

No 2 of 2018

Serial Act No 254

## **Melbourne Anglican Trust Corporation Act 2018**

### AN ACT

relating to the Corporation trustees and for other purposes

### **PREAMBLE**

- A The Melbourne Anglican Trust Corporation is the corporate body of Trustees constituted by resolution of the Church Assembly pursuant to the *Anglican Trusts Corporations Act 1884* (Vic) (**the 1884 Act**);
- B Under the 1884 Act, s 4, the Trust Corporation must—  
deal with all such property and securities so as to give effect to the trusts to which they shall be specially subject, or when not subject to any express trust in such manner as the Synod of such diocese may from time to time direct but so as not to interfere with the jurisdiction of the Supreme Court in the enforcement of trusts.
- C Under the 1884 Act, s 12—  
All property becoming vested in any corporate body of trustees as hereinbefore mentioned or which shall in any manner be acquired by such corporate body shall so far as the same is subject to any express trust be held managed dealt with, mortgaged, charged or otherwise encumbered by such corporate body in conformity with such expressed trust, and shall so far as the same is not subject to any express trust be held managed dealt with, mortgaged, charged or otherwise encumbered in such manner as the Synod in the diocese may from time to time direct, and such property shall be subject as to the management thereof to the acts and regulations of the

Synod in force for the time being which are applicable thereto.

D Under the 1884 Act, s 14—

The Synod in any diocese in which trustees have been incorporated under the provisions of this Act shall from time to time make rules for the appointment of corporation trustees and the filling up of vacancies occurring in the trusteeship for the custody of the seal of the corporation and the affixing the same to any document and for verifying the affixing thereof and for carrying into effect the provisions of this Act and may from time to time alter or vary the same, and a copy of every such rule and of any alteration or variation thereof certified by the bishop of the diocese shall be deposited with the Registrar-General and advertised in the Government Gazette, and a duly certified copy of any such rule regulation or provision so registered and advertised shall be prima facie evidence of the same having been duly made.

D Pursuant to the 1884 Act, Synod enacted the *Trustee Act* 1910;

E It is now desired to enact the following Act in place of various provisions of that Act.

**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 **Melbourne Anglican Trust Corporation Act 2018**.

### **2 Commencement**

This Act comes into operation on 1 November 2019 except that at its session in October of that year Synod may elect 6 eligible persons as Trustees pursuant to section 5 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 Commissary<sup>1</sup> duly authorised to act as an alternate Trustee to the holder of the office of Archbishop; and
- (b) the Administrator of the Diocese<sup>2</sup>;

*Archbishop in Council* means the Archbishop in Council as constituted under the *Archbishop in Council Act 2018*;

*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 22;

*eligible person* means a person—

---

<sup>1</sup> *Melbourne Archbishopric Act 1980*, s16.

<sup>2</sup> *Melbourne Archbishopric Act 1980*, s19.

- (a) aged 18 years or more; and
- (b) a communicant member of the Anglican Church of Australia—

who is not a disqualified person;

***property*** has the meaning in the 1884 Act;

***Registrar*** means the Registrar of the Diocese;

***Trustee*** means a person holding office as a Corporation Trustee<sup>3</sup> of the Trust Corporation under this Act or its predecessor and includes—

- (a) a Vicar-General or Commissary duly authorised to act as an alternate Trustee to the holder of the office of Archbishop; and
- (b) the Administrator of the Diocese;

***Trustees*** mean the collective body of persons holding office and exercising their rights and powers as Corporation Trustees of the Trust Corporation under this Act or its predecessor;

***Trust Corporation*** means the Melbourne Anglican Trust Corporation.

#### **4 Purposes of the Act**

The purposes of this Act are to provide for the governance of the Trust Corporation and for the management of property held in trust for the Church and for special trusts.

---

<sup>3</sup> The designation of “Corporation Trustee” is made by section 4(2) of the *Trustee Act* 1910.

## **PART 2 – COMPOSITION OF THE TRUSTEES**

### **5 Number and composition**

The Trustees shall be comprised of 8 persons as follows—

- (a) the Archbishop<sup>4</sup>;
- (b) the Chancellor; and
- (c) 6 eligible persons as the Synod may from time to time elect.

### **6 Term of office**

- (1) Subject to this Act, a Trustee who is elected to office holds office for a term of six years commencing from the date of their election.
- (2) A person other than the Archbishop ceases to hold the office of Trustee and that office becomes vacant and a new election may be made if he or she—
  - (a) is absent for three consecutive meetings of the Trust Corporation except on leave of absence granted by the Chapter; or
  - (b) resigns in writing to the Archbishop and the Archbishop accepts that resignation; or
  - (c) completes any applicable term of office; or
  - (e) dies; or
  - (f) becomes a disqualified person; or
  - (g) becomes a person whose office as a Trustee elected by the Synod has become vacant by the operation of a provision of the **Professional Standards Uniform Act 2016**.

---

<sup>4</sup> The expression is defined in section 3 to include a duly authorised Vicar-General or Commissary and the Administrator of the diocese.

- (3) When any Trustee elected by the Synod dies resigns or otherwise ceases to be a Trustee—
  - (a) the Registrar shall report the Trustee’s death resignation or cessation to the Synod at its next ordinary session and Synod may elect a person to the office of Trustee;
  - (b) the Archbishop in Council may pending that report to Synod fill the casual vacancy by appointing a person to the office of Trustee; and
  - (c) a person appointed under paragraph (b) holds office until the report of the Registrar under paragraph (a).
- (4) Subject to subsection (5), a person who has been elected and held or holds office as a Trustee is eligible to nominate for re-election as a Trustee.
- (5) A person who has been elected a Trustee and held office for a continuous period of 12 years is not eligible for further election without an interval of 3 years.

## **7 Declaration by the Trustees**

A person elected as a Trustee must not perform any duties of that office before signing a declaration in or to the effect of the form in the First Schedule.

## **PART 3 – FUNCTIONS AND POWERS OF THE TRUSTEES**

### **8 Functions and powers**

- (1) Subject to the 1884 Act, this Act and to any other Acts rules or regulations which may from time to time be made by this Synod, the Trustees in respect of all property for time to time vested in them must—

- (a) as trustees of any property held subject to express trusts or special trusts, deal with all such property so as to give effect to the trusts to which they shall be specially subject; and
  - (b) deal with all property so far as the same is not subject to any express trusts or special trusts in such manner as the Archbishop in Council may from time to time direct concerning the same.
- (2) Subject to this Act and in addition to any powers conferred by law on trustees, the Trustees have the powers necessary or convenient to carry out, or incidental or conducive to carrying out, their functions.

## **PART 4 – PROCEEDINGS OF THE TRUSTEES**

### **9 Meetings**

- (1) The Trustees 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 Trustees to constitute a quorum constitutes a meeting of the Trustees. All the provisions in this Act relating to meetings of the Trustees apply, as far as they can and with any necessary changes, to meetings of the Trustees by telephone or other electronic means.
- (3) A Trustee who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (4) 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 of the Trustees involved was at that place for the duration of the meeting.

- (5) If, before or during the meeting, a technical difficulty occurs which means that one or more Trustees cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of Trustees remains present, continue with the meeting.

### **10 Convening meetings of the Trustees**

- (1) The Archbishop must convene a meeting of the Trustees at least three times each year and may convene a meeting of the Trustees at other times at his or her discretion.
- (2) The Secretary must, on the requisition of two Trustees, convene a meeting of the Trustees.
- (3) A Trustee may bring a matter before the Trustees by written notice given to the Archbishop and the Secretary.
- (4) 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 Trustees that is more than 14 days after the day on which he or she received the notice.
- (5) If a matter is brought before the Trustees under subsection (3), the terms of the notice and the name of the Trustee must be recorded in the minutes.

### **11 Notice of meetings of the Trustees**

- (1) Subject to this Act, notice of a meeting of the Trustees must be given to each person who is at the time of giving the notice a Trustee.
- (2) A notice of a meeting of the Trustees —

- (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 Trustee may waive notice of a meeting of the Trustees 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 Trustees by, or a failure to give notice of a meeting of the Trustees to, a Trustee 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 Trustee has waived or waives notice of that meeting under the preceding before or after the meeting;
  - (c) the Trustee 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 Trustee attended the meeting.
- (5) Attendance by a person at a meeting of the Trustees waives any objection which that person may have to a failure to give notice of the meeting.

## **12 Other attendees**

- (1) The Trustees may invite any person to attend and speak at meetings of the Trustees.

- (2) The Secretary is entitled to attend and with the leave of the meeting, speak at meetings of the Trustees but may not vote.

### **13 Quorum at meetings of the Trustees**

- (1) No business may be transacted at a meeting of the Trustees unless a quorum is present at the time the business is dealt with.
- (2) A quorum consists of any four Trustees.
- (3) If there is a vacancy in the office of a Trustee, then the remaining Trustees may act.

### **14 Chair of meetings of the Trustees**

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

### **15 Decisions of the Trustees**

- (1) A meeting of the Trustees at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Trustees under this or any other Act.
- (2) A question arising at a meeting of the Trustees must be decided by a majority of votes cast by the Trustees present. Such a decision is for all purposes a decision of the Trustees.
- (3) Where the votes of the Trustees present on a proposed resolution are equal the chair of the meeting does not have a second or casting vote.

## **16 Written resolutions of the Trustees**

- (1) A resolution is taken to have been passed by a meeting of the Trustees if a majority of the Trustees excepting any Trustee—
  - (a) on leave of absence approved by the Trustees; 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 Trustee 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 chair of the Trustees signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (c) telephoning the Secretary or the chair of the Trustees and signifying assent to the resolution and clearly identifying its terms.

## **17 Disclosure of interests**

- (1) The Trustees may make guidelines requiring the disclosure of interests that a Trustee, and any person considered by the Trustees as related to or associated with the Trustee, may have in any matter.<sup>5</sup>

---

<sup>5</sup> These provisions follow the scheme of those in the constitution of the Diocesan Corporation.

- (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 Trustee fails to comply with the guidelines.
- (3) Despite subsection (1), a Trustee who has a material personal interest in a matter that relates to the affairs of the Trust Corporation must give to the other Trustees notice of the interest unless the interest—
- (a) relates to a contract that insures, or would insure, the Trustee against liabilities that person incurs as a Trustee; or
  - (b) all of the following are satisfied—
    - (i) the Trustee has already given notice of the nature and extent of the interest and its relation to the affairs of the Trust Corporation under subsection (1);
    - (ii) if a person who was not a Trustee at the time when the notice under subsection (1) was given is appointed as a Trustee — 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 Trustee 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 Trustee may be considered to have a material personal interest in a matter, the Trustee has a material personal interest if the matter concerns any material financial interest—

- (a) of the Trustee,
- (b) of a member of the immediate family of the Trustee,  
or
- (c) of any business or organization (whether profit-making or not) of which the Trustee or a member of the immediate family of the Trustee is an office holder.

### **18 Restrictions on voting**

- (1) A Trustee who has a material personal interest in a matter that is being considered at a meeting of the Trustees 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 Trustee to be present; or
  - (b) the interest does not need to be disclosed under subsection (3) of the preceding section.
- (3) The Trustee may be present and vote if the Trustees who do not have a material personal interest in the matter have passed a resolution that—
  - (a) identifies the Trustee, the nature and extent of the Trustee's interest in the matter and its relation to the affairs of the Trust Corporation; and
  - (b) states that those Trustees are satisfied that the interest should not disqualify the Trustee 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

Trustees present constitute a quorum in relation to that matter.

**19 Trustees may contract with the corporation and hold other offices**

- (1) A Trustee is not disqualified from contracting or entering into an arrangement with the Trust Corporation as vendor, purchaser or in another capacity, merely because the Trustee holds office as a Trustee 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 in which a Trustee is in any way interested is not invalid or voidable merely because the Trustee holds office as a Trustee or because of the fiduciary obligations arising from that office.
- (3) A Trustee who is interested in an arrangement involving the Trusts Corporation is not liable to account to the Trust Corporation for any profit realised under the arrangement merely because the Trustee holds office as a Trustee or because of the fiduciary obligations arising from that office, provided that the Trustee complies with –
  - (a) the applicable disclosure requirements under the guidelines made by the Trustees; and
  - (b) the requirements of this Act—  
regarding that interest.
- (4) A Trustee 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 to the Trust Corporation for remuneration or other benefits the Trustee receives as a director or officer of, or from having an interest in, that body corporate.

## **20 Minutes of meetings and minutes of resolutions**

- (1) The Trustees must ensure—
  - (a) minutes of proceedings; and
  - (b) resolutions of meetings of the Trustees (including committees of the Trustees)—are recorded in books kept for the purpose, within a reasonable period after the relevant meeting is held.
- (2) The Trustees must ensure that minutes of resolutions passed by the Trustees (and committees of the Trustees) 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.

## **21 The Secretary**

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

## **PART 5 – VACANCY AND DISQUALIFICATION**

### **22 Disqualification from holding office as a Trustee**

- (1) Subject to subsection (3), a Trustee 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—

is a disqualified person and may not hold that office of Trustee.

- (2) A Trustee 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 Trustee 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.
- (3) The participation of a disqualified person in a meeting of the Trustees does not invalidate the meeting or any proceedings at it.

## **PART 6 – ANNUAL REPORT**

### **23 Report**

As soon as possible after the end of a financial year, the Trustees must prepare and lay before the Archbishop in Council and the Synod an annual report of the activities of the Trustees in the previous year.

## **PART 7 – MISCELLANEOUS MATTERS**

### **24 The Common Seal**

The common seal of the Trust Corporation shall be kept in safe custody by the Registrar of the Diocese and shall be affixed to documents needing to be impressed therewith by the authority of the Trustees or a Committee of the Trustees authorised by the Trustees in that behalf and every instrument to which the Seal is affixed shall be signed by two Trustees.

### **25 Validity of acts**

An act done by the Trustees or by any person acting as a Trustee, or a meeting of Trustees, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the Trustees when the act was done:

- (a) there being any vacancy in the number of Trustees at the time of such proceeding.
- (b) a defect in the appointment of the person as a Trustee;
- (c) the person being disqualified as a Trustee or as an alternate of the Archbishop or having vacated office; or
- (d) the person not being entitled to vote.



## **THE FIRST SCHEDULE**

### **Form of Declaration**

I [name]

having been appointed or elected to the role office or position of Trustee of the Melbourne Anglican Trust Corporation.

DECLARE that I am qualified for that office under the provisions of the Acts of the Synod of the Diocese of Melbourne, that I am not a disqualified person within the meaning of that expression in the *Melbourne Anglican Trust Corporation Act 2018*, and that I will faithfully perform all the duties of that office or those offices and conform to the Acts of the Synod in relation to those duties.

Date

---

ACTS OF THE SYNOD OF THE ANGLICAN DIOCESE OF MELBOURNE

*Melbourne Anglican Trust Corporation Act 2018*

---

Notes: This Act was assented to on 24 October 2018 and came into operation on 1 November 2019.