.

23. Indemnity

(1) The Council is to indemnify each person who is, or has been, a member of the Council against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served as a member of the Council other than a liability –

- (a) owed to the Council or a related body corporate, or
- (b) for a pecuniary penalty order under section 1317G of the Corporations Law or a compensation order under section 1317H of the Corporations Law, or
- (c) that is owed to someone other than the Council or a related body corporate and did not arise out of conduct in good faith.

This subclause 23(1) does not apply to a liability for legal costs.

(2) The Council is to indemnify each person who is, or has been, a member of the Council against legal costs incurred in defending an action for a liability which results directly or indirectly from facts or circumstances relating to the person serving or having served as a member of the Council other than costs which are incurred –

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subclause 23(1), or
- (b) in defending or resisting criminal proceedings in which the person is found guilty, or

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- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established, or
- (d) in connection with proceedings for relief to the person under the Corporations Law in which the court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

(3) For the purposes of subclause 23(2), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

(4) The Council need not indemnify a person under subclause 23(1) and/or subclause 23(2) for a liability to the extent that the person is entitled to an indemnity for that liability under a contract of insurance.

(5) The Council may pay, agree to pay, or cause to be paid a premium for a contract insuring a person who is, or has been, a member of the Council against any liability which results directly or indirectly from facts or circumstances relating to the person serving, or having served, in that capacity other than a liability arising out of –

- (a) conduct involving a wilful breach of duty in relation to the Council, or
- (b) the improper use of information by the person, obtained because the person is, or has been, a member of the Council to gain an advantage for that person or another person or to cause detriment to the Council; or
- (c) the improper use of the person's position as a member of the Council to gain an advantage for himself or herself or for another person or to cause detriment to the Council.

This subclause 23(5) does not apply to a liability for legal costs.

(6) The Council may pay, agree to pay, or cause to be paid a premium for a contract insuring a person who is, or has been, a member of the Council against legal costs incurred in defending an action for a liability which results directly or indirectly from facts or circumstances relating to the person serving, or having served, in that capacity.

(7) The obligations and powers under subclauses 23(1), 23(2), 23(5) and 23(6) are incurred or are to be exercised (as the case may be) only to the extent permitted by law.

24. Reporting by the Council

At least once each year, the Council is to report to the Synod about its affairs. Further, it is to furnish such other information as to its affairs as may be requested from time to time by resolution of Synod or the Standing Committee.

25. Compliance with the Accounts, Audits and Annual Reports Ordinance 1995

The Council is to comply with the Accounts, Audits and Annual Reports Ordinance 1995.

26. Dissolution

Where the Council has been endorsed as a deductible gift recipient in relation to a fund or institution under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Commonwealth) (as amended), then where the fund or institution is wound up, or the endorsement under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Commonwealth) is revoked, then any surplus assets of the fund or institution within the Diocese of Sydney remaining after payment of all liabilities must be transferred to a fund or institution that –

- (a) in the case of a fund, comprises church trust property, and

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- (b) in the case of an institution has been established by ordinance for governing and controlling the management and user of church trust property, and

which has objects similar to those set out in clause 4 of this Ordinance and is an endorsed deductible gift recipient pursuant to the requirements of section 30 of Income Tax Assessment Act 1997 (Commonwealth).

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

R TONG
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 16 February 2009.

R WICKS
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
04/03/2009