

No 2 of 2018

Serial Act No 254

Reprinted as at 2 January 2024 with amendments to Act No. 1 of 2023

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

### AN ACT

relating to the constitution of the Trust Corporation and for other purposes

Title am  
Act no  
1/2023 s 14

### **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**.

s 2 rep by No 1/2023

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### **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.

s 3(1) am by No. 9/2022, No 1/2023

### **3 Interpretation**

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

*Archbishop* means the Archbishop of Melbourne and includes—

- (a) a person when they are exercising the powers and performing the functions of Vicar-General or Commissary; and
- (b) the Administrator of the Diocese;

*Melbourne Anglican Trust Corporation Act 2018*

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\* \* \* \* \*

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

\* \* \* \* \*

***Corporation Trustee means*** a person holding office as a Corporation Trustee of the Trust Corporation under section 5;

\* \* \* \* \*

***disqualified person*** has the meaning in section 22;

***eligible person*** means a person—

- (a) aged 18 years or more; and
- (b) a communicant member—  
who is not a disqualified person;

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

\* \* \* \* \*

***Secretary*** means the Secretary appointed under section 21;

\* \* \* \* \*

***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.

\* \* \* \* \*

s 4 am by No 1/2023

#### **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 express trusts and special trusts administered by the Trustees.

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

s 5 subs by No. 1/2023

### **5 Persons holding office as Corporation Trustees**

The Corporation Trustees are —

- (a) the Archbishop;
- (b) the Chancellor; and
- (c) 6 eligible persons who are not disqualified persons, elected by the Synod.

s 6 am No 1/2023 Sch

### **6 Term of office**

- (1) Subject to this Act, a Corporation 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 Corporation 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 Trustees; 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 Corporation Trustee elected by the Synod has become vacant by the operation of a provision of the **Professional Standards Uniform Act 2016**.

subsec 6(3) am by No 1/2023

- (3) When a Corporation Trustee elected by the Synod dies resigns or otherwise ceases to be a Corporation Trustee—
- (a) the Registrar shall report the person's death resignation or cessation to the Synod at its next ordinary session and Synod may elect an eligible person to the office of Corporation Trustee;
  - (b) the Archbishop in Council may pending that report to Synod fill the casual vacancy by appointing an eligible 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).

subsec 6(4) am by Act No 1/2023

- (4) Subject to subsection (5), a person who has been elected and held or who holds office as a Corporation Trustee is eligible to nominate for re-election as a Corporation Trustee.
- (5) A person who has been elected a Corporation Trustee and held office for a continuous period of 12 years is not eligible for further election without an interval of 3 years.

s 7 am Act no. 1/2023

## **7 Declaration by the Corporation Trustees**

A person elected as a Corporation 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.

s 8A ins No 1/2023

### **8A Indemnification of certain office holders**

- (1) If so directed by the Archbishop in Council, the Trust Corporation must enter into a deed of indemnity, insurance and access with—
  - (a) each of the Corporation Trustees;
  - (b) each of the directors of the Diocesan Corporation;

- (c) the Archbishop and each member of the Council of the Diocese as members of the Archbishop in Council;
  - (d) anyone entitled by virtue of sections 20 and 21 of the **Archbishop in Council Act 2018** to attend and speak at meetings of the Archbishop in Council;
  - (e) anyone entitled by virtue of rule 16.1 of the constitution of the Diocesan Corporation to attend and speak at meetings of its directors;
  - (f) anyone entitled by virtue of section 12(2) of the **Melbourne Anglican Trust Corporation Act 2016** to attend and speak at meetings of the Corporation Trustees; and
  - (g) the members of the Cathedral Chapter.
- (2) Subject to this section, the Trust Corporation may and must indemnify from the funds it holds on trust for general church purposes a person with whom it has entered into a deed of indemnity, insurance and access under subsection (1) according to the terms of that deed.
- (3) The Archbishop in Council may determine that the Trust Corporation is for the purposes of this section—
- (a) to procure and maintain from the funds it holds on trust for general church purposes or
  - (b) to include in a deed of indemnity, insurance and access a provision for the Trust Corporation to procure and maintain from the funds it holds on trust for general church purposes—

an insurance policy such as is common for a directors and officers' insurance policy in Australia for persons

holding the offices referred to in subsection (1), and the Trust Corporation may and must give effect to that determination or provision.

- (4) Where by the terms of a deed of indemnity, insurance and access given under this section there is provision for any judgment or discretion to be exercised in its application or administration, that judgment or discretion is to be exercised by the Archbishop in Council or, in any case where the Archbishop is personally affected by how that judgment or discretion is to be exercised, by the Council of the Diocese.
- (5) The Registrar, the Secretary of the Trust Corporation, the Secretary of the Diocesan Corporation and the Secretary of the Chapter must give effect to any requirement imposed upon the holder of that office by a deed referred to in subsection (1).

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

s 9 am No 1/2023 Sch

### **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 Corporation 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 Corporation 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 Corporation 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 Corporation Trustees cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of Corporation Trustees remains present, continue with the meeting.

s 10 am by No 1/2023 Sch

### **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 Corporation Trustees, convene a meeting of the Trustees.
- (3) A Corporation 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 subsection (3) 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 Corporation Trustee must be recorded in the minutes.

s 11 am by No 1/2023 Sch

### **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 Corporation 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 Corporation 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 Corporation 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 Corporation Trustee has waived or waives notice of that meeting under subsection (3) before or after the meeting;
  - (c) the Corporation 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 Corporation Trustee attends 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.

s 13 am by No 1/2023 Sch

## **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 is a majority of the total number of Corporation Trustees.
- (3) If there is a vacancy in the office of a Corporation Trustee, then the remaining Corporation Trustees may act.

s 14 am by No 1/2023 Sch

## **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 Corporation Trustees present must elect one of their number as chair of the meeting.

s 15 am by No 1/2023 Sch

### **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 Corporation Trustees present. Such a decision is for all purposes a decision of the Trustees.
- (3) Where the votes of the Corporation Trustees present on a proposed resolution are equal the chair of the meeting does not have a second or casting vote.

s 16 am by No 1/2023 Sch

### **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 Corporation Trustees excepting any Corporation 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 question—sign or consent to a written resolution of which at least 48 hours' notice in writing is given.
- (2) A Corporation 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.

s 17 subs by No 1/2023

### **17 Disclosure and management of interests**

- (1) Subject to this section, the Corporation Trustees and those entitled to be in attendance and speak at meetings of the Corporation Trustees must comply with any written policy, procedures or other requirements made by the Archbishop in Council under section 28 of the **Archbishop in Council Act 2018** that apply to them in relation to the disclosure and management of personal interests.
- (2) A policy, procedure or other requirement made by the Archbishop in Council under section 28 of the **Archbishop in Council Act 2018** must not operate so as to affect or limit the discharge by the Trust Corporation of its functions and powers under section 8 in relation to express or special trusts.

s 18 rep by No 1/2023

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s 19 subs by No 1/2023

**19 Corporation Trustees may contract with the Trust Corporation and hold other offices**

- (1) A Corporation 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 Corporation Trustee holds office as a Corporation 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 Corporation Trustee is in any way interested is not invalid or voidable merely because the Corporation Trustee holds office as a Corporation Trustee or because of the fiduciary obligations arising from that office.
- (3) A Corporation Trustee who is interested in an arrangement involving the Trust Corporation is not liable to account to the Trust Corporation for any profit realised under the arrangement merely because the Corporation Trustee holds office as a Corporation Trustee or because of the fiduciary obligations arising from that office, provided that the Corporation Trustee complies with—
  - (a) all policies, procedures and other requirements referred to in section 17; and
  - (b) the requirements of this Act—  
regarding that interest.
- (4) A Corporation Trustee must be a director of the Diocesan Corporation and may be or become—

(a) another officer of; or

(b) 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 Corporation 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**

s 22 am by No 1/2023

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

- (1) Subject to subsection (3), a Corporation 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 Corporation Trustee who is by virtue of a prohibition order under the **Professional Standards Act 2009** or the **Professional Standards Uniform Act 2016** prohibited from holding or from carrying out or performing the functions of Corporation Trustee is disqualified from holding the office, or from carrying out or performing that office to the extent that doing so is prohibited by the prohibition order.
- (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 –REPORTING**

Part 6  
heading am  
Act no  
1/2023 s 14

s 23 heading am Act no 1/2023

### **23 Annual 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.

s 23A ins Act no 1/2023

### **23A Report on the administration of express trusts and special trusts**

- (1) The Diocesan Auditor must each year conduct a review to determine whether in their opinion the Trustees have observed the terms of and discharged their functions under the express trusts and special trusts administered by the Trust Corporation.
- (2) Each review must—
  - (a) be in respect of at least 20 express trusts and special trusts administered by the Trust Corporation; and
  - (b) not be in respect of any express trusts or special trusts reviewed under this section in the preceding year.
- (3) Each special and express trust must be reviewed at least once within each ten year period.
- (4) Subject to subsections (1) and (2), the Archbishop in Council must each year determine the scope of the review to be conducted under this section before it is conducted.

- (5) The report of each review must be provided to the Synod at its next ordinary session.

## **PART 7 – MISCELLANEOUS MATTERS**

s 24 am by No 1/2023

### **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 Corporation Trustees.

s 25 am by No 1/2023

### **25 Validity of acts**

An act done by the Trustees, one or more Corporation Trustees, or a meeting of Trustees, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by one or more of the Corporation Trustees when the act was done:

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



## THE FIRST SCHEDULE

First  
Schedule am  
by No  
1/2023 Sch

### Form of Declaration

I [name]

having been appointed or elected to the role office or position  
of Corporation 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

*Melbourne Anglican Trust Corporation Act 2018*

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Notes:

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

2. This consolidation incorporates the amendments made by the following Acts:

<b>Name</b>	<b>No.</b>	<b>Date of Assent</b>	<b>Date of commencement</b>
<i>Interpretation of Legislation (Communicant Member) Act 2022</i>	9/2022	18 October 2022	18 October 2022
<i>Diocesan Governance Legislation Amendment Act 2023</i>	1/2023	24 October 2023	All except ss 8, 10(1) and 11, 24.10.2023; remaining provisions 14.12.2023