

The Anglican Church of Australia – Diocese of Newcastle

The Samaritans Foundation Ordinance 2017

Be it ordained by the Diocesan Council as follows -

1. This Ordinance may be cited as the Samaritans Foundation Ordinance 2017.
2. The Samaritans Foundation Diocese of Newcastle Ordinance 1994 is amended by the deletion of all sections and the insertion in their place of the sections contained in Schedule One.
3. The Board members in place when this Ordinance comes into effect shall be the Board members.
4. The Bishop shall determine the date on which this Ordinance shall come into effect.
5. The Bishop may make such determinations as are necessary so as to give effect to the purpose and intent of this Ordinance.

Samaritans Foundation Ordinance 2017

SAMARITANS FOUNDATION DIOCESE OF NEWCASTLE
(ABN 38 574 464 524)

PREAMBLE

Samaritans Foundation Diocese of New South Wales (**Samaritans Foundation**) is the social services arm of the Anglican Diocese of Newcastle.

Samaritans Foundation was established in 1984 and is a body corporate incorporated under the *Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW)* to carry out the work of Samaritans Foundation.

1. NAME

The name of the entity is Samaritans Foundation Diocese of New South Wales (ABN 38 574 464 524) (**Samaritans Foundation**).

2. TYPE

Samaritans Foundation is a not-for-profit entity which is established to be, and to continue as, a charity.

3. DEFINITIONS

3.1 In this Ordinance, unless there is something in the subject or context which is inconsistent:

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*.

ADI has the same meaning as in the Banking Act 1959 (Commonwealth).

ASIC means the Australian Securities and Investments Commission.

Auditor means the Auditor of the Diocese appointed in accordance with the Diocesan Council Ordinance 1929.

Bishop means the Bishop of the Diocese for the time being or any Commissary of the Bishop serving while the Bishop is absent, on leave or acting with the delegated authority of the Bishop, or the Administrator during any vacancy in the office of Bishop.

Board means the Board appointed pursuant to **clause 17** below.

Board Member means any person holding the position of a member of the Board for the time being.

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

Business Day means a day on which banks are open for business in Newcastle.

Chairperson means the Chairperson of the Board appointed in accordance with **clause 18.1(a)**.

Chief Executive Officer means the Chief Executive Officer appointed pursuant to **clause 40**.

Church Trust Property Act means the Anglican Church of Australia Trust Property Act 1917 (NSW). **Committee** means a committee established in accordance with **clause 23**.

Controlled Entity means any proprietary limited company the shares of which are owned or controlled by Samaritans Foundation or any company limited by guarantee controlled by Samaritans Foundation of which the Samaritans Foundation is a member.

Designated Fund Ordinance means the Designated Fund Ordinance 2015 passed by the Diocese under the Bodies Corporate Act and includes any amendments thereto or replacements thereof.

Diocesan Council means the Diocesan Council of the Diocese or a committee of the Diocesan Council with the delegated authority of the Council (to the extent of that delegation).

Diocese means the Anglican Diocese of Newcastle.

Financial Year means the financial year of Samaritans Foundation ending on 30 June.

Member means a Member of Samaritans Foundation as described in **clause 8**.

Ordinance means this ordinance as amended or supplemented from time to time by the Bishop.

Parish means a parish, provisional district or experimental pastoral area of or in the Diocese.

Responsible Persons Ordinance means the *Diocese of Newcastle (Responsible Persons) Ordinance* 2015 and includes any amendments thereto or replacements thereof.

Synod means the Synod of the Diocese.

Trustees means the Trustees of Church Property for the Diocese of Newcastle ABN 31 876 908 346, a body corporate pursuant to the *Anglican Church of Australia Trust Property Act* 1917 (NSW).

Trust Property means all or any part of any real or personal property of the Samaritans Foundation within the meaning of the term "church trust property" in section 4 of the Church Trust Property Act including (without limitation) –

(a) land and any buildings or improvements on or estates or interests in the land;

(b) real or personal property within or outside the geographical boundaries of the Diocese; and

(c) real or personal property acquired at any time after the date of assent of this Ordinance, within the meaning of the term "church trust property" in section 4 of the Church Trust Property Act.

1984 Ordinance means the Samaritans Foundation Diocese of Newcastle Ordinance 1984, as amended by (or incorporating amendments by) the following amending ordinances passed by the Diocese under the Bodies Corporate Act:

- (a) the *Samaritans Foundation Amending Ordinance 2008*;
- (b) the *Samaritans Foundation Amending Ordinance 2014*;
- (c) the *Diocese of Newcastle Clarification of the Role of Body Corporate President Ordinance 2015*; and
- (d) the *Designated Fund Ordinance 2015*.

3.2 In this Ordinance, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Ordinance;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

3.3 Headings do not form part of or affect the construction or interpretation of this Ordinance.

4. OBJECTS & POWERS

4.1 The charitable objects for which Samaritans Foundation is established are to provide benevolent relief to those suffering poverty or distress (such as sickness, disability, destitution, suffering, misfortune or helplessness) by:

- (a) promoting and conducting activities within Australia and particularly within the Diocese to relieve sickness, suffering, poverty, distress, misfortune, destitution or helplessness;

(b) providing care services for the relief of those who are poor, aged or infirm; and

(c) undertaking any other activities in furtherance of the above.

4.2 Samaritans Foundation can only exercise the powers in section 6 of the Bodies Corporate Act to:

(a) carry out the objects of Samaritans Foundation set out in **clause 4.1**; and

(b) do all things incidental or convenient in relation to the attainment of an object under **clause 4.1**.

5. NOT-FOR-PROFIT

5.1 The income and property of Samaritans Foundation will only be applied towards the promotion of the objects of Samaritans Foundation set out in **clause 4.1**.

5.2 No income or assets of Samaritans Foundation will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of Samaritans Foundation. However nothing in this Ordinance will prevent payment in good faith to a Member:

(a) in return for any services rendered or goods supplied in the ordinary and usual course of business to Samaritans Foundation;

(b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to Samaritans Foundation;

(c) of reasonable and proper rent for premises leased by any Member to Samaritans Foundation,

for carrying out Samaritans Foundation's charitable purposes.

6. VARIATION OF 1984 ORDINANCE

This provisions of this Ordinance replace the provisions of the 1984 Ordinance.

7. AMENDING THIS ORDINANCE

This Ordinance may only be amended in accordance with the Bodies Corporate Act, which as at the date of this Ordinance requires:

(a) the passing of an amending ordinance by the Synod or by any board, committee, council or body of persons exercising the delegated authority of the Synod;

(b) the certification of that amending ordinance by the assent of the Bishop; and

(c) a copy of the amending ordinance certified by the Bishop to be filed in the Office of the Registrar-General.

8. MEMBERSHIP

The Members of Samaritans Foundation shall be the Board Members for the time being.

9. ENTRANCE FEE AND SUBSCRIPTIONS

There shall be no entrance fee, annual fee or subscription payable by the Members.

10. DISPUTE RESOLUTION

10.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Ordinance between any or all of:

- (a) a Board Member or Board Members;
- (b) Samaritans Foundation; and
- (c) the Diocesan Council,

including, to avoid there being any doubt, a dispute between a Board Member with one or more other Board Members.

10.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

10.3 If those involved in the dispute do not resolve it under **clause 10.2**, they must within 10 days:

- (a) tell the Board Members about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

10.4 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree, a person chosen by the Bishop.

10.5 A mediator chosen by the Bishop under **clause 10.4**:

- (a) must not have a personal interest in the dispute; and
- (b) must not be biased towards or against anyone involved in the dispute.

10.6 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;

- (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.
- 10.7 In the event that the dispute is not settled within 28 days of it being referred to mediation, or such other period as agreed to in writing between the parties, any or all parties to the dispute may request that the Bishop refer the dispute to arbitration.
- 10.8 When conducting the arbitration, the arbiter must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) make a decision on the dispute, which, subject to the Bishop's approval shall be final.
- 10.9 In the event that the Bishop does not approve any decision made by an arbiter in accordance with **clause 10.8**, the Bishop will invite each party to make written submissions in respect of the dispute within 14 days. The Bishop will, within 14 days of having received submissions from both parties:
- (a) make a decision on the dispute; and
 - (b) provide each party with written reasons for the decision,
- and the Bishop's decision shall be final and binding on the parties.

11. ANNUAL GENERAL MEETING

- 11.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- 11.2 At each annual general meeting, the Board must present an annual report of Samaritan Foundation's activities and an audited report of the Samaritan Foundation's finances.
- 11.3 Even if these items are not set out in the notice of meeting, the business of an general meeting may include:
- (a) a review of Samaritans Foundation's activities;
 - (b) a review of Samaritans Foundation's finances; and
 - (c) any auditor's report.
- 11.4 All persons present at the meeting must be given a reasonable opportunity to ask questions or make comments about the management of Samaritans Foundation.

12. SPECIAL GENERAL MEETING

- 12.1 The Board may, whenever it thinks fit, convene a special general meeting of the Samaritans Foundation.
- 12.2 The Bishop may direct the Board to convene a special general meeting.
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13. NOTICE OF GENERAL MEETINGS

- 13.1 Notice of a general meeting must be given to:
- (a) each Member; and
 - (b) the Auditor.
- 13.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 13.3 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business.
- 13.4 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 13.5 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Ordinance and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.
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14. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

The Bishop may invite any person who is not a Member to attend and/or address a general meeting.

15. BISHOP TO PRESIDE AT GENERAL MEETINGS

- 15.1 The Bishop shall be entitled to preside as President of all general meetings at which he or she is in attendance.
- 15.2 The Bishop may at his or her sole discretion appoint a person to act as his or her delegate and preside over any general meeting at which the Bishop is not present.
- 15.3 Where the Bishop is not present and has not appointed a delegate or the delegate is not present the Chairperson shall preside over any general meeting.
- 15.4 In the case of an equality of votes whether on a show of hands or on a poll, the Bishop (or any delegate appointed pursuant to **clause 15.2**) at which the show of hands is taken or at which the poll is demanded will have a casting vote.

16. ADJOURNMENT OF GENERAL MEETINGS

The Bishop (or any delegate appointed pursuant to **clause 15.2**) may adjourn an general meeting with the consent of the meeting to a time and place as determined by the Bishop (or any delegate appointed pursuant to **clause 15.2**).

- 16.1 If the Bishop or (or any delegate appointed pursuant to **clause 15.2**) are not present at the general meeting, the general meeting may be adjourned to a time and place agreed by the majority of Members in attendance at the meeting.
- 16.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 16.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 16.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

17. REPORTING TO THE SYNOD

The Board shall submit the annual report presented in accordance with **clause 11.2** to the next ordinary session of the Synod.

18. ELECTION AND APPOINTMENT OF BOARD MEMBERS

- 18.1 The Board shall comprise:
- (a) A Chairperson appointed by the Bishop for such term as the Bishop sees fit;
 - (b) 3 communicant members of the Anglican Church appointed by the Diocesan Council of which at least one must be a member of the clergy and on the

basis that at least one member will be appointed no later than 31 October each year for a 3 year term commencing on 1 November that year;

- (c) 3 members appointed by the Diocesan Council on the basis that at least one member will be appointed no later than 31 October each year for a 3 year term commencing on 1 November that year;
- (d) 3 members appointed by the Board on the basis that at least one member will be appointed no later than 31 October each year for a 3 year term commencing on 1 November that year.

18.2 Every Board Member must retire at least once every 3 years.

18.3 A Board Member who retires under **clause 18.2** may be nominated for re-election. However, a Board Member may not be elected for more than 3 consecutive terms (or 9 years), except with the written approval of the Diocesan Council.

18.4 In the event of there being a casual vacancy on the Board, that vacancy shall be filled for the remainder of the term of that vacancy:

- (a) If the vacancy is for the Chairperson, by a person appointed by the Bishop;
- (b) If the vacancy is for a Board Member appointed by the Bishop, by a person appointed by the Bishop;
- (c) If the vacancy is for a Board Member appointed by the Diocesan Council, by a person appointed by the Diocesan Council; and
- (d) If the vacancy is for a Board Member appointed by the Board, by a person appointed by the Board.

18.5 Prior to any appointment of a Board Member, the Board must provide to the appointor in accordance with **clause 18.1**:

- (a) an outline of the skills of existing Board Members and the skills needed for forthcoming appointments; and
- (b) a current resume and any reference checks, reports and/or other documentation obtained as part of any due diligence carried out in respect of any proposed or recommended appointee(s),

for consideration by the appointor.

19. WHEN A BOARD MEMBER STOPS BEING A BOARD MEMBER

A Board Member stops being a Board Member if they:

- (a) give written notice of resignation as a Board Member to the Chairperson and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Chairperson);
- (b) die;

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- (c) in the case of a Board Member appointed by the Diocesan Council pursuant to clause **18.1(a)**, cease to be a communicant member of the Anglican Church;
 - (d) retire in accordance with **clause 18.2**, unless re-elected pursuant to **clause 18.3**;
 - (e) are absent for 3 consecutive Members' meetings without approval from the other Members;
 - (f) become bankrupt;
 - (g) are convicted of any offence punishable by imprisonment for 5 years or more;
 - (h) become of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (i) are disqualified by either the ACNC or ASIC from acting as a responsible person for a charity or as a director of a corporation within the meaning of the *Corporations Act 2001 (Cth)*, respectively; or
 - (j) are removed by the Bishop in accordance with his or her powers under the Responsible Persons Ordinance.

20. NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to Samaritans Foundation must be signed, drawn, accepted, endorsed or otherwise executed as the case may be in accordance with the Designated Funds Ordinance.

21. POWERS OF BOARD MEMBERS

- 21.1 The governance, control, management and conduct of Samaritans Foundation shall be vested in the Board who shall have the power to perform all such acts and do all such things as appear to the Board to be desirable for the proper management of Samaritans Foundation, including but not limited to:
- (a) incorporating proprietary limited companies, the shares of which are owned and controlled by Samaritans Foundation and the directors of which shall be the Board Members of the Samaritans Foundation for the time being;
 - (b) making arrangements to acquire by purchase or otherwise any property for the advancement of the objects of Samaritans Foundation;
 - (c) raising money by mortgaging any asset of Samaritans Foundation for completing acquisitions or for other purposes approved by the Board;
 - (d) controlling all monies received for the purpose of Samaritans Foundation and authorising all expenditure necessary for the proper running of Samaritans Foundation;

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- (e) opening and managing banking accounts for Samaritans Foundation and its Controlled Entities and complying with any determination made in accordance with the Designated Fund Ordinance 2015 and authorising operations thereon provided that no account shall be operated upon by less than two persons and shall not be overdrawn without the approval of the Board;
 - (f) giving guarantees on behalf of its Controlled Entities in respect of liabilities incurred or to be incurred by its Controlled Entities;
 - (g) investing monies from time to time in institutions that are limited to investment in authorised Trustee Securities with capital (which may include short-term government securities, bank accepted bills and bank certificates of deposits) in accordance with the Designated Fund Ordinance 2015;
 - (h) raising funds by appeal for the purpose of furthering the objects of Samaritans Foundation or its Controlled Entities;
 - (i) receiving, administering and providing for the investment of donations, gifts and legacies and receiving, administering and distributing income to the charitable and mission work of Samaritans Foundation;
 - (j) encouraging Parishes to participate in the ongoing work of Samaritans Foundation in ways which suit their particular circumstances and interests;
 - (k) encouraging the social and community services at present being undertaken and provided within Parishes;
 - (l) paying any reasonable and lawful licence fee or levy to the Diocese determined by the Diocesan Council;
 - (m) doing all such things as are incidental or conducive to the exercise and performance of all or any of the powers and duties of the Board and carrying out the objectives of Samaritans Foundation; and
 - (n) registering business names under the *Business Names Registration Act 2011* (Cth) as necessary in respect of any aspects of the work of Samaritans Foundation or its Controlled Entities.

21.2 Pursuant to the Church Trust Property Act and as otherwise allowed by law Samaritans Foundation is:

- (a) authorised to govern, manage and control all Trust Property in any manner in which it sees fit and to do all things incidental to such government, management and control; and
- (b) authorised to pool any Trust Property and all matters and things incidental to such pooling.

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- 21.3 Pursuant to the Church Trust Property Act, the Bodies Corporate Act and any other relevant law, it is expedient for Samaritans Foundation to be authorised, empowered and directed and Samaritans Foundation is so authorised, empowered and directed (as it deems appropriate) to:
- (a) borrow or otherwise raise moneys by such means and methods as Samaritans Foundation determines are appropriate and without limitation incur any Finance Debt and enter into derivative and other related financial arrangements and transactions;
 - (b) provide any Security or Guarantee in favour of a third party (including any ADI) over all or any part of the Trust Property and any other assets it holds; and
 - (c) in the case of the enforcement of any right of any creditor, or default under any obligation, arising under or in connection with any Security or Guarantee provided by Samaritans Foundation or Finance Debt incurred by Samaritans Foundation, without limitation –
 - (i) to sell all or any part of the Trust Property and other assets whether subject to any Security or otherwise;
 - (ii) to apply all or any part of the Trust Property and other assets or any proceeds from any realisations of the Trust Property and other assets in full or partial satisfaction of any such Finance Debt or liability secured by any such Security or Guarantee; and
 - (iii) to be indemnified from all or any part of the Trust Property and any other assets it holds.

22. DELEGATION OF BOARD MEMBERS' POWERS

- 22.1 The Board Members may delegate any of their powers and functions to a Committee, a Board Member, an employee of Samaritans Foundation (such as the Chief Executive Officer) or any other person, as they consider appropriate, on such terms and conditions and with such restrictions as they think expedient.
- 22.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 22.3 The delegation must be recorded in Samaritans Foundation's minute book.

23. COMMITTEE OF BOARD MEMBERS

- 23.1 The Board may form and delegate any of its powers to a Committee consisting of such Board Members and other persons as it thinks fit (so long as the majority of the members of the Committee are Board Members) and may from time to time revoke such delegation.

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- 23.2 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 23.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Ordinance.
- 23.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by this Ordinance to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.
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24. PAYMENTS TO BOARD MEMBERS

- 24.1 The Board Members may, if the Members resolve by ordinary resolution, be paid as remuneration for their services such sum as the Diocesan Council determines.
- 24.2 Notwithstanding **clause 5.2** above, Samaritans Foundation may:
- (a) pay a Board Member for any services rendered to Samaritans Foundation in a professional or technical capacity, other than as a Board Member, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a Board Member for expenses properly incurred by the Board Member in connection with the affairs of Samaritans Foundation.
- 24.3 Any payment made under **clause 24.2** must be approved by the Diocesan Council.
- 24.4 Samaritans Foundation may pay premiums for insurance indemnifying Board Members, as allowed for by law and this Ordinance.
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25. CONFLICTS OF INTEREST

- 25.1 A Board Member must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a Circular Resolution):
- (a) to the other Board Members; or
 - (b) if all of the Board Members have the same conflict of interest, at the next general meeting, or at an earlier time if reasonable to do so.
- 25.2 The disclosure of a conflict of interest by a Board Member must be recorded in the minutes of the meeting.
- 25.3 A general notice given to the Board by a Board Member that the Board Member is an officer or member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Board Member's interest in that corporation or firm shall, in relation to any matter involving Samaritans Foundation and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Board Member's interest, provided that the extent of the interest is no greater at the

time of first consideration of the relevant matter by the Board than was stated in the notice.

- 25.4 Each Board Member who has a material personal interest in a matter that is being considered at a Board meeting must not, except as provided under **clause 25.5**:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 25.5 A Board Member may still be present and vote if:
- (a) their interest arises because they are a Board Member of Samaritans Foundation, and the other Board Members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the Board Member against liabilities that the Board Member incurs as a Board Member (see **clause 45**);
 - (c) their interest relates to a payment by Samaritans Foundation under **clause 46** (indemnity), or any contract relating to an indemnity allowed under this Ordinance; or
 - (d) the Board Members who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Board Member, the nature and extent of the Board Member's interest in the matter and how it relates to the affairs of Samaritans Foundation; and
 - (ii) says that those Board Members are satisfied that the interest should not stop the Board Member from voting or being present.

26. DUTIES OF BOARD MEMBERS

- 26.1 The Board Members must comply with their duties as Board Members under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Board Member of Samaritans Foundation;
 - (b) to act in good faith in the best interests of Samaritans Foundation and to further the charitable purpose(s) of Samaritans Foundation set out in **clause 4.1**;
 - (c) not to misuse their position as a Board Member;
 - (d) not to misuse information they gain in their role as a Board Member;
 - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 26**;

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- (f) to ensure that the financial affairs of Samaritans Foundation are managed responsibly; and
 - (g) not to allow Samaritans Foundation to operate whilst insolvent.
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27. WHEN THE BOARD MEETS

The Board may decide how often, where and when it meets, provided that it shall meet together not less than 8 times each calendar year (including the general meeting).

28. CALLING BOARD MEETINGS

28.1 A Board meeting may be convened at any time by:

- (a) the Chairperson; or
- (b) 4 Board Members,

giving at least 7 days' notice of the meeting to all Board Members.

28.2 Notice of a Board meeting need not be in writing.

29. USING TECHNOLOGY TO HOLD BOARD MEETINGS

29.1 The Board Members may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Board Members.

29.2 The Board Members' agreement may be a standing one.

29.3 A Board Member may only withdraw their consent within a reasonable period before the meeting.

30. QUORUM AT BOARD MEETINGS

30.1 Unless otherwise determined by the Board, a quorum for meetings of the Board is half plus one of the Board Members, or if the number of Board Members is not a multiple of 2, then the odd number nearest to and greater than half of the Board Members.

30.2 No business may be transacted at any Board meeting unless a quorum of Board Members is present at all times during the meeting.

30.3 Board Members who are personally present (or in conference in accordance with **clause 29**) form a quorum. A Board Member who is disqualified from voting on a matter pursuant to **clause 25** shall be counted in the quorum despite that disqualification.

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- 30.4 All resolutions of the Board Members passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Board Member, or any act carried out pursuant to such resolution, shall, provided each Board Member to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Board Members.
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31. VOTING

- 31.1 A resolution of the Board must be passed by a majority of votes of the Board Members present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Board Members will for all purposes be taken to be a determination of the Board.
- 31.2 Each Board Member shall have one vote.
- 31.3 In case of an equality of votes at a Board meeting, the Chairperson will have a casting vote in addition to a deliberative vote which they may or may not choose to exercise.
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32. RESOLUTIONS BY BOARD MEMBERS

- 32.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if all the Board Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 32.2 The resolution is passed when a majority of the Board Members sign the resolution.
- 32.3 A transmission, via whatever technological means, which is received by Samaritans Foundation and which purports to have been signed by a Board Member shall for the purposes of this clause be taken to be in writing and signed by that Board Member at the time of the receipt of the transmission by Samaritans Foundation in legible form.
- 32.4 Samaritans Foundation may send a circular resolution by email to the Board Members and the Board Members may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
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33. VALIDATION OF ACTS OF BOARD MEMBERS

All acts done:

- (a) at any Board meeting; or
- (b) by any person acting as a Board Member,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Board Member or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such

person had been duly appointed or had continued in office and was duly qualified to be a Board Member and had been entitled to vote.

34. MINUTES AND RECORDS

- 34.1 Samaritans Foundation must make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
 - (b) a copy of a notice of each general meeting.
- 34.2 Samaritans Foundation must make and keep the following records:
- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
 - (b) circular resolutions of Board Members.
- 34.3 To allow the Board Members to inspect Samaritans Foundation's records, Samaritans Foundation must give Board Members reasonable access to the records set out in **clauses 34.1 34.2 and 38.1**.
- 34.4 The Board Members must ensure that minutes of an general meeting or a Board meeting are signed within a reasonable time after the meeting by:
- (a) the Bishop; or
 - (b) any other person presiding over the meeting.
- 34.5 The Board Members must ensure that minutes of the passing of a circular resolution of Board Members are signed by the Chair within a reasonable time after the resolution is passed.

35. PATRONS

- 35.1 The Bishop may appoint patrons of Samaritans Foundation to advise and assist Samaritans Foundation wherever possible.
- 35.2 Patrons shall hold office for a term determined by the Bishop.
- 35.3 Patrons may attend meetings of the Board but shall not be entitled to vote.

36. EXECUTION OF DOCUMENTS

- (a) Documents must be executed on behalf of Samaritans Foundation in accordance with the Bodies Corporate Act.
- (b) If a document is executed on behalf of Samaritans Foundation:

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- (i) using its common seal, the common seal may only be affixed in accordance with a resolution of the Board and in the presence of and attested to by the signatures of:
 - (A) 2 Board Members; and
 - (B) the Chief Executive Officer or a person authorised in writing by the Chief Executive Officer to sign on his/her behalf
 - (ii) pursuant to any applicable delegation, it must be executed in accordance with the terms of that delegation.

37. POWER OF ATTORNEY

Samaritans Foundation may empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State. A deed signed by such attorney on behalf of Samaritans Foundation shall bind Samaritans Foundation and have the same effect as if it were under its common seal.

38. FINANCIAL AND RELATED RECORDS

- 38.1 Samaritans Foundation must make and keep written financial records that:
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 38.2 Samaritans Foundation must also keep written records that correctly record its operations.
- 38.3 Samaritans Foundation must retain its records for at least 7 years.
- 38.4 The Board Members must take reasonable steps to ensure that Samaritans Foundation's records are kept safe.

39. BOARD MEMBERS' ACCESS TO DOCUMENTS

- 39.1 A Board Member has a right of access to the financial records of Samaritans Foundation at all reasonable times.
- 39.2 If the Board Members agree, Samaritans Foundation must give a Board Member or former Board Member access to:
 - (a) certain documents, including documents provided for or available to the Board Members; and
 - (b) any other documents referred to in those documents.

40. CHIEF EXECUTIVE OFFICER

- 40.1 The Board may appoint a Chief Executive Officer to perform the responsibilities and duties of Chief Executive Officer of:
- (a) Samaritans Foundation; and
 - (b) the Controlled Entities,
- on terms to be agreed between the Board and the Chief Executive Officer from time to time.
- 40.2 The Bishop must give prior approval to the appointment of a Chief Executive Officer and any terms or variation of terms on which the Chief Executive Officer is employed.
- 40.3 Candidates for the position of Chief Executive Officer will be nominated by the Board for consideration by the Bishop.
- 40.4 The Chief Executive Officer may be either a member of the clergy or laity and is responsible to the Board for the management and administration of Samaritans Foundation and its Controlled Entities.
- 40.5 The Chief Executive Officer shall be an employee of Samaritans Foundation.
- 40.6 The Board may only terminate the Chief Executive Officer's employment upon 3 months' prior written notice to the Chief Executive Officer (except in the case of wilful misconduct, in which case the Chief Executive Officer's employment may be terminated immediately). Any termination of the Chief Executive Officer's employment must first be approved by the Bishop.
- 40.7 The Board will ensure that the terms of the Chief Executive Officer's employment require that the Chief Executive Officer be required to provide at least 3 months' notice in writing of his/her resignation.
- 40.8 The Chief Executive Officer must comply with his/her duties as prescribed in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise his/her powers and discharge his/her duties with the degree of care and diligence that a reasonable individual would exercise if they were the Chief Executive Officer of Samaritans Foundation;
 - (b) to act in good faith in the best interests of Samaritans Foundation and to further the charitable purpose(s) of Samaritans Foundation set out in **clause 4.1**;
 - (c) not to misuse his/her position as Chief Executive Officer of Samaritans Foundation;
 - (d) not to misuse information s/he gains in his/her role as Chief Executive Officer of Samaritans Foundation;
 - (e) to disclose any perceived or actual material conflicts of interest by written notice to the Member;

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- (f) to ensure that the financial affairs of Samaritans Foundation are managed responsibly; and
 - (g) not to allow Samaritans Foundation to operate whilst insolvent.

40.9 The Chief Executive Officer shall be entitled to attend all meetings of the Board and have the right to speak but not vote.

41. INSPECTIONS AND INQUIRIES BY THE BISHOP AND DIOCESAN COUNCIL

41.1 The Board shall ensure that:

- (a) the Bishop and the Diocesan Council are kept informed of all key financial, strategic and risk matters associated with Samaritans Foundation in such manner and with such frequency as the Bishop and Diocesan Council determine; and
- (b) any requests of the Bishop and the Diocesan Council are considered by the Board.

40.2 The Diocesan Council may at any time and in such manner as it thinks fit:

- (c) direct an inspection of Samaritans Foundation, its finances, its buildings and equipment; and/or
- (d) direct an inquiry into the operational and general affairs of Samaritans Foundation.

42. BY-LAWS

42.1 The Board Members may pass a resolution to make by-laws to give effect to this Ordinance. By-laws may not be inconsistent with this Ordinance and, in the event of any inconsistency, the provisions of this Ordinance will prevail.

42.2 The Board Members must comply with by-laws as if they were part of this Ordinance.

43. WHEN NOTICE IS TAKEN TO BE GIVEN

Written notice under this Ordinance may be:

- (a) delivered in person, or left at a the recipient's address, and is taken to be given on the day it is delivered;
- (b) sent by post, and is taken to be given on the fifth day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

44. WINDING UP

- 44.1 If any surplus remains following the winding up of Samaritans Foundation, the surplus will not be paid to or distributed to the Members, but will be given or transferred to one or more corporation(s) or institution(s) which has:
- (a) charitable objects which are similar to the objects of Samaritans Foundation as set out in **clause 4.1**;
 - (b) a governing document which requires its income and property to be applied in promoting its objects;
 - (c) is registered as a public benevolent institution (**PBI**) and endorsed by the Australian Taxation Office to be income tax exempt and to have deductible gift recipient (**DGR**) status; and
 - (d) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on Samaritans Foundation by **clause 5**.
- 44.2 The identity of the corporation(s) or institution(s) is to be determined by the Bishop in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.
- 44.3 In the event that Samaritans Foundation ever has its endorsement as a DGR revoked, Samaritans Foundation must transfer all remaining money received in respect of such gifts and contributions to an institution which meets the requirements set out at **clause 44.1(a) to 44.1(d)**. The identity of the other institution or corporation is to be determined by the Bishop in writing.

45. INDEMNITY

To the extent permitted by law every Board Member shall be indemnified out of the funds of Samaritans Foundation against all costs, expenses and liabilities incurred as such a Board Member or employee (or former Board Member or employee). However, no such Board Member (or former Board Member) shall be indemnified out of the funds of Samaritans Foundation under this clause unless:

- (a) it is in respect of a liability to another person (other than Samaritans Foundation or a related body corporate to Samaritans Foundation) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Board Member (or former Board Member) or in which the Board Member (or former Board Member) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Board Member (or former Board Member).

46. PAYMENT OF INDEMNITY POLICY PREMIUM

- 46.1 To the extent permitted by law, Samaritans Foundation may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Board Member (or former Board Member) of Samaritans Foundation against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for a liability arising out of conduct involving a wilful breach of duty in relation to Samaritans Foundation.
- 46.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- 46.3 Where a Board Member (or former Board Member) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then Samaritans Foundation shall not be required to indemnify the Board Member under **clause 45** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

47. INDEMNITY TO CONTINUE

- 47.1 The indemnity granted by Samaritans Foundation, contained in **clause 45**, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.