

## SAMARITANS FOUNDATION - DIOCESE OF NEWCASTLE ORDINANCE 1984

**AN ORDINANCE** to establish the governance provisions for the operation of the Samaritans Foundation.

**BE IT THEREFORE** Ordained by the Diocesan Council of the Diocese of Newcastle as follows:

### BACKGROUND

- A. The *Samaritans Foundation Diocese of Newcastle Ordinance 1984* provided for the separate governance of the welfare arm of the Diocese of Newcastle.
- B. This Ordinance provides for the future management and control of Samaritans Foundation – Diocese of Newcastle.

### PART 1 – PRELIMINARY

1. Short Title

This Ordinance may be cited for all purposes as the ***Samaritans Foundation Diocese of Newcastle Ordinance 2017***.

2. Repeal

The following ordinances are repealed:

- (a) The *Newcastle Anglican Department of Social Work Ordinance 1968* (as amended) is hereby repealed.
- (b) The repeal effected by sub-clause (a) of this clause shall not affect the past operation of the *Newcastle Anglican Department of Social Work Ordinance 1968* (as amended) or anything suffered done or commenced or any right privilege obligation or liability acquired accrued or incurred thereunder and the trusts created by the said Ordinance shall be valid and continue in the manner and the extent provided.
- (c) All offices established and all persons elected or appointed to and holding office under the *Newcastle Anglican Department of Social Work Ordinance 1968* (as amended) shall continue and be subject to the provisions of this Ordinance as if it had been in force at the time such offices were established and such persons were elected or appointed as if they had been established elected or appointed respectively thereunder.
- (d) This Ordinance shall apply to all matters and things made done or commenced under the *Newcastle Anglican Department of Social Work Ordinance 1968* (as amended) and at the commencement of this Ordinance of any force or effect or capable of acquiring any force or effect by virtue of the said repealed Ordinance as if this Ordinance had been in force at the time when they were made done or commenced and they were made done or commenced hereunder.
- (e) Any amendment effected by the *Samaritans Foundation – Diocese of Newcastle Amending Ordinance 2008* shall not affect the past operation of the Foundation or anything suffered to be done or commenced or any right privilege obligation or liability acquired accrued or incurred under the amended ordinance and any trusts created by the amended ordinance shall be valid and continued in the manner and to the extent provided.

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- (f) Following consultation with the Board of Samaritans and the Diocesan Council, this Bill provides for a reduction in the size of the Board. The Bill limits the appointments to the Board to the Bishop, Diocesan Council and the Board.

3. Definitions

3.1 In this Ordinance, unless the context or subject matter otherwise indicates or requires:

<b>ACNC</b>	means the Australian Charities and Not-for-profits Commission.
<b>ACNC Act</b>	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .
<b>ADI</b>	has the same meaning as in the Banking Act 1959 (Commonwealth).
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>Auditor</b>	means the Auditor of the Diocese appointed in accordance with the Diocesan Council Ordinance 1929.
<b>Bishop</b>	means the Bishop of Newcastle, in the absence of the Bishop it means the Commissary and, during any vacancy in the See, the Administrator of the Diocese.
<b>Board</b>	means the Board appointed pursuant to clause 18 below.
<b>Board Member</b>	means any person holding the position of a member of the Board for the time being.
<b>Bodies Corporate Act</b>	means the <i>Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW)</i> .
<b>Business Day</b>	means a day on which banks are open for business in Newcastle.
<b>Chairperson</b>	means the Chairperson of the Board appointed in accordance with clause 18.
<b>Church Trust Property Act</b>	means the Anglican Church of Australia Trust Property Act 1917 (NSW).
<b>Commissary</b>	means the person appointed by the Bishop to act in his place when the Bishop is absent from the Diocese.
<b>Committee</b>	means a committee established in accordance with clause 23.
<b>Controlled Entity</b>	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.
<b>Designated Fund Ordinance</b>	means the Designated Fund Ordinance 2015 passed by the Diocese under the Bodies Corporate Act and includes any amendments thereto or replacements thereof.

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<b>Diocesan Chief Executive</b>	means the Diocesan Chief Executive of the Diocese
<b>Diocesan Council</b>	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).
<b>Diocese</b>	means the Anglican Diocese of Newcastle.
<b>Executive Director</b>	means any person appointed as Executive Director in accordance with clause 40 of this Ordinance.
<b>Financial Year</b>	means the financial year of Samaritans Foundation ending on 30 June.
<b>Finance Debt</b>	means and includes any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including: <ul style="list-style-type: none"> <li>a) an advance or loan;</li> <li>b) drawing, accepting, endorsing, discounting, collecting or paying a bill of exchange, cheque or other negotiable instrument;</li> <li>c) the discounting or sale of receivables;</li> <li>d) entering into any agreement or transaction in connection with raising financial accommodation as a result of which a debt or liability or a contingent debt or liability, will or might arise (including any finance lease, hire purchase agreement or title retention agreement);</li> <li>e) any commodity, currency or interest rate swap agreement, forward exchange rate agreement or futures contract (as defined in any statute);</li> <li>f) any reimbursement obligation or indemnity relating to any financial accommodation (including any letter of credit or bank undertaking); or</li> <li>g) any Guarantee of any other Finance Debt.</li> </ul>
<b>Guarantee</b>	means the guarantee of any obligation of another party by Samaritans Foundation.
<b>Head of Entity</b>	means the person appointed by the Board to be the head of the relevant entity as defined in legislation relating to child protection or disability (with this definition also applying to the term Head of Agency where relevant) and for such other duties as the Board may determine.
<b>Member</b>	means a Member of Samaritans Foundation as described in clause 8.
<b>NAC</b>	means Newcastle Anglican Corporation.
<b>Officer</b>	means any person holding a designated position within the governance structure of the entity including the Chairperson, Deputy Chairperson or Diocesan Chief Executive.

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<b>Ordinance</b>	means this ordinance as amended or supplemented from time to time by the Bishop.
<b>Parish</b>	means a parish, provisional district or experimental pastoral area of or in the Diocese.
<b>Responsible Persons Ordinance</b>	means the <i>Diocese of Newcastle (Responsible Persons) Ordinance 2015</i> and includes any amendments thereto or replacements thereof.
<b>Security</b>	means any mortgage, charge, lien, pledge, general security agreement or any assignment, trust or other arrangement securing the performance or payment of any obligation. It includes a security interest under section 12 of the <i>Personal Property Securities Act 2009 (Cth)</i> .
<b>Synod</b>	means the Synod of the Diocese.
<b>Trustees</b>	means the Trustees of Church Property for the Diocese of Newcastle ABN 31 876 908 346, a body corporate pursuant to the <i>Anglican Church of Australia Trust Property Act 1917 (NSW)</i> .
<b>Trust Property</b>	<p>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) –</p> <ul style="list-style-type: none"> <li>(a) land and any buildings or improvements on or estates or interests in the land;</li> <li>(b) real or personal property within or outside the geographical boundaries of the Diocese; and</li> <li>(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.</li> </ul>
<b>1984 Ordinance</b>	<p>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:</p> <ul style="list-style-type: none"> <li>(a) the <i>Samaritans Foundation Amending Ordinance 2008</i>;</li> <li>(b) the <i>Samaritans Foundation Amending Ordinance 2014</i>;</li> <li>(c) the <i>Diocese of Newcastle Clarification of the Role of Body Corporate President Ordinance 2015</i>; and</li> <li>(d) the <i>Designated Fund Ordinance 2015</i>.</li> </ul>

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- 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.
  - (h) where reference in this Ordinance is made to the Bishop such reference should be interpreted as the Bishop exercising the powers of the Bishop of the Diocese (rather than acting in the capacity of Chairperson of Samaritans).
- 3.3 Headings do not form part of or affect the construction or interpretation of this Ordinance.

**PART 2 – OPERATIVE PART**

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.

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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

These provisions of The Samaritans Diocese of Newcastle Ordinance 2017 replace the amended 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

The Bishop shall settle and determine any doubt or dispute arising in reference to any matter subject to this Ordinance and may from time to time make directions for remedying any breach, error or omission related to the administration of the Samaritans Foundation. Any determination or direction from the Bishop shall be final.

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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 a 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.

13. Notice of General Meeting

- 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

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- (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.
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 Chair General Meetings and to have Casting Vote
- 15.1 Where the Bishop is not present at a general meeting and has not appointed a delegate or the delegate is not present, the Deputy Chair of the NAC shall preside over the general meeting.
- 15.2 In the case of an equality of votes whether on a show of hands or on a poll, the Chairperson (or any delegate appointed under clause 15.1) at which the show of hands is taken or at which the poll is demanded shall have a casting vote.
16. Adjournment of General Meetings
- 16.1 The Bishop (or any delegate appointed pursuant to clause 15.2) may adjourn a 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).
- 16.2 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.
- 16.3 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.
- 16.4 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 16.5 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. The Board of NAC is also the Board of Samaritans Foundation
- 18.1 The Board of Samaritans Foundation shall comprise the Board members of NAC.
- 18.2 The Officers of the NAC shall be the Officers of the Samaritans Foundation.
- 18.3 Any change in the composition of the Board of NAC shall also result in an identical change to the composition of the Board of Samaritans Foundation.



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19. When a Board Member stops being a Board Member

A Board member of Samaritans Foundation ceases to be a Board member when that person ceases to be a Board member of NAC, irrespective of the reason.

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 Samaritans Foundation is an entity subject to the control of the Diocesan Council. The Board is responsible for the governance, management, and administration of the business of the Samaritans Foundation.

The Board is accountable to the Bishop, Synod and Diocesan Council for the corporate performance of Samaritans Foundation.

The Board must ensure that it undertakes its work in accordance with the mission, values and strategies of the Anglican Diocese of Newcastle. Its powers include, but are not limited, to:

- (a) directing the incorporation of 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 Samaritans Foundation for the time being;
- (b) directing the acquisition by purchase or otherwise of any property for the advancement of the objects of Samaritans Foundation;
- (c) directing the raising of money by mortgaging any asset of Samaritans Foundation for completing acquisitions or for other purposes approved by the Board;
- (d) directing the control of all monies received for the purpose of Samaritans Foundation and authorising all expenditure necessary for the proper running of Samaritans Foundation;
- (e) directing the 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;

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- (g) directing the investment of 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) directing the raising funds by appeal for the purpose of furthering the objects of Samaritans Foundation or its Controlled Entities;
  - (i) directing the receipt, administration and provision 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) directing the payment of any reasonable and lawful licence fee or levy to the Diocese determined by the Diocesan Council; and
  - (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
- 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.
- 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:

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- (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 of NAC, an individual Board Member, the Diocesan Chief Executive an Executive Director or any person as they consider appropriate on such terms and conditions they consider appropriate and with such restrictions they consider 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 Any powers the Board seeks to delegate to a committee shall be delegated to a Committee of NAC.
- 23.2 Where any power is delegated to a Committee of NAC by the Board, the Board shall convey any directions or restrictions upon the delegation of the power. .
- 23.3 The Committee of NAC to which any power is delegated under clause 23.1 shall conduct its business in accordance with the framework provided under clause 23 of the *Newcastle Anglican Corporation Ordinance 2017* (as amended).

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 46);
- (c) their interest relates to a payment by Samaritans Foundation under clause 45 (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:

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

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 Board meeting may be convened at any time by:

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

provided the concurrence of the Bishop is first obtained and then by providing three clear 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 The quorum for a meeting of the Board is four members of the Board.

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.

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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.

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, are valid as if notice of the meeting had been duly given to all Board Members.

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.

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.

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.

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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 a 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:

- (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 Diocesan Chief Executive or a person authorised in writing by the Diocesan Chief Executive to sign on his/her behalf
- (ii) pursuant to any applicable delegation, it must be executed in accordance with the terms of that delegation.

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37. Power of Attorney

The Board of 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. Management of Samaritans and Head of Entity

40.1 The Diocesan Chief Executive shall be responsible for the management and administration of Samaritans' operations and may with the concurrence of the Bishop delegate any powers or responsibilities to an Executive Director or some other person as determined by the Diocesan Chief Executive and approved by the Board.

40.2 The Board with the concurrence of the Bishop shall appoint an Executive Director or some other person to the position of Head of Entity for Samaritans and may prescribe the duties to be undertaken as the Head of Entity.

41. Inspections and Inquiries by Bishop

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

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(b) any requests of the Bishop and the Diocesan Council are considered by the Board.

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

(a) direct an inspection of Samaritans Foundation, its finances, its buildings and equipment; and/or

(b) 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 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.

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- 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 (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.

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## PART 3 – ORDINANCE ADMINISTRATION

Table of Amendments

<b>Date</b>	<b>Current Section</b>	<b>Instrument and Date of Commencement</b>	<b>Section Amended</b>
29 May 1998	25 26	<i>Samaritans Foundation Diocese of Newcastle Ordinance 1984 Amending Ordinance 1998</i>	11 A (a) 11 A (b)
	2	<i>Samaritans Foundation Amending Ordinance 2008</i>	1
	3(e)	<i>Samaritans Foundation Amending Ordinance 2008</i>	2(e)
	3(f)	<i>Samaritans Foundation Amending Ordinance 2008</i>	2(f)
	6	<i>Samaritans Foundation Amending Ordinance 2008</i>	5
	11	<i>Samaritans Foundation Amending Ordinance 2008</i>	8
	19-20	<i>Samaritans Foundation Amending Ordinance 2008</i>	9
	25 -27	<i>Samaritans Foundation Amending Ordinance 2008</i>	11 (a) - (b)
	30	<i>Samaritans Foundation Amending Ordinance 2008</i>	12
	30(o)	<i>Samaritans Foundation Amending Ordinance 2008</i>	12(p)
	31	<i>Samaritans Foundation Amending Ordinance 2008</i>	13
	32	<i>Samaritans Foundation Amending Ordinance 2008</i>	14
	33	<i>Samaritans Foundation Amending Ordinance 2008</i>	15
	34	<i>Samaritans Foundation Amending Ordinance 2008</i>	16
	35 - 38	<i>Samaritans Foundation Amending Ordinance 2008</i>	17
	39	<i>Samaritans Foundation Amending Ordinance 2008</i>	18
24 July 2014	7	<i>Samaritans Foundation Amending Ordinance 2014</i>	6(a)
	8	<i>Samaritans Foundation Amending Ordinance 2014</i>	6(b)
	10	<i>Samaritans Foundation Amending Ordinance 2014</i>	7
	11	<i>Samaritans Foundation Amending Ordinance 2014</i>	8
	12	<i>Samaritans Foundation Amending Ordinance 2014</i>	8A
	13	<i>Samaritans Foundation Amending Ordinance 2014</i>	8B
	14,16,17,18	<i>Samaritans Foundation Amending Ordinance 2014</i>	8
30 April 2015	9	<i>The Diocese of Newcastle Clarification of the Role of Body Corporate President Ordinance 2015</i>	6A
	1	<i>The Diocese of Newcastle Clarification of the Role of Body Corporate President Ordinance 2015</i>	21
30 July 2015	30(e)	<i>The Designated Fund Ordinance 2015</i>	12(f)
24 August 2017	All	<i>Samaritans Foundation Ordinance 2017</i>	All
26 March 2020	10	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	10
	New	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	15.5

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	21.1	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	21.1
	21.3	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	21.3
	28.1	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	28.1
	30.1	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	30.1
03 April 2020	21.1	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020 – Amendment to Schedule One</i>	21.1
	21.3	<i>Governance During Australian COVID-19 Pandemic Emergency Ordinance 2020 – Amendment to Schedule One</i>	21.3
17 August 2020	19(k)	<i>Governance Restructure Transitional Ordinance 2020</i>	new
	28.1	<i>Governance Restructure Transitional Ordinance 2020</i>	28.1
17 August 2020	3.1	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	3.1
	3.2	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	3.2
	15	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	15
	18	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	18
	19	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	19
	21.1	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	21.1
	21.3	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	21.3
	22.1	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	22.1
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		2020	
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	37	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	37
	40	<i>Samaritans Foundation - Diocese of Newcastle Ordinance 2017 Governance Amendment Ordinance 2020</i>	40

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