

No 4 of 2018

Serial Act No 256

Archbishop in Council Act 2018

AN ACT

relating to the governance of the Diocese and for other purposes

BE IT ENACTED by the Archbishop, the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Melbourne in Victoria duly met in Synod according to law as follows:

PART 1 – PRELIMINARY

1 Short title

This Act may be cited as the **Archbishop in Council Act 2018**.

2 Commencement

This Act comes into operation on 1 November 2019 except that—

- (a) at its first ordinary session of that year Synod may elect members of the Archbishop in Council constituted pursuant to section 10 of the Act; and
- (b) following that first ordinary session of 2019 and the election for the members of the Archbishop in Council, the Archbishop may appoint members to the Archbishop in Council pursuant to section 10 of the Act.

3 Interpretation

(1) In this Act, unless the context otherwise requires—

Archbishop means the Archbishop of Melbourne and includes—

- (a) a Vicar-General or Commissary¹ duly authorised to act on behalf of the holder of the office of Archbishop; and
- (b) the Administrator of the Diocese²;

Archbishop in Council means the governing body referred to in section 5.

the Church means the Anglican Church of Australia within the Diocese of Melbourne;

Diocesan Corporation means the Melbourne Anglican Diocesan Corporation Ltd;

disqualified person has the meaning in section 33;

member of the immediate family of an individual means a person who is—

- (a) a parent, child or sibling of the individual;
- (b) a spouse or domestic partner of the individual; or
- (c) a relative of the individual and a member of the individual's household;

member means a member of the Archbishop in Council;

ordinary member means a member of the Archbishop in Council other than the Archbishop;

Trust Corporation means the Melbourne Anglican Trust Corporation.

- (2) For the purposes of the definition of a member of the immediate family in subsection (1) —
 - (a) ***domestic partner*** of a person means a person with whom the person is in a domestic relationship that is—

¹ *Melbourne Archbishopric Act 1980*, s 16.

² *Melbourne Archbishopric Act 1980*, s 19.

- (a) a registered domestic relationship within the meaning of the *Relationships Act 2008* (Vic); or
 - (b) a relationship between two persons who are not married to each other but who are living together as a couple on a genuine domestic basis (irrespective of gender);
- (b) *spouse* means the person to whom a person is married.

4 Purpose of the Act

The purpose of this Act is to provide for the governance of the Diocese in relation to the temporal affairs of the Diocese.

PART 2 – FUNCTIONS OF THE ARCHBISHOP IN COUNCIL

5 Establishment

There shall be a governing body known as the Archbishop in Council.

6 Functions

- (1) Subject to the **Melbourne Anglican Diocesan Corporation Act 2015** and any other applicable Act of the Synod, the Archbishop in Council is responsible for the temporal affairs of the Diocese including setting and monitoring strategies for mission and ministry and formulating policies.
- (2) The Archbishop in Council has those other functions as are conferred upon it by Synod.

7 Archbishop in Council to be a Diocesan council

For the purposes of the definition of "Diocesan council" in section 74(1) of the Constitution of this Church³, the Archbishop in Council is determined to be the diocesan council.

8 Assent to bills for Canons of this Church

- (1) Subject to this section—
 - (a) the power to assent to a bill under sub-sections (2) and (3) of section 28A of the Constitution of this Church is delegated to the Archbishop in Council; and
 - (b) the Archbishop in Council is permitted to assent to a bill under those sub-sections by resolution.
- (2) A resolution referred to in sub-section (1)(b)—
 - (a) must state that it is necessary or desirable for the assent to be given by the Archbishop in Council before the next session of the Synod;
 - (b) must be passed either by—
 - (i) two-thirds of the clerical ordinary members and two-thirds of the lay ordinary members present at the meeting and voting; or
 - (ii) two-thirds of those members present at the meeting and voting. and
 - (c) must in either case be assented to by the Archbishop.

9 Recording and publication of such a resolution

A resolution made under section 8 must be as soon as reasonably possible, and at any event within 14 days—

- (a) recorded by the Registrar in the registry as if it were an Act of the Synod;

³ 'this Church' is defined in the National Constitution to mean the Anglican Church of Australia.

- (b) notified to the members of the Synod by notice given electronically or in a publication generally available to members of Synod; and
- (c) made available on the Diocesan website together with a copy of the bill and any explanatory memorandum.

PART 3 – COMPOSITION AND TERM OF OFFICE

10. Number and eligibility

The Archbishop in Council shall consist of—

- (a) the Archbishop; and
- (b) eligible persons elected as ordinary members as follows—
 - (i) 3 female clerks elected by Synod;
 - (ii) 3 male clerks elected by Synod;
 - (iii) 3 female lay persons elected by Synod; and
 - (iv) 3 male lay persons elected by Synod; and
- (c) not more than 4 persons appointed by the Archbishop after consultation with the ordinary members as to the need for appropriate skills, experience and diversity.

11 Eligibility

- (1) A person is eligible to be a member if—
 - (a) aged 18 years or more;
 - (b) a communicant member of the Anglican Church of Australia;
 - (c) either on the electoral roll of a parish or authorised Anglican congregation or Cathedral or holding an active licence of the Archbishop; and
 - (d) not a disqualified person.

- (2) A person who is—
- (a) the Chancellor;
 - (b) the Deputy Chancellor;
 - (c) the Advocate of the Diocese;
 - (d) the Registrar of the Diocese
 - (e) an assistant bishop of the Diocese; or
 - (f) the Chief Executive Officer of the Diocesan Corporation—
- is not eligible to be elected or appointed as a member.

12 Term of office

- (1) The term of an ordinary member commences from the date of their election or appointment and expires on the day before the day on which the Archbishop in Council first meets after the next election of members at the first ordinary session of each Synod.
- (2) Subject to subsection (3), a member whose term of office has expired is eligible for election or appointment for a further term.
- (3) A member who has served as a member for 3 consecutive terms is not eligible for further election or appointment without an interval of 3 years.
- (4) For the purpose of subsection (1), a person who under section 16 fills a casual vacancy is taken to have been elected on the date they fill that vacancy.

13 Automatic vacancy

The office of an ordinary member becomes vacant if—

- (a) the member resigns by notice in writing given to the Archbishop;

- (b) within one month of having been appointed or elected a member of the Archbishop in Council, the member has not become a member of the Diocesan Corporation;
- (c) the member ceases to be a member of the Diocesan Corporation;
- (d) in the case of a person who was elected or appointed as a clerk, the member ceases to be qualified for election or appointment as a clerk;
- (e) in the case of a person who was elected or appointed as a lay person, the member ceases to be qualified for election or appointment as a lay person.
- (f) completes any applicable term of office;
- (g) dies; or
- (h) becomes a disqualified person.

14 Absence and vacancy

If any ordinary member be absent without the permission of the Archbishop in Council from three consecutive ordinary meetings of the Archbishop in Council the office of that member may be declared vacant by the Archbishop in Council.

15 Removal from office

- (1) An elected member may be removed from office by resolution of the Synod.
- (2) An appointed member may be removed from office by the Archbishop on one month's written notice.

16 Filling of Vacancies

- (1) A vacancy in the office of an elected member shall be filled for the remainder of the member's term by a clerk or a lay person, as the case requires, in accordance with

section 21 of the **Regulation of Elections Act 1980** and regulations under that Act.

- (2) If a vacancy in the office of an elected member cannot be filled under sub-section (1), the vacancy shall be filled for the remainder of the term by an election at the next ordinary session of Synod or, if so determined under section 31 of the **Regulation of Elections Act 1980**, by postal ballot under that Act.
- (3) A vacancy in the office of an appointed member shall be filled for the remainder of the member's term by a person appointed by the Archbishop after consultation with the members of the Archbishop in Council as to the need for appropriate skills and experience.

PART 4 – PROCEEDINGS OF THE ARCHBISHOP IN COUNCIL

17 Meetings

- (1) The Archbishop in Council may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (2) The simultaneous linking together by telephone or other electronic means of a sufficient number of the Archbishop in Council to constitute a quorum constitutes a meeting of the Archbishop in Council.
- (3) All the provisions in this Act relating to meetings of the Archbishop in Council apply, as far as they can and with any necessary changes, to meetings of the Archbishop in Council by telephone or other electronic means.
- (4) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

- (5) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one member of the Archbishop in Council involved was at that place for the duration of the meeting.
- (6) If, before or during the meeting, a technical difficulty occurs which means that one or more of the Archbishop in Council cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of members remains present, continue with the meeting.

18 Convening meetings

- (1) The Archbishop must convene a meeting of the Archbishop in Council at least six times each year and may convene a meeting of the Archbishop in Council at other times at his or her discretion.
- (2) Five ordinary members may bring a matter before the Archbishop in Council by written notice given to the Archbishop and the Secretary.
- (3) The Secretary must place a matter of which written notice has been received under the preceding subsection on the business paper of the next meeting of the Archbishop in Council that is more than 14 days after the day on which he or she received the notice.
- (4) If a matter is brought before the Archbishop in Council under subsection (2), the terms of the notice and the name of the ordinary member must be recorded in the minutes.

19 Notice of meetings

- (1) Subject to this Act, notice of a meeting of the Archbishop in Council must be given to each person who is at the time of giving the notice a member or an office holder entitled to attend.
- (2) A notice of a meeting of the Archbishop in Council—
 - (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and
 - (c) may be given in person or by post, telephone, fax or other electronic means.
- (3) A member may waive notice of a meeting of the Archbishop in Council by notifying the Secretary to that effect in person or by post, telephone, fax or other electronic means.
- (4) The non-receipt of notice of a meeting of the Archbishop in Council by, or a failure to give notice of a meeting of the Archbishop in Council to, a member does not invalidate anything done or resolution passed at the meeting if—
 - (a) the non-receipt or failure occurred by accident or error;
 - (b) the member has waived or waives notice of that meeting under the preceding subsection before or after the meeting;
 - (c) the member has notified or notifies the Secretary of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means before or after the meeting; or

(d) the member attended the meeting.

- (5) Attendance by a person at a meeting of the Archbishop in Council waives any objection which that person may have to a failure to give notice of the meeting.

20 An assistant bishop of the Diocese may attend and speak

An assistant bishop of the Diocese is entitled to attend and speak at meetings of the Archbishop in Council but may not vote.

21 Certain other office holders may attend and speak

The following are entitled to attend and speak at meetings of the Archbishop in Council but may not vote—

- (a) if not an elected or appointed member, the Dean of Melbourne;
- (b) the Chancellor;
- (c) the Deputy Chancellor;
- (c) the Advocate; and
- (d) the Registrar of the Diocese.

22 Other attendees may attend and speak

- (1) The Archbishop in Council may invite any other person to attend and speak at meetings of the Archbishop in Council.
- (2) The Secretary is entitled to attend and with the leave of the meeting, speak at meetings of the Archbishop in Council but may not vote.

23 Quorum at meetings

- (1) No business may be transacted at a meeting of the Archbishop in Council unless a quorum is present at the time the business is dealt with.

- (2) A quorum consists of the Archbishop and one third of the ordinary members.
- (3) If there is a vacancy in the office of a member, then the remaining members may act.

24 Chair of meetings

- (1) The Archbishop must preside as chair at each meeting of the Archbishop in Council if present within 10 minutes after the time appointed for the meeting and willing to act.
- (2) If the Archbishop⁴ is not so present or willing to act, the members of the Archbishop in Council present must elect one of their number as chair of the meeting.

25 Decisions of the Archbishop in Council

- (1) A meeting of Archbishop in Council at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Archbishop in Council under this Act.
- (2) Except where the Synod by legislation has authorised a decision on a particular matter or type of matter to be made by the ordinary members, meeting when the Archbishop is not present, questions arising at a meeting of the Archbishop in Council must be decided both by:
 - (a) the vote of the Archbishop; and
 - (b) a majority of votes cast by the ordinary members present.

Such a decision is for all purposes a decision of the Archbishop in Council.

⁴ Note that “Archbishop” has the wider definition given in s3(1) above.

- (3) Where the votes of the ordinary members present on a proposed resolution are equal the chair of the meeting does not have a second or casting vote.
- (4) Where the Synod by legislation has authorised a decision on a particular matter or type of matter to be made by the ordinary members, meeting when the Archbishop is not present, the decision must be made by the vote of the majority of votes cast by those members present.

26 Written resolutions

- (1) A resolution is taken to have been passed by a meeting of the Archbishop in Council if the Archbishop and a majority of the ordinary members excepting any person—
 - (a) on leave of absence approved by the Archbishop in Council; or
 - (b) who disqualifies himself or herself from considering the resolution in question; or
 - (c) who would be prohibited by this Act from voting on the resolution in questionsign or consent to a written resolution of which at least 48 hours notice in writing is given.
- (2) A member may consent to a resolution by—
 - (a) signing the document containing the resolution (or a copy of that document);
 - (b) giving to the Secretary a written notice (including by fax or other electronic means) addressed to the Secretary or to the Archbishop signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or

- (c) telephoning the Secretary or the Archbishop and signifying assent to the resolution and clearly identifying its terms.

27 Delegation

The Archbishop in Council may delegate any portion of its powers to any committee consisting of members or of persons of whom at least two are members either with or without an obligation to report to the Archbishop in Council but the powers so delegated shall be strictly defined and shall be revocable by the Archbishop in Council at any time.

28 Disclosure of interests

- (1) The Archbishop in Council may make guidelines requiring the disclosure of interests that a member, a committee member and any person considered by the Archbishop in Council as related to or associated with the member or committee member, may have in any matter.⁵
- (2) Any guidelines made under this Act must not derogate from the requirements of this Act but no act, transaction, agreement, instrument, resolution or other thing with a third party is invalid or voidable only because a member or committee member fails to comply with the guidelines.
- (3) Despite subsection (1), a member or committee member who has a material personal interest in a matter that relates to the temporal affairs of the Diocese must give to the other members or other committee members (as the case may be) notice of the interest unless the interest—
 - (a) relates to a contract that insures, or would insure, the member or committee members against liabilities

⁵ These provisions follow the scheme of those in the constitution of the Diocesan Corporation.

- that person incurs as a member or committee member; or
- (b) all of the following are satisfied—
- (i) the member or committee member has already given notice of the nature and extent of the interest and its relation to the temporal affairs of the Diocese under subsection (1);
 - (ii) if a person who was not a member or committee member at the time when the notice under subsection (1) was given is appointed as a member or committee member — the notice is given to that person; and
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the member or committee member has given a standing notice of the nature and extent of the interest and the notice is still effective in relation to the interest.
- (4) In addition to any other basis on which a member or committee member may be considered to have a material personal interest in a matter, the member or committee member has a material personal interest if the matter concerns—
- (a) any material financial interest—
 - (i) of the member or committee member,
 - (ii) of a member of the immediate family of the member or committee member, or
 - (iii) of any business or organisation (whether profit-making or not) of which the member or committee member or a member of the

immediate family of the member or committee member is an office holder; or

- (b) the parish or parochial district which the member or committee member attends with such regularity as would entitle a lay person to be on its electoral roll.

29 Restrictions on voting

- (1) A member or committee member who has a material personal interest in a matter that is being considered at a meeting must not—
- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.
- (2) Subsection (1) does not apply if—
- (a) subsection (3) allows the member or committee member to be present; or
- (b) the interest does not need to be disclosed under subsection (3) of the preceding section.
- (3) The member or committee member may be present and vote if the other members or committee members who do not have a material personal interest in the matter have passed a resolution that—
- (a) identifies the member, the nature and extent of the member's or committee member's interest in the matter and its relation to the temporal affairs of the Diocese; and
- (b) states that those members are satisfied that the interest should not disqualify the member or committee member from voting or being present.

- (4) If the provisions of this section mean that the meeting is, during consideration of a matter, without a quorum, the members or committee members present constitute a quorum in relation to that matter.

30 Members of Archbishop in Council may contract with the corporation and hold other offices

- (1) A member or committee member is not disqualified from contracting or entering into an arrangement with the Trust Corporation or the Diocesan Corporation as vendor, purchaser or in another capacity, merely because the member or committee member holds office as a member or committee member or because of the fiduciary obligations arising from that office.
- (2) A contract or arrangement entered into by or on behalf of the Trust Corporation or the Diocesan Corporation in which a member or committee member is in any way interested is not invalid or voidable merely because the member holds office as a member or committee member or because of the fiduciary obligations arising from that office.
- (3) A member or committee member who is interested in an arrangement involving the Trust Corporation or the Diocesan Corporation is not liable to account to the Trust Corporation or the Diocesan Corporation for any profit realised under the arrangement merely because the person holds office as a member or committee member or because of the fiduciary obligations arising from that office, provided that the person complies with –
- (a) the applicable disclosure requirements under the guidelines made by the Archbishop in Council; and
- (b) the requirements of this Act

regarding that interest.

(4) A member or committee member may be or become—

- (a) a director of;
- (b) another officer of; or
- (c) interested in—

the Diocesan Corporation or a related body corporate or other body corporate associated with the Diocesan Corporation, and need not account for remuneration or other benefits the person receives as a director or officer of, or from having an interest in, that body corporate.

31 Minutes of meetings and minutes of resolutions

(1) The Archbishop in Council must ensure that—

- (a) minutes of proceedings; and
- (b) resolutions of meetings of the Archbishop in Council (including committees of the Archbishop in Council),

are recorded in books kept for the purpose, within a reasonable period after the relevant meeting is held.

(2) The Archbishop in Council must ensure that minutes of resolutions passed by the Archbishop in Council (and committees of the Archbishop in Council) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.

(3) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

32 The Secretary

- (1) The Archbishop in Council may appoint a person to the office of Secretary to the Archbishop in Council, on such terms and conditions as it may determine.
- (2) The Secretary reports to the Archbishop in Council and is responsible for the preparation of notices of meeting and the minutes of proceedings of the Archbishop in Council and other matters provided in this Act.

PART 5 –DISQUALIFICATION

33. Disqualification from holding office as a member

- (1) Subject to subsection (3) an ordinary member who is—
 - (a) an undischarged bankrupt; or
 - (b) a person who has been convicted of an offence punishable by more than 5 years imprisonment; or
 - (c) permanently or for a period of more than 12 months incapable to a substantial degree by reason of mental incapacity or physical disability to discharge the duties of the role office or position; or
 - (d) a member of the immediate family of another member or of the Archbishop or of a person entitled to be present pursuant to section 20 or section 21—is a disqualified person and may not hold that office of ordinary member.
- (2) An ordinary member who is subject to a prohibition order under the **Professional Standards Act 2009** or the **Professional Standards Uniform Act 2016** may not hold office as member if they are prohibited from holding or carrying out that office under that Act, and that person is a

disqualified person to the extent, but only to the extent, of that prohibition.

PART 6 – ANNUAL REPORT

34 Accounts and report to Synod

- (1) The Archbishop must in every session of the Synod within four days after it has met lay statements before it in accordance with this section.
- (2) A statement must be approved by the Archbishop in Council and must—
 - (a) include a statement of all acts done by the Archbishop in Council during that year⁶;
 - (b) report on how the functions given to the Archbishop in Council by Acts of the Synod have been discharged;
 - (c) report on acts done by the Archbishop in Council in relation to matters in which it has been directed or requested by the Synod to act; and
 - (d) report on acts done by the Archbishop in Council to formulate policies and to ensure their implementation.
- (3) A statement must be approved by the board of directors of the Diocesan Corporation and must—
 - (a) report on how the functions given to the Diocesan Corporation have been discharged;

⁶ See also the *Financial Governance Act 2018*, ss 8(1)(a) and 12(1).

- (b) report on acts done by the Diocesan Corporation in relation to matters in which it has been directed or requested by the Synod to act; and
- (c) report on acts done by the Diocesan Corporation to formulate policies and to ensure their implementation.

PART 7 – MISCELLANEOUS MATTERS

35 Validity of acts

- (1) An act done by the Archbishop in Council or by any person acting as a member, or by a meeting of the Archbishop in Council, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person or the Archbishop in Council when the act was done:
 - (a) there being any vacancy in the number of members at the time of such proceeding;
 - (b) a defect in the appointment of the person as a member;
 - (c) the person being disqualified as a member or having vacated office; or
 - (d) the person not being entitled to vote.
- (2) An act done by a committee of the Archbishop in Council or by any person acting as a committee member, or by a meeting of a committee of the Archbishop in Council, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person or committee when the act was done:
 - (a) there being any vacancy in the number of committee members at the time of such proceeding;

- (b) a defect in the appointment of the person as a member;
- (c) the person being disqualified as a member or having vacated office;
- (d) a defect in the appointment of the person as a committee member;
- (e) the person being disqualified as a committee member or having vacated office; or
- (f) the person not being entitled to vote.

36 Archbishop in Council may make amend or repeal regulations

- (1) The Archbishop in Council may by resolution from time to time make amend or repeal regulations, not inconsistent with the provisions of this Act—
 - (a) for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
 - (b) providing for records or forms arising out of or incidental to the operation of this Act.
- (2) Regulations made under this Act may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance; and
 - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body.

ACTS OF THE ANGLICAN DIOCESE OF MELBOURNE

Archbishop in Council Act 2018

ACTS OF THE ANGLICAN DIOCESE OF MELBOURNE

Archbishop in Council Act 2018

The Archbishop in Council Act 2018 was passed on 24 October 2018 and assented to on 24 October 2018 and came into operation on 1 November 2019 except that—

- (a) at its first ordinary session of that year Synod may elect members of the Archbishop in Council constituted pursuant to section 10 of the Act; and
- (b) following that first ordinary session of 2019 and the election for the members of the Archbishop in Council, the Archbishop may appoint members to the Archbishop in Council pursuant to section 10 of the Act.