

Anglican Provident Fund (Sydney) Ordinance 1990 Amendment Ordinance 1994

No 42, 1994

Long Title

An Ordinance to amend the Anglican Provident Fund (Sydney) Ordinance 1990.

The Synod of the Diocese of Sydney Ordains as follows -

Citation

1. This ordinance may be cited as the "Anglican Provident Fund (Sydney) Ordinance 1990 Amendment Ordinance 1994".

Amendments

2. The Anglican Provident Fund (Sydney) Ordinance 1990 is amended as follows -

(a) in clause 1 the matter "Anglican Provident Fund (Sydney) Ordinance 1990" is deleted and the matter "Anglican Provident Fund Ordinance 1990" is inserted instead;

(b) in subclause(1) -

(i) the definition of "Act" is deleted and the following is inserted instead -

""The Act" includes, where appropriate, any one or more of the Superannuation Industry (Supervision) Act 1993, the Occupational Superannuation Standards Act 1987, the Income Tax Assessment Act 1936 and any other Acts of Parliament which govern the operation of superannuation funds as they may be amended or re-enacted and regulations made under those Acts, all other requirements, whether legislative or otherwise and includes -

(a) any administrative guidelines issued by a Responsible Authority; and

(b) statements by Government advising proposed changes to the Act

with which the Fund must comply (or with which in the reasonable opinion of the Board the Fund ought to comply).";

(ii) after the definition of "Director" the following is inserted -

"Eligible Fund includes -

(a) a fund which the Responsible Authority has declared eligible to receive rolled-over benefits;

(b) a Complying Superannuation Fund (as defined by the Act);

(c) a Complying ADF (as defined by the Act); and

(d) any other scheme or fund established or regulated by law for the maintenance or preservation of superannuation benefits arising under the Superannuation Guarantee Charge or arising from lost or unclaimed benefits or any other like fund, scheme or annuity which the Board determines to be an Eligible Fund from which the Board may accept moneys or assets or to which the Board may pay or transfer moneys or assets without (in the opinion of the Board) jeopardising the status of the Fund as a Complying Superannuation Fund.";

(iii) the definition of "Fund" is deleted and the following is inserted instead -

""Fund" means the Anglican Provident Fund.";

(iv) the definition of "Permanent Incapacity or Permanent Invalidity" is deleted and the following is inserted instead -

""Permanent Incapacity or Permanent Invalidity" means such mental or physical impairment as in the opinion of the Board will result in the Member being unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education, training or experience or such other measure of impairment as the Board shall require from time to time consistent with any preservation standard in the Statutory Requirements."; and

(v) the definition of "Statutory Requirements" is deleted and the following is inserted instead -

""Statutory Requirements" means any requirements of the Act.";

(c) subclause 2(2) is deleted and the following is inserted instead -

"(2) Words and phrases used in this Ordinance which are defined in the Act have the same meanings as set out in the Act.";

(d) subclause 2(4) is deleted and the following is inserted instead -

- "(4) (a) Unless the Board at any time in writing resolves otherwise having regard to such advice as it may consider appropriate, the requirements contained in the standards prescribed in the Act and which are applicable to the operation of a superannuation fund are taken to be included in this Ordinance.
- (b) The provisions of this subclause override all other provisions of this Ordinance to the extent that where any provision of this Ordinance is inconsistent with the requirements of the Statutory Requirements then the Statutory Requirements take precedence.";
- (e) after subclause 2(4) the following is inserted -
- "(5) As from 1 July 1994 the primary purpose of the Fund is to provide old age pensions for Members in accordance with the Ordinance.
- (6) The Board may make an irrevocable election that the Fund will become a regulated superannuation fund (as defined by the Act).";
- (f) clauses 4 to 11 inclusive are deleted and the following are inserted instead -

"Constitution

4. (1) Until the 1995 session of the Synod of the Diocese of Sydney and subject to clause 11 the Directors in office at the date of assent to the Anglican Provident Fund (Sydney) Ordinance 1990 Amendment Ordinance 1994 remain in office until they are replaced under clauses 5 or 6. If they cease to hold office under clause 11 the Board may replace them.

(2) Before 1 June 1995 the Board may designate each of the Directors (including the Chairman) as either a "Member Representative" or "Employer Representative". The number of "Member Representatives" and "Employer Representatives" must be equal but a Member Representative need not necessarily be a Member of the Fund and a person is not precluded from being an "Employer Representative" by virtue of being a Member of the Fund.

(3) If the Board does not make the designation permitted by subclause 4(2) by 1 June 1995, the Chairman must make those designations before 1 July 1995.

5. At its 1995 session, the Synod of the Diocese of Sydney must elect to the Board -

- (a) two persons as "Member Representatives"; and
- (b) two persons as "Employer Representatives".

6. (1) For the purposes of this clause 6 and in respect of any Diocese within the Anglican Church of Australia (other than the Diocese of Sydney) -

- (a) "Eligible Member" means a Member who is permanently engaged in the work of the Anglican Church in that Diocese or employed by any institution, school or organisation connected with the Anglican Church in that Diocese; and
- (b) that Diocese has one or two Electorates as follows -
- (i) if that Diocese has twenty or more Eligible Members but not more than thirty nine Eligible Members, it has one Electorate;
- (ii) if that Diocese has forty or more Eligible Members it has two Electorates.

(2) At its 1995 session the Synod of that Diocese may appoint one Member Representative and one Employer Representative from each Electorate.

7. If a Director appointed by a Diocese ceases to hold office the Diocese must within sixty days replace the Director. If it does not then the Bishop of that Diocese must replace the Director within a further thirty days or within such greater time as the Act allows.

8. In addition to the circumstances set out in clause 11, each Director appointed by a Diocese under clauses 5, 6 or 7 remains in office until the earlier of-

- (a) the expiry of four years from the date of his or her appointment as a Director; or
- (b) the date he or she resigns as a Director.

9. (1) A former Director (including a Director whose term of office has recently expired or is about to expire) is eligible for reappointment unless clause 11 applies.

(2) A former Director is not eligible for reappointment if his or her office is automatically vacated under clause 11.

Vacancies

10. (1) The Casual Vacancies Ordinance 1935 does not apply to this Ordinance.

(2) Where a Director appointed under Clause 5 ceases to hold office, the Synod or the Standing Committee of the Diocese of Sydney may, subject to Clause 11, by resolution replace that Director with any person.

(3) Where a Director appointed under Clauses 6 or 7 ceases to hold office, the Synod or the Standing Committee of the Diocese which appointed that person may, subject to Clause 11, by resolution replace that Director with any person.

(4) Where a Synod or Standing Committee does not make an appointment permitted by Clauses 10(2) or 10(3) within sixty days of the vacancy arising, the Bishop of that Diocese must replace that person within a further thirty days or such greater time as the Act allows.

Vacation of Office

11. (1) The office of a Director is vacated if -

- (a) the Director's term of office expires under Clause 4;
- (b) the Director resigns in writing addressed to the Board;
- (c) the Director dies;
- (d) the Director becomes bankrupt or executes a deed of assignment or arrangement for the benefit of creditors;
- (e) the Director is absent from Board meetings for six months without the leave of the Board;
- (f) the Diocese which appointed the Director declares his office vacant;
- (g) the Director attains the age of 72 years; or
- (h) the Director otherwise becomes a disqualified person for the purposes of the Act.

(2) If it comes to the knowledge of the Board or the secretary or other proper officer of a Diocese which appointed a Director that the office of that Director has become vacant the Board or the secretary or other proper officer as the case may be must inform all relevant persons as soon as possible.";

(g) clause 14 is deleted and the following is inserted instead -

"14. Resolutions of the Board must be passed by not less than two thirds of the appointed Directors. The Chairman of the meeting does not have a second or casting vote.";

(h) after Clause 16, a new clause 16A is inserted in the following terms -

"16A (1) The Board may insure as it sees fit -

- (a) any liability of the Board;
 - (b) any liability of Directors and Officers of the Board;
 - (c) any liability of the Fund;
 - (d) any liability of the Fund to indemnify or reimburse the Board; and
 - (e) any liability of any Contributor to indemnify or reimburse the Board.
- (2) The cost of any insurance referred to in this Clause is an expense of the Fund.

(3) This Clause does not impose on the Board an obligation to take out any insurance referred to in this Clause.";

(i) clause 17 is deleted and the following is inserted instead -

"17. (1) The Board has all powers which are necessary for it to manage and control the Fund in accordance with the Statutory Requirements.

(2) Without limiting the general nature of the powers in sub-clause (1) the Board may do any of the following things -

- (a) appoint, employ and remove such agents and employees as the Board may deem necessary to carry on the management and administration of the Fund and determine their powers and duties and fix and pay their fees, salaries or emoluments;
- (b) establish bank accounts and determine in what manner and by whom such accounts should be operated;
- (c) delegate all or any of its powers to Committees consisting of such members of the Board as it thinks fit; any Committee so formed shall in the exercise of the powers so delegated conform to any regulation or direction that may be from time to time imposed on it by the Board;
- (d) borrow money (either without security or secured by legal or equitable mortgage or other security on all or any of the assets of the Fund including moneys to become owing to the Fund) for the purpose only of obtaining

temporary finance, the money so borrowed to be by means of a bank overdraft with an eligible bank or by such alternative instruments and with such alternative financial institutions as are approved by the Responsible Authority;

- (e) sell, lease or otherwise dispose of or deal with all or any of the assets of the Fund for such consideration and subject to such terms and conditions and otherwise in such manner as the Board may deem expedient;
 - (f) pay all costs and expenses of and incidental to the management and control of the Fund;
 - (g) appoint or remove any person or company as investment manager of the Fund for such period or periods and subject to such conditions as the Board may from time to time determine and delegate to and confer upon such investment manager such powers discretions and authorities relating to the assets of the Fund as the Board thinks fit and pay out of the assets of the Fund to any such investment manager such remuneration for its services as the Board considers proper;
 - (h) appoint and revoke the appointment of attorneys;
 - (i) effect insurance with any life assurance company or companies on the lives of Members or as a group upon such terms and conditions as the Board may determine;
 - (j) have such other powers, duties and functions as it may deem necessary for it to discharge its duties in accordance with the Act.";
- (j) after clause 17 a new clause 17A is inserted in the following terms -

"General Duties of the Board

- 17A. (1) The Board has the following duties -
- (a) to act honestly in all matters concerning the Fund;
 - (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
 - (c) to ensure that the Board's duties and powers are performed and exercised in the best interests of Members;
 - (d) to keep the money and other assets of the Fund separate from any money and assets, respectively -
 - (i) that are held by the Board personally; or
 - (ii) that are money or assets, as the case may be, of any Contributor (as described in Regulation 1);
 - (e) not to enter into any contract, or do anything else, that would prevent the Board from, or hinder the Board in, properly performing or exercising the Board's functions and powers;
 - (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following -
 - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to investment objectives and expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
 - (g) to formulate and to give effect to a strategy for the prudential management of the reserves of the Fund, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
 - (h) to allow a Member or other person prescribed by the Act access to any information or any documents which are prescribed by the Act for this purpose.

(2) If any provision of this clause conflicts with any other provision of this Ordinance (except the obligation to comply with the Statutory Requirements), this clause prevails.;"

- (k) paragraph (i) of subclause 18(1) is deleted and the following is inserted instead -
- "(i) units or equivalent rights or interests in any arrangements, including but without limiting the generality of the foregoing, the type popularly known as a "cash management trust" or "money market trust" or "mutual fund" made for the purpose or having the effect of providing for persons having funds available for investment facilities for the participation by them as beneficiaries under a trust or mutual fund in any profits or income arising from the acquisition, holding, management or disposal of investments that are principally comprised of investments authorised under another paragraph of this clause and if they are operated in Australia being arrangements authorised or permitted under a trust deed that is approved as such under the Corporations Law;"
- (l) after paragraph (i) of subclause 18(1) a new paragraph is inserted in the following terms -
- "(j) such other investments as may be approved by resolution of the Board.;"
- (m) subclauses 18(2) and 18(3) are deleted and the following is inserted instead -
- "(2) The Board may from time to time vary, replace, and otherwise deal with investments as fully and effectively and with the same unrestricted powers in all respects as a person absolutely and beneficially entitled dealing with his or her own property may so do.
- (3) All investments must be made in the name of the Anglican Provident Fund except that if an investment manager has been appointed pursuant to clause 17(2)(g) the investments may be held in the name of the investment manager or nominee company or custodian company appointed by the Board.;"
- (n) subclause 22(4) is deleted and the following is inserted instead -
- "(4) Despite Clause 22(1) but subject at all times to the Statutory Requirements the Synod may with the consent of the Board amend this Ordinance as it thinks fit.
- (5) As soon as is practicable (in the opinion of the Board) after any amendment of this Ordinance or any rule made in accordance with this Clause, the Board must give to each Member whose entitlements or rights under the Ordinance are affected, a written notice of the nature and purpose of the amendments and the effect (if any) on the entitlements or rights of the Member. The accidental failure to provide a written notice does not invalidate the alteration, addition or deletion.;"
- (o) subclause 34(1) is deleted and the following is inserted instead -
- "34. (1) Where a Member who ceases to carry on regular and continuous duty seek payment of benefits on the ground of "Permanent Incapacity or Permanent Invalidity" that Member must give to the Board a certificate signed by two registered medical practitioners certifying that, in the opinion of those medical practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education, training or experience or such other information as required from time to time by the Board consistent with the preservation requirement in the Statutory Requirements.;"
- (p) subclause 37(1) is deleted and the following is inserted instead -
- "37. (1) Where a Preservable Amount forms part or all of a benefit that Preservable Amount must not be paid to or in respect of a Member until the satisfaction by the Member of one of the following conditions -
- (a) being retired from the workforce and having attained an age of not less than 55 years or such other age as may be prescribed by the Statutory Requirements;
- (b) retirement from the workforce before attaining the age of 55 years or such other age as the Statutory Requirements may require on the ground of Permanent Incapacity or Permanent Invalidity;
- (c) the permanent departure of the Member from Australia;
- (d) the Member's death;
- (e) any other circumstances specified from time to time by the Statutory Requirements;
- (f) any other circumstances determined by the Board and approved by the Responsible Authority.;"
- (q) after subclause 42(3) the following are inserted -
- "(4) Any benefit payable upon the death of a Member is payable to or for the benefit of such of the Dependants of the Member or the legal personal representatives of the Member or to any other persons to whom the Board may pay the benefit in accordance with the Act to the exclusion of any other of them in such shares and proportions as the Board may in its absolute discretion decide.

(5) If the Board after reasonable inquiry determines that the deceased Member left no Dependants and no legal personal representative or any person who is entitled to become the legal personal representative of a Member or any other person to whom the Board may pay the benefit in accordance with the Act then the Board must treat the benefit as an unclaimed benefit under Clause 50.";

(r) clause 46 is deleted and the following inserted instead -

"Forfeiture

46. (1) The benefit of a Member (including an Annuitant or a Pensioner) is immediately forfeited to the Fund where -

- (a) the Member or any Dependand of the Member or any other person with the Member's knowledge assigns, mortgages, charges, transfers or attempts to assign mortgage, charge or transfer the right or interest in the Fund of that Member, or of any Dependand of that Member, or of any other Member either in whole or in part, absolutely or conditionally; or
- (b) the Member or any Dependand of the Member entitled to a benefit is declared bankrupt or becomes insolvent (in the opinion of the Board); or
- (c) an event occurs which would result in all or any part of any benefit becoming payable to or vested in any other person or persons including the Member's Dependants or any Government or other public authority as a result of the Member or the Dependants of the Member or any other person with the Member's knowledge doing, causing or allowing any act or thing to be done.

(2) For the purposes of this Clause a direction given to the Board by the Member and/or the Member's legal personal representative where a benefit is payable does not constitute an assignment, mortgage, charge or transfer by the Member or the Member's Dependants.

(3) The Board must hold any benefit forfeited under Clause 46(1) and pay it when it decides to do so for the benefit of the Member and/or any of the Dependants of the Member as if the Member's benefit had not been forfeited to the Fund.

(4) The Board may pay any forfeited benefit to the Member and/or any of the Dependants of the Member it may decide and in any manner it may decide.

(5) If the Member or any Dependand of the Member becomes entitled to a benefit where that Member or Dependand is in the opinion of the Board -

- (a) mentally ill or of unsound mind; or
- (b) otherwise incapable of managing his or her own affairs

the Board must hold that benefit for the benefit of the Member or the Dependants of the Member or any of them.

(6) The Board may pay that benefit by instalments if it so decides but must ultimately pay the whole of the benefit.";

(s) clause 47 is deleted and the following inserted instead -

"Transfers

47. (1) (a) Where a Member is or was also a Member of any other Eligible Fund the Board may accept in respect of that Member from that Member and/or that Eligible Fund any money or other assets which the trustees or controlling body of that Eligible Fund wish to transfer to the Fund.

(b) The Board may accept moneys or other assets transferred in accordance with this Clause subject to any special conditions as it may decide.

(c) Where Clause 47(1)(a) applies to a Member the Board may grant that Member rights and benefits additional to or instead of those otherwise provided under this Ordinance as the Board may decide.

(2) (a) The Board may pay or transfer or cause to be paid or transferred to the trustees of any other Eligible Fund any benefit which becomes payable to or in respect of a Member -

- (i) if the Member consents in writing; and
- (ii) on such conditions as the Board may decide.

(b) If a Member is accepted as a member of another Eligible Fund to which a Contributor (as defined in Regulation 1) contributes for the benefit of the Member the Board may at the request of that Contributor pay or transfer to

that other Eligible Fund an amount equal to an amount determined by the Board to be the value of the Member's benefit in the Fund.

- (c) The receipt of the trustees of the other Eligible Fund will be sufficient discharge to the Board and the Board shall not be responsible in any way for the payment or disposal by the trustees of the other Eligible Fund of the benefit paid or transferred.
 - (d) The Board may impose any restrictions and/or conditions as it thinks fit in order to comply with the Statutory Requirements on any transfer made under this Clause.";
- (t) clause 48 is renumbered as clause 51;
- (u) after clause 47, new clauses 48, 49, and 50 are inserted as follows -

"Directions and Discretions of Third Parties Etc.

48. Where a provision of this Ordinance -

- (a) requires the Board to act on the direction of any other person (including a Contributor as described in Regulation 1); or
- (b) permits other such person to give a direction or to exercise a discretion; or
- (c) requires the Board to seek or consider the opinion of any other such person,

the Board must disregard that provision to the extent which in its opinion is necessary to comply with the Act.

Inquiries and Complaints

49. (1) The Board must publish procedures to ensure that there are in place at all times arrangements under which Members have the right to make inquiries into or complaints about the operation and/or the management of the Fund so far as that operation or management affects the particular Member.

(2) The Board must ensure that the procedures established and arrangements made under clause 49(1) -

- (a) are in place by the date which the Act requires; and
- (b) require that a Member's inquiry or complaint will be properly considered and dealt with within ninety days or such greater time as may be allowed by the Act after it is made.

Unclaimed Benefits

50. (1) When a Member becomes entitled to the payment of a benefit and does not take any action which the Board reasonably requires to claim the benefit the Board must -

- (a) make inquiries that it thinks reasonable in the circumstances to locate the Member and ask the Member in writing to take the action required to claim the benefit; and
 - (b) if it locates the Member, pay the benefit to the Member;
- (2) If the Board is unable to locate the Member it must -

- (a) make inquiries that it thinks reasonable in the circumstances to locate any Dependants of the Member; and
- (b) if it locates one or more Dependants, pay the benefit as it thinks appropriate.

(3) If any benefit remains unpaid for ninety days or any other period provided in the Statutory Requirements, the Board may transfer the benefit to another Eligible Fund.

(4) If any benefit remains unpaid and the Board is reasonably satisfied that the Member has not received two consecutive reports required by the Statutory Requirements, the Board must transfer the benefit to another Eligible Fund.

(5) If any benefit remains unpaid until the date when the Member reaches the eligibility age for an age pension the Board must -

- (a) pay the benefit to the Responsible Authority where required to do so by the Statutory Requirements; or
- (b) forfeit the benefit to the Fund if not so required.

(6) If a Member and/or a Dependant makes any claim in respect of a benefit which has been forfeited to the Fund the Board is not under any obligation to pay that benefit. However, the Board may pay that benefit or any part of that benefit in its absolute discretion and upon terms and conditions that it considers reasonable.";

- (v) regulation 9(1) is deleted and the following inserted instead -
"9. (1) Subject to sub-regulation 9(2), any benefit payable on the retirement or resignation of a Member before age sixty years), or on the Member's death or Permanent Incapacity or Permanent Invalidity must be paid as a lump sum.";
- (w) after regulation 9(2), new regulations 9A and 9B are inserted in the following terms -
"9A. Any benefit payable on the retirement of a Member after reaching age sixty (60) years must be paid as a pension unless the Member requests that the benefit be paid as, or commuted to, a lump sum.
9B. The Board may apply the amount which would otherwise be payable to a Member to purchase a pension or annuity which at the time the pension is purchased the Board reasonably believes will be paid in accordance with the Statutory Requirements."; and
- (x) regulation 10(1) is deleted and the following is inserted instead -
"(1) The Board must pay the whole of any death benefit as a lump sum in accordance with clauses 42(4) and 42(5)."

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

N.M. Cameron
Chairman of Committees

We Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 10 October 1994.

W.G.S. Gotley
C.J. Moroney
Secretaries of Synod

I Assent to this Ordinance.

R.H. Goodhew
Archbishop of Sydney
11/10/1994