

SPECIAL GENERAL MEETING

Saturday 5 April 2014

St Peter's College, Hackney Road, Hackney

Not earlier than 9.30am

AGENDA

1.0 OPEN MEETING Mr Bruce Linn Chair of Anglicare SA Inc Board

2.0 APOLOGIES

**3.0 ANGLICARE SA INC NEW CONSTITUTION /
ANGLICARE SA HOUSING ASSOCIATION INC CONSTITUTION**

3.1 **Motion:** *That the report of the Board be received.*

3.2 **Motion:** *That subject to confirmation by the Synod, the Constitution of Anglicare SA Incorporated be repealed and a new Constitution be adopted in the form now tabled and certified by the Chair.¹*

3.3 **Motion:** *That the new Constitution of Anglicare SA Housing Association Incorporated (henceforth to be known as Anglicare SA Housing Limited) annexed to the report of the Board of Anglicare SA Incorporated be approved, with the provisions relating to the proposed merger with Laura and Alfred West Cottage Homes, as listed below, to not come into effect unless and until the Supreme Court of South Australia approves the merger.²*

Clause 1. Preamble

The third paragraph

Clause 5. Objects

Sub clause 5.3

Clause 13 Pecuniary Interests

Sub clause 13.1 the words "or Appendix A"

Clause 19 Amendment of the Constitution

Sub clause 19.1 The words "Subject to sub-clause 19.2,"

Sub-clause 19.2

Clause 21 Electronic Meetings of Directors

Sub clause 21.5

Appendix A

All Clauses

4.0 CLOSE OF MEETING

¹ Please note that a minor amendment to better define Synod members as members of Anglicare SA Limited will be tabled to amend 8.2 to delete the words "are eligible to apply for membership of the company" and replace them with the words "shall be accepted as members of the company".

8.2 would then read "Those persons who from time to time are members of Synod (including Alternate members at such time of times as they are entitled to attend a meeting of the Synod) and who have applied to be members of the Company shall be accepted as members of the Company".

² Please note that a minor amendment to insert a reference to Appendix 5 in the Objects of Anglicare SA Housing Limited will be tabled.



**Special General Meeting
(Not before 9.30 am)
Saturday April 5 2014**

This meeting has been called in conjunction with a special session of Synod to consider the amendment of the constitution of Anglicare SA Inc. to become a Company Limited by Guarantee and to approve the amendment of the constitution of Anglicare Housing Inc. to also become a Company Limited by Guarantee.

These matters were briefly canvassed at the October 2013 session of Synod. Synod was advised that *"These changes are considered to be necessary to secure registration as a registered housing provider, to meeting increasing requirements of funders, and to be a more appropriate form of governance given the size and complexity of Anglicare, than association status".ⁱ*

The October Synod resolved:

"That this Synod gives in principle support for Anglicare SA incorporated undertaking a process to become a company limited by guarantee under the Corporations Act 2001 noting that this matter will need further consideration at a subsequent session of Synod."

Incorporation of both Anglicare Housing and Anglicare SA as Companies

Since the October Synod several issues have become clearer, however the process has become more complex as the Synod notice paper reveals!

The preference for having just one company Anglicare SA Limited to also be the registered housing provider has not proven possible as the housing regulator has clarified a number of required measures, (such as the maximum of 30% of the budget to be spent on staffing), which Anglicare SA as a whole cannot meet as most of our services are staff intensive.

Instead it has been agreed in discussions with the Diocese to continue the same arrangement as currently exists for the Anglicare Housing Association in having the same board as Anglicare SA Inc. and using the management and staff of Anglicare SA, but holding the community housing properties in the separate housing entity.

It is proposed that Anglicare SA Limited and Anglicare SA Housing Limited will both be incorporated as companies limited by guarantee due to the size and complexity of the former and to enable registration of the latter as a Tier 1 housing provider. While incorporation as a company does not impose greater responsibilities on the members of Anglicare SA (other than a \$20 guarantee, see below), board members and officers will be subject to the greater scrutiny of the Australian Securities and Investment Commission and the provisions of the Corporations Act. The board believes this is an important safeguard given Anglicare SA's size and prominence requiring the highest levels of governance.

It is also proposed to tighten the constitutional arrangements to clarify the relationship between the two entities so that Anglicare SA Housing Limited is clearly a subsidiary of Anglicare SA Limited (same board, Anglicare SA as the sole member of Anglicare SA Housing, same CEO and management). The subsidiary arrangement is important as it enables the funds and assets of both to be consolidated and considered as a single entity for financing purposes. This will be important in facilitating the

ability to leverage the Anglicare SA balance sheet should the board wish to borrow to build or acquire new community housing assets.

Given the need for the registered Tier 1 housing provider to be a company, having both entities incorporated as companies will simplify the legislative, regulatory and reporting requirements.

Preserving the Relationship of Anglicare SA within the Diocese of Adelaide

Throughout the consideration of the proposed changes, the paramount principle has been to keep the accountability of Anglicare to Synod and its status as part of the Diocese. The combination of the measures to be considered by the Special General Meeting and Synod will tighten the relationship while meeting the requirements of both Diocesan legislation and the Corporations Act.

There are three key aspects to the constitutional basis of the relationship of Anglicare SA within the Diocese; membership of Anglicare SA, appointment of the Board and alteration of the constitution. All of these important constitutional provisions are preserved in the new constitution.

Membership of Synod and membership of Anglicare SA will now be co-requisites; Lay members will be required to be members of Anglicare SA in order to be members of Synod and Clergy will be required to be members of Anglicare SA as a condition of their license.

Under the Corporation Act, persons are required to apply for membership of a company limited by guarantee and to give a guarantee that they agree be liable for up to twenty dollars \$20 if the company is wound up and monies are owed. In order to avoid this requirement becoming a disincentive to membership of Anglicare, the Synod will be asked to amend the *Incorporation of Anglicare SA Ordinance 2000* to provide full indemnity to Synod members for this \$20 guarantee should it ever be required.

All members of Synod will then be required to apply for and maintain their membership of Anglicare SA and agree to give this guarantee and will then be automatically accepted as members of Anglicare SA. This will be arranged by lay members nominating for Synod also signing an application to be a member of Anglicare SA and by new clergy having membership of Anglicare SA as a condition of their license. (All existing members of Anglicare SA Inc. at the time of incorporation as a company will have their membership transferred to Anglicare SA Limited under clause 8.9 of the new constitution.)

These new arrangements will actually tighten the provisions for members of Synod to be the members of Anglicare SA from the current constitution, and will ensure the membership of Anglicare SA is identical with Synod. (And as is currently the case, any board members who are not members of the Synod.)

The Board of Anglicare SA will continue to have the same composition as now:

- The Archbishop as President,
- One member appointed by the Archbishop,
- Three members elected by Synod, and
- Three members elected by Diocesan Council,
- Two members, one person nominated by each of the Dioceses of Willochra and The Murray,
- Up to three members co-opted by the Board.

The procedure for changes to the constitution of Anglicare SA Limited will have the same requirements as currently exist for Anglicare SA Inc. (By resolution of not less than a two thirds majority of members of Anglicare SA at a general meeting and confirmed by resolution of the Synod).

The new constitution for Anglicare SA Limited is as close to the existing constitution for Anglicare SA Inc. with minimum changes required to reflect the terminology and other requirements of the Corporations Act. Other changes are:

- To remove the specific requirement for a Board Executive Committee while retaining the ability to appoint new Board Committees as appropriate.
- New clause 26.5 limiting the power to incorporate a subsidiary to have the same objects or a subset of the objects of Anglicare SA and requiring membership of the board of a subsidiary to be board members or employees of Anglicare SA.
- Redundant clause 29 relating to Anglicare SA being the legal successor in title to aged care predecessor organisations has been removed.
- New clause 32.3 relating to the members \$20 guarantee towards the debts and liabilities of the company if it is wound up. This will be fully covered by the amendment to the Anglicare SA Incorporation Ordinance indemnifying members of Synod.
- Notices and Electronic Meetings; these provisions have been updated to reflect the availability of electronic communication and addresses.

Anglicare SA Housing Limited

The proposed constitution of Anglicare SA Housing Limited mirrors the proposed constitution of Anglicare SA Limited, with the following key exceptions:

- The Objects reflect the current Objects of the Anglicare Housing Association,
- Anglicare SA Limited is the sole member,
- The Board of Anglicare SA Limited is the Board of Anglicare SA Housing Limited,
- The CEO of Anglicare SA is the CEO of Anglicare SA Housing Limited,
- Amendment to the Constitution requires the approval of Synod (and resolution by two thirds of the Board and the Board of Anglicare SA)
- Special Provisions relating to Laura and Alfred West Cottage Homes (LAWCH).

The highlighted provisions in the proposed Anglicare SA Housing Limited constitution refer to a proposed amalgamation with LAWCH. At this stage it is unclear as to whether this proposal will go ahead and it is proposed that these amendments be approved subject to the approval of the Supreme Court to the proposed modification of the LAWCH Trusts which require rectification of long standing breaches by LAWCH.

Procedure:

The Synod will meet and consider amendment of the Anglicare SA Incorporation Ordinance to authorise incorporation as a company limited by guarantee and to indemnify members of Synod in relation to the required guarantee of \$20 by members of Anglicare SA Limited.

If it is passed the Ordinance will not come into effect until and unless the proposed constitution is approved.

The Synod then adjourns and the Special General meeting of Anglicare SA commences.

The motion to repeal the current constitution of Anglicare SA Inc. and adopt the new constitution of Anglicare SA Limited is moved and debated and then voted on by members.

(A two thirds majority of members present and voting is required to approve the resolution)

The motion to approve the new Constitution of Anglicare SA Housing Limited is moved and debated and then voted on by members.

(A simple majority of members is required to approve the resolution. The sections of the new constitution referring to LAWCH are to be approved subject to the approval of the Supreme Court).

The Special General Meeting is then closed and the Synod resumes.

The Synod considers a resolution to approve the amendments to the constitution of Anglicare SA as approved by the Special General meeting.

The Synod is asked to receive reports regarding the amendment of the constitution of the Anglicare Housing Association.

The Synod is asked to consider a resolution requesting the Archbishop to make future clergy licenses subject to the licensee applying for and remaining a member of Anglicare SA Limited.

The Synod considers amendment of the Election of Members of the Synod Ordinance to require elected lay members of Synod to apply for and remain members of Anglicare SA Limited.

If the amendments to the Constitution of Anglicare SA and the amendments to the Ordinances are all passed, the Archbishop may declare that the Ordinances now come into effect.

The Rev'd Peter Sandeman
Chief Executive Officer
12 March 2014

ⁱ Letter to the Secretary of Synod from the CE of Anglicare SA dated 11 September 2013 and provided to Synod Members.