

Anglican Church of Australia Constitution Act 1961 No 16

[1961-16]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Church of England in Australia Constitution Act 1961
- **Does not include amendments by**
[Commercial Arbitration Act 2010 No 61](#) (not commenced — to commence on 1.10.2010)
- **Note**
In this Act, a reference to the Church of England or to the Church of England in Australia is to be construed as a reference to the Anglican Church of Australia—see [Anglican Church of Australia Act 1976](#), sec 4 (a) and Sch 1.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 24 September 2010

Anglican Church of Australia Constitution Act 1961 No 16



New South Wales

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Anglican Church of Australia Constitution Act 1961 No 16



New South Wales

An Act relating to the Church of England in Australia; and for purposes connected therewith.

Preamble

WHEREAS by Ordinances duly passed by the Synods of the several Dioceses of the Church of England in the State of New South Wales such Dioceses have assented to a Constitution for the Church of England in Australia being the Constitution approved by the General Synod of the Church of England in Australia and Tasmania at its meeting held in Sydney on the sixth day of October one thousand nine hundred and fifty-five, for submission to the Dioceses of the said Church AND WHEREAS the said Constitution provides that it shall take effect on a day to be appointed by a deed signed by the Diocesan Bishops of not less than eighteen Dioceses of the Church of England in Australia and Tasmania including two Metropolitans declaring that their respective Dioceses have assented to the Constitution and that such day shall not be appointed until the Parliaments of five States of the Commonwealth of Australia have passed Acts for giving effect to the said Constitution AND WHEREAS not less than eighteen of the said Dioceses including not less than two Metropolitan Dioceses have duly assented to the said Constitution AND WHEREAS legal force and effect cannot be given to the said Constitution without the aid of the legislature AND WHEREAS the said Constitution so approved and assented to is set forth in the Schedule to this Act:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

1 Name of Act

This Act may be cited as the *Anglican Church of Australia Constitution Act 1961*.

2 Constitution, canons and rules to be binding for Church property purposes

The several articles and provisions of the Constitution contained in the Schedule to this Act (hereinafter called the Constitution) and any canons and rules to be made under or by virtue or in pursuance thereof are and as provided in the Constitution shall be for all purposes connected with or in any way relating to the property of the Church of England

in Australia binding on the Bishops, clergy and laity being members of the Church of England in Australia in the several Dioceses of the Church of England within the State of New South Wales.

3 Effect of canons and rules

Any canon or rule made under or by virtue or in pursuance of the said Constitution which contravenes any law or statute in force for the time being in the said State shall to the extent of such contravention be incapable of having any force or effect.

4 Church of England Constitutions Act Amendment Act 1902—operation restricted

Any provision of the *Church of England Constitutions Act Amendment Act of 1902* which is inconsistent with the provisions of this Act and the Constitution shall to the extent of such inconsistency be inoperative in the several Dioceses of the Church of England within the said State: Provided that this section shall not prejudice or affect the previous operation of the said Act, or any proceeding matter or thing lawfully done or suffered under the said Act before this Act comes into operation.

5 Church Trust Property

The *Church of England Trust Property Act 1917*, as amended, shall continue to apply to Church Trust Property within the meaning of the Act, and in the said Act all references to the Church of England shall include the Church of England in Australia.

6 As to certain references in Acts and instruments

The *Church of England Trust Property Act 1917*, as amended, and all other Acts and Statutes and all grants deeds wills and other instruments, and all ordinances and rules of the Synods of the Dioceses in force and existence at the date when the Constitution shall take effect, shall be read and construed as if the name Church of England in Australia were substituted for the name Church of England or United Church of England and Ireland or for any other words meaning the Church of England or the United Church of England and Ireland.

7 Church of England in Australia Trust Corporation

The body corporate mentioned in section sixty-four of the Constitution is hereby incorporated under the name of “The Church of England in Australia Trust Corporation”, and shall have perpetual succession and a common seal, and may sue and be sued by its corporate name, and shall be capable of taking purchasing holding granting demising disposing of or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as are set forth in the Constitution and which bodies corporate may by law do and suffer.

The first corporators of the said corporation shall be the persons respectively holding the following offices on the date when this Act comes into operation, namely:

The Archbishop of Sydney.

The Archbishop of Melbourne.

The Bishop of Newcastle.

The Bishop of Canberra and Goulburn.

The Bishop of Ballarat.

During their tenure of office a majority of the corporators for the time being shall constitute a quorum at any meeting thereof.

The said corporators, so long as they shall hold their respective offices, shall remain members of the Corporation until corporate trustees are elected or appointed under the Constitution.

8 Administration of customary oaths

It shall be lawful for any Bishop Commissary Administrator Chancellor Archdeacon or Registrar holding office in any Diocese of the Church of England in Australia to administer to any Bishop Clergyman or member of the said Church the oath or oaths customarily used heretofore at the ordaining of deacons or priests, consecration or enthronement of bishops institution of clergy to a cure of souls in a parish or other ecclesiastical district installation induction or collation to any office on the grant of any Licence in the said Church in the State of New South Wales and it shall be lawful for such persons to take or make such oath or oaths.

9 Powers of tribunal under chapter 9 of Constitution

For the purpose of securing the attendance of witnesses and the production of documents, and for the examination of witnesses on oath or otherwise, a tribunal mentioned in chapter nine of the Constitution shall be deemed to be an arbitrator as referred to in the [Commercial Arbitration Act 1984](#), and shall have power to administer an oath to, or take an affirmation from, a witness, and for the same purpose any party to a proceeding before such a tribunal or any person permitted by any such tribunal to submit any evidence to it shall be deemed to be a party to an arbitration agreement within the meaning of that Act.

10 Construction

This Act shall be read and construed so as not to exceed the legislative power of the State to the extent that where any enactment thereof would, but for this section have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

11 Interpretation

In this Act the words ***State of New South Wales*** shall have the same meaning as in the [Constitution Act 1902](#).

12 Commencement

This Act other than this section shall commence upon a day to be appointed by the Governor as hereinafter provided and notified by proclamation published in the Gazette. The day so to be appointed shall be the day appointed and notified in the Commonwealth Gazette in accordance with section sixty-eight of the Constitution.

A copy of the Commonwealth Gazette containing a notification of the appointed day which purports to be signed by one or more of the Metropolitans shall be conclusive evidence that the day has been duly appointed in accordance with section sixty-eight of the Constitution.

Schedule

THE CONSTITUTION OF THE CHURCH OF ENGLAND IN AUSTRALIA

PART 1

CHAPTER 1 FUNDAMENTAL DECLARATIONS

—
1.

The Church of England in Australia, being a part of the one Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.

2.

This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation.

3.

This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

CHAPTER 2 RULING PRINCIPLES

—
4.

This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles but has plenary authority at its own

discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the Services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.

Provided further that until other order be taken by canon made in accordance with this Constitution, a Bishop of a Diocese may, at his discretion, permit such deviations from the existing Order of Service, not contravening any principle of doctrine or worship as aforesaid, as shall be submitted to him by the Incumbent and Churchwardens of a parish.

Provided also that no such request shall be preferred to the Bishop of a Diocese until the Incumbent and a majority of the parishioners present and voting at a meeting of parishioners, duly convened for the purpose, shall signify assent to such proposed deviations. Such meeting shall be duly convened by writing, placed in a prominent position at each entrance to the Church and by announcement at the Morning and Evening Services, or at the service if only one, at least two Sundays before such meeting, stating the time and place of such meeting, and giving full particulars of the nature of the proposed deviation.

5.

Subject to the Fundamental Declarations and the provisions of this Chapter this Church has plenary authority and power to make canons, ordinances and rules for the order and good government of the Church, and to administer the affairs thereof. Such authority and power may be exercised by the several synods and tribunals in accordance with the provisions of this Constitution.

6.

This Church will remain and be in communion with the Church of England in England and with Churches in communion therewith so long as communion is consistent with the Fundamental Declarations contained in this Constitution.

PART 2 THE GOVERNMENT OF THE CHURCH

CHAPTER 3 OF THE BISHOPS

7.

A diocese shall in accordance with the historic custom of the One Holy Catholic and Apostolic Church continue to be the unit of organisation of this Church and shall be the see of a bishop.

8.

There shall be a bishop of each diocese who shall be elected as may be prescribed by or under the constitution of the diocese, provided that the election shall as to the canonical fitness of the person elected be subject to confirmation as prescribed by ordinance of the provincial synod, or if the diocese is not part of a province then as prescribed by canon of general synod.

During any vacancy in the office or incapacity of the bishop of any diocese or during his absence from the diocese for a period exceeding thirty days the authorities powers rights and duties conferred or imposed on him by this constitution shall be exercised by the person appointed by or under the constitution of the diocese to administer the affairs of the diocese.

General synod may by canon confer upon a bishop of a diocese the title of Archbishop provided that such canon shall be carried by an affirmative vote of at least two-thirds of the members of each house and shall receive the approval of all the Metropolitans.

9.

There shall be a Metropolitan (to be called Archbishop) of each province of this Church who shall hold office as prescribed by any Act of Parliament or by the constitution of the province or by ordinance of the provincial synod.

During any vacancy in the office or incapacity of the Metropolitan of any province, or during his absence from the province for a period exceeding thirty days the authorities powers rights and duties of the Metropolitan under this Constitution shall be exercised by the senior diocesan bishop of the province at the time in the province able and willing to act, seniority being determined by the date of consecration.

10.

There shall be a Primate of this Church who shall be elected and hold office as may be prescribed by canon of the general synod.

During any vacancy in the office or incapacity of the Primate or during his absence from Australia for a period exceeding thirty days, the authorities powers rights and duties of the Primate under this Constitution shall be exercised by the senior Metropolitan at the time in Australia able and willing to act, or if there is no Metropolitan able and willing to act, then by the senior diocesan bishop at the time in Australia able and willing to act, seniority in every case being determined by the date of consecration.

11.

The Primate Metropolitans and diocesan bishops may apart from their meetings as a house of bishops of the general synod meet from time to time for the discharge of the functions assigned to a meeting of them under this Constitution.

12.

Such a meeting of the said bishops shall be convened by the Primate on his own initiative or at the request in writing of not less than one-third of the bishops, and shall have power to regulate its own business.

13.

The presence of at least one-half of the said bishops shall be necessary to constitute such a meeting of the bishops for the discharge of its functions under this Constitution.

14.

A certificate signed by the Primate or Metropolitan or Bishop presiding in the absence of the Primate and purporting to state a decision of such a meeting of the bishops or the votes of individual

bishops shall be evidence of the matters so stated.

CHAPTER 4 OF GENERAL SYNOD

Composition and Procedure

15.

General synod shall consist of the house of bishops, the house of clergy and the house of laity.

The three houses shall sit together in full synod and shall deliberate and transact business therein and shall vote together unless a vote by houses is required by not less than five members of the house of bishops or by ten members of the house of clergy, or by ten members of the house of laity.

In the event of a vote by houses being required, all questions shall be put first to the house of laity, then to the house of clergy, and finally to the house of bishops and no question shall be deemed to be resolved in the affirmative by general synod unless it is so resolved by a vote of the majority of those present in each of the three houses.

A house by a majority of its members voting may decide to consider separately any matter in debate whereupon further discussion of the matter shall be postponed until there has been an opportunity of separate consideration.

16.

The house of bishops shall be composed of the Primate, Metropolitans, and diocesan bishops.

17.

(1)

The house of clergy shall be composed of clerical representatives of each diocese.

(2)

The house of laity shall be composed of lay representatives of each diocese.

(3)

Clerical and lay representatives of a diocese shall be elected or appointed, and any vacancy in the place of a representative shall be filled at such time and in such manner as may be prescribed by or under the constitution of the diocese.

(4)

The number of representatives shall be determined in accordance with the table annexed to this Constitution.

(5)

Every bishop or priest shall be qualified to be a clerical representative of a diocese if he is resident therein at the date of his appointment and holds a licence from the diocesan bishop, provided however that the qualification of residence in the diocese shall not be necessary in the case of a missionary diocese or a diocese having less than thirty-one clergymen resident and duly licensed to officiate therein.

(6)

Every layman who is not under the age of twenty-one years and is a communicant of this Church shall be qualified to be a lay representative of a diocese, whether he does or does not reside therein.

(7)

The bishop of each diocese shall certify and transmit to the Primate a list of names and addresses of the clerical and lay representatives of the diocese.

In the event of any change in the representation of a diocese the bishop shall certify and transmit to the Primate a supplementary list showing the change.

Any list or supplementary list so certified shall be evidence that a representative therein named is entitled to be such representative unless a subsequent list shows that he has ceased to be a representative.

18.

General synod in such manner as it may deem proper may determine whether any person who claims to be a member of the synod or of any house is entitled to be a member thereof and whether he has been duly and lawfully elected appointed or summoned to the synod.

19.

(1)

General synod may proceed to the despatch of business notwithstanding the failure of any diocese to provide for its representation in the synod and notwithstanding a vacancy in the office of Primate or a Metropolitan or a diocesan bishop.

(2)

No canon rule act or exercise of power of general synod shall be vitiated by reason only of the fact that any person to be elected appointed or summoned to the synod has not been elected appointed or summoned, or by reason only of any informality with respect to the election appointing or summoning.

20.

The Primate or in his absence the senior Metropolitan present, or if there is no Metropolitan present, the senior diocesan bishop present shall be President of the house of bishops and of general synod, seniority in every case being determined by the date of consecration.

The President may take part in any discussion and vote on any question.

21.

Until general synod otherwise prescribes the presence of at least seven members of the house of bishops and at least fifteen members of the house of clergy representing not less than seven dioceses and of at least fifteen members of the house of laity representing not less than seven dioceses shall be necessary to constitute a meeting of general synod for the exercise of its powers.

22.

At each session of synod the house of clergy and the house of laity shall elect its own chairman and such other officers as it considers necessary.

Sessions

23.

Until general synod by canon otherwise prescribes:

- (a) Ordinary sessions of synod shall be held at intervals not exceeding four years, and at such time and place as synod may by resolution appoint or failing any such resolution then as the standing committee of synod may by resolution appoint provided that the standing committee of synod may on grounds of emergency or other special grounds by resolution defer the summoning of synod for a period exceeding four years from the previous synod but not exceeding twelve months from the date of such resolution and may do so from time to time provided further that synod shall meet at least once in every six years;
- (b) A special session of synod shall be convened by the Primate at the request in writing of not less than one-half of the members of the house of bishops or of one-third of the members of the house of clergy or of one-third of the members of the house of laity or upon a resolution of the standing committee;
- (c) At least four months before the time for any ordinary session of synod the Primate shall by mandate under his hand and seal summon the diocesan bishops, and require them to convene the prescribed number of clerical and lay representatives of their respective dioceses at the appointed time and place;
- (d) The procedure and powers of synod in a special and an ordinary session shall be the same, provided that in a special session no business other than the business specified in the mandate shall be transacted.

Records and Seal

24.

The proceedings of general synod shall be duly recorded and be authenticated by the signature of the President.

Every canon of general synod shall be printed in duplicate, and each duplicate shall be certified as correct by the President, the chairman of committees and the secretaries of the synod, authenticated by the official seal, and filed in books.

25.

(1)

General synod shall have an official seal, which shall be judicially noticed.

The seal shall not be used to authenticate any canon rule resolution instrument or document or any copy thereof except upon a resolution of synod or of the standing committee of synod and by and in the presence of at least three members of the said committee.

(2)

Any canon rule resolution instrument or document authenticated by the official seal shall be admissible in evidence without further proof.

A document purporting to be a copy of any canon rule or resolution so authenticated and purporting to be certified by at least three members of the standing committee as a true copy shall be evidence of the canon rule or resolution and be admissible in evidence without further proof.

CHAPTER 5 OF THE POWERS OF GENERAL SYNOD

26.

Subject to the terms of this Constitution synod may make canons rules and resolutions relating to the order and good government of this Church including canons in respect of ritual, ceremonial and discipline and make statements as to the faith of this Church and declare its view on any matter affecting this Church or affecting spiritual, moral or social welfare, and may take such steps as may be necessary or expedient in furtherance of union with other Christian Communions.

27.

A canon shall be made by a bill passed in accordance with the following procedure:

- (i) The bill shall have been circulated to each diocese at least three months before the first day of the session of synod at which the bill is to be presented, provided that the standing committee may allow a shorter period of notice but not less than one month and provided further that general synod by an affirmative vote in each house of at least three-fourths of the members present may declare any bill to be a matter of urgency and permit it to be included in the agenda without previous notice.
- (ii)
 - (a) After the bill has been read and passed a first and second time, it shall be considered in committee and reported back with or without amendment;
 - (b) The bill shall be read and passed a third time provided however a special bill shall follow the procedure hereinafter appointed.

28.

(1)

A bill which deals with or concerns the ritual ceremonial or discipline of this Church shall follow the procedure of this section as a special bill unless synod by vote in each house of at least three-fourths of the members present decides that it need not proceed as a special bill.

(2)

In the case of other bills if not less than twenty-five members of general synod petition the President that a bill should be treated as a special bill the President shall put to general synod the motion that it be so treated and if general synod so decides the bill shall be dealt with as a special bill.

(3)

Special bills shall be dealt with as follows:

- (i) A special bill after the first and second readings and the committee stage have been concluded shall be submitted for a provisional third reading and if the bill is then approved by a vote of at least two-thirds of the members of each of the three houses present it shall stand as a canon provisionally made.
- (ii) The provisional canon shall then be referred to the synod of each diocese for its consideration and each diocesan synod shall submit to the President within a period specified by canon or by the provisional canon its assent to or dissent from the bill together with such report and recommendations as it may think fit.
- (iii) If every diocesan synod reports that it assents to the provisional canon the President shall so declare and thereupon it shall be a canon duly passed, otherwise the reports and recommendations received from the diocesan synods shall be presented to general synod which shall recommit the provisional canon as a bill to a further second reading and committee stage.
- (iv) If on the subsequent third reading the bill is approved by at least two-thirds of the members of each of the three houses present it shall be a canon, unless general synod immediately before the vote is taken by a majority of the three houses voting together shall declare that such reading shall be provisional only whereupon the procedure given above shall again be followed.

29.

If not less than one-fourth of the members of general synod or one-third of the members of the house of bishops or of the house of clergy or of the house of laity petition the President that a canon duly made is in whole or in part inconsistent with any part or parts of the Fundamental Declarations or Ruling Principles of the Constitution or that a canon deals with or concerns ritual ceremonial or discipline of this Church and has not been passed in accordance with section 28 (1) hereof, the President shall refer the question to the appellate tribunal and in the meantime the canon shall not come into force. If the tribunal finds no inconsistency or no breach of section 28 (1) as the case may be, the President shall thereupon declare the canon to be in force. If the tribunal finds inconsistency or breach of section 28 (1), it shall report to general synod the nature of the inconsistency or breach giving its reasons and may, if it thinks fit, indicate what amendments, if any, would remove the inconsistency or avoid the breach, and unless and until such amendments are made by general synod the canon shall not come into force.

30.

Subject to the preceding section and unless the canon itself otherwise provides, a canon duly passed by general synod shall come into force on and from a date appointed by the President, being not later than one calendar month from the date upon which the canon was passed. The canon as on and from the appointed date shall apply to every diocese of this Church and any ordinance of any diocesan synod inconsistent with the canon shall to the extent of the inconsistency have no effect.

Provided that:

- (a) Any canon affecting the ritual, ceremonial or discipline of this Church shall be deemed to affect

the order and good government of the Church within a diocese, and shall not come into force in any diocese unless and until the diocese by ordinance adopts the said canon.

- (b) If general synod declares that the provisions of any other canon affect the order and good government of the Church within, or the church trust property of a diocese, such canon shall not come into force in any diocese unless and until the diocese by ordinance adopts the said canon.
- (c) If general synod should not so declare the synod of a diocese or the diocesan council may declare its opinion that the provisions of the said canon affect the order and good government of the church within or the church trust property of such diocese and notify the President within one month thereafter and then the following provisions shall apply:
 - (i) If the said diocesan synod or council declare its opinion as aforesaid within a period of two years from the date of the passing of the said canon and the standing committee advises the President that it agrees with the said opinion the canon shall not and shall be deemed not to have come into force in such diocese unless and until it is adopted by ordinance of the diocesan synod;
 - (ii) If the said diocesan synod or council declare its opinion at any time after the expiration of the said period of two years and the standing committee advises the President that it agrees with the said opinion the said canon shall cease to apply to the said diocese as from the date of the said declaration and shall not after such date again come into force in such diocese unless and until it is adopted by ordinance of the diocesan synod;
 - (iii) If the standing committee in either case should not so advise the President he shall refer the question raised by the said opinion to the appellate tribunal for its determination and unless the appellate tribunal determines the question in the negative the canon shall be deemed not to have come into force in the said diocese in the first case or to have force or effect in the said diocese after the date of the said declaration in the second case until the diocesan synod by ordinance adopts the said canon.
- (d) Any canon adopted as aforesaid by a diocesan synod may by ordinance be excluded at a subsequent date.

31.

If any question shall be raised as to the inconsistency of any canon rule resolution or statement of general synod with the Fundamental Declarations or the Ruling Principles the Primate may and at the written request of twenty-five members of general synod shall refer the question to the appellate tribunal hereinafter constituted whose opinion thereon shall be final.

32.

(1)

Synod shall not make any canon or rule imposing any financial liability on any diocese except in accordance with this section.

(2)

Synod may by canon or rule provide for the costs charges and expenses in or in connection with:

- (a) The carrying into effect of this Constitution;

- (b) The holding of synod and the conduct of its business;
- (c) The meetings of the standing committee and of any other committee, board or commission appointed by synod;
- (d) The sittings of the appellate tribunal to hear and determine any appeal question or matter made or referred to it and the sittings of the special tribunal to hear and determine any charge brought before it;
- (e) The maintenance of the registry of the Primate, and primatial travelling expenses;
- (f) The election or appointment of the corporate trustees and the administration of the affairs of the body corporate.

Provided that synod may make any canon or rule imposing a financial liability on any diocese which by ordinance assents to the same including the costs charges and expenses in or in connection with the conduct of the affairs of any board institution or body set up by synod and provided also that any financial liability accepted by a diocese under any determination rule or regulation continued in operation under section 71 hereof shall remain unless or until it is replaced by or under the provisions of this Constitution.

33.

(1)

General synod may make rules prescribing anything necessary or convenient for carrying out and giving effect to any canon or for controlling and regulating the administration of its affairs, and in particular may make rules prescribing:

- (a) The procedure for any election or appointment to be made by or under the authority of synod to any office;
- (b) The authorities powers rights and duties of any officer committee board or commission of synod.

A rule shall be made by resolution after notice has been duly given in accordance with the standing orders.

(2)

General synod may regulate the conduct of its business under standing orders or otherwise as it may deem proper.

CHAPTER 6 COMMITTEES BOARDS AND COMMISSIONS

34.

There shall be a standing committee of general synod which shall consist of so many members not less than ten as may be prescribed by any rule of synod.

The members of the committee shall be elected or appointed and shall hold office as may be prescribed by any rule of the synod.

The seal books and records of general synod shall be in the care and control of the standing committee.

35.

General synod shall appoint such boards of assessors as may be required for the purposes of this Constitution and may appoint any committee board or commission that it may deem proper for carrying out or giving effect to any canon rule or resolution of synod, and the following provisions of this section shall apply to a board of assessors as well as to any such committee board or commission.

Unless otherwise provided by any canon or rule of synod:

- (a) The committee board or commission may include or consist of persons who are not members of synod;
- (b) The members of the committee board or commission shall be elected or appointed and shall hold office as may be determined by resolution of synod but shall not, unless the resolution so provide, cease to be members of the committee board or commission by reason only of ceasing to be members of synod;
- (c) The committee board or commission shall have such powers and duties as may be conferred or imposed by resolution of synod;
- (d) The committee board or commission may, if synod by resolution so directs, continue to exist and to exercise and perform its powers and duties, until the expiration of the first week of the next following ordinary session of synod.

CHAPTER 7 THE PROVINCES AND PROVINCIAL SYNODS

Provinces

36.

A province of the Church of England in the Dioceses of Australia and Tasmania shall subject to this Constitution continue as at the date on which this Constitution takes effect, until altered in accordance therewith.

37.

A new province may be formed by any four or more dioceses associating for that purpose, provided that the formation of the province is approved by ordinance of the diocesan synod of each of such dioceses, and ratified by canon of general synod. Nevertheless general synod may upon a petition preferred to it by less than four dioceses declare that such petitioning dioceses may proceed under this section and the same shall then apply to them accordingly.

38.

A province may be altered in accordance with the constitution of the province either by an increase or by a decrease in the number of dioceses forming the province, provided that the alteration shall not take effect until ratified by canon of general synod.

Provincial Synods

39.

The constitution of each province of the Church of England in the Dioceses of Australia and Tasmania shall subject to this Constitution continue as at the date on which this Constitution takes effect, until altered in accordance with the provisions of this Constitution.

40.

The constitution of a new province may provide either for a provincial synod or for a provincial council, and in either case may contain such provisions as the diocesan synod of each of the dioceses to be included in the province may think fit, provided that the constitution shall not take effect until ratified by canon of the general synod.

41.

The constitution of a province may be altered in accordance therewith, or with the consent of all the dioceses of the province given by ordinance of the synod of each diocese, provided that the alteration shall not take effect until ratified by canon of general synod.

This section extends to altering the constitution of a province by substituting a provincial council for a provincial synod, or by substituting a provincial synod for a provincial council.

42.

A provincial synod or a provincial council shall have such powers for the order and good government of this Church, within the province as may be prescribed by the constitution of the province.

CHAPTER 8 THE DIOCESES AND DIOCESAN SYNODS

Dioceses

43.

A diocese of the Church of England in Australia and Tasmania shall subject to this constitution continue as at the date on which this Constitution takes effect, until altered in accordance therewith.

44.

(1)

A new diocese may be formed in any of the following ways, that is to say:

- (a) by separation of territory from a diocese;
- (b) by the union of two or more dioceses or parts of dioceses;
- (c) out of territory in Australia which is not part of any diocese, and either out of such territory alone or out of such territory together with any diocese or part of a diocese;
- (d) as a missionary diocese, whether within or outside Australia.

(2)

Where a new diocese is formed by separation of territory from a diocese or by the union of two or more dioceses or parts of dioceses, the proposal to form the new diocese may be initiated by the

diocese or dioceses concerned or by the province, if any, in which the diocese or dioceses are included but the new diocese shall not be formed unless such diocese or dioceses and province, if any, agree by ordinance of their respective synods that the new diocese shall be formed, and general synod by canon ratify the formation of the new diocese.

(3)

In any other case the proposal to form a new diocese may be initiated in general synod, but where any diocese or part of a diocese is to be included, the new diocese shall not be formed unless the synod of the diocese and the synod of the province in which the diocese is included concur by ordinance and the new diocese shall be deemed to be formed as general synod may by canon determine.

(4)

Upon the formation of a new diocese any church trust property allocated to the new diocese by ordinance of the synod of any diocese concerned, and any church trust property allocated to the new diocese by canon of general synod in any case where a diocese is not concerned, shall by virtue of the ordinance or canon, as the case may be, and without any other assurance in the law, be held by and be vested in the trustees then or thereafter appointed for the purpose and upon and subject to the trusts affecting the same, but for the use benefit and purposes of this Church within the new diocese.

45.

(1)

A diocese may by ordinance surrender the whole or any part of its territory to any other diocese, and that other diocese may by ordinance accept the territory so surrendered. Provided however a diocese which has been formed by the separation of territory from a diocese or dioceses shall not surrender such territory to any diocese other than the diocese from which the territory was last separated without the consent of such last-mentioned diocese given by an ordinance of the synod thereof.

The surrender and acceptance may be made upon such terms and conditions, including the allocation of church trust property as may be agreed upon by ordinances made by the dioceses concerned.

(2)

A diocese may by ordinance alter its boundaries so as to include territory which is not part of any diocese or so as to exclude territory otherwise than by surrender to another diocese.

(3)

Any surrender or alteration under this section shall not take effect until ratified by or under canon of general synod.

46.

General synod may by canon admit to the synod any diocese the territory of which is partly or wholly outside Australia and may upon such admission impose such terms and conditions, including the extent of representation in the house of clergy and in the house of laity, as the synod thinks fit.

Diocesan Synods

47.

The constitution of each diocese of the Church of England in Australia and Tasmania shall subject to this Constitution continue as at the date on which this Constitution takes effect, until altered in accordance therewith.

48.

The constitution of a new diocese shall provide for the election or appointment of the first bishop of the diocese and shall contain such other provisions as may be deemed necessary or convenient, whether set forth expressly or adopted by reference to the provisions set forth in a canon of general synod, or adopted by reference to the provisions of the constitution of any other diocese, and whether so adopted with or without modifications and additions.

The constitution of the new diocese shall not take effect until ratified by or under canon of general synod.

49.

In a missionary diocese or in a diocese in which less than ten priests are licensed if there be no diocesan synod and until general synod by or under any canon otherwise prescribes there shall be a diocesan council with such constitution as general synod thinks fit.

If in any diocese in which there is no provision for a synod the office of the bishop become vacant, the office shall be filled as prescribed by canon of general synod, or if there is no such canon, then in accordance with the provisions under which the last election or appointment was made.

If in any diocese there is no synod or diocesan council the general synod may by canon appoint a synod or council.

50.

The constitution of a diocese may be altered in accordance therewith or as the synod of the diocese may by ordinance determine in accordance with any canon of general synod.

51.

Subject to this Constitution a diocesan synod may make ordinances for the order and good government of this Church within the diocese, in accordance with the powers in that behalf conferred upon it by the constitution of such diocese.

Consent of Diocese to Alteration

52.

(1)

Notwithstanding any provision to the contrary contained in this Constitution or anything done thereunder general synod shall not without the assent by ordinance of the diocese concerned alter or permit the alteration of:

- (a) The constitution or boundaries of a diocese or any of the powers rights or duties of the synod of a diocese or of any diocesan society council board agency or authority, including the

powers rights and duties relating to church trust property and the rights of a diocese with regard to the election of its bishop;

- (b) The qualifications or mode of election of the representatives of a diocese in general synod;
- (c) The status of any diocese as a metropolitan see or the title to or tenure of office of any metropolitan.

(2)

Except with its own assent by ordinance no metropolitan see shall cease to be a metropolitan see or to have associated with it three dioceses.

CHAPTER 9 THE TRIBUNALS

53.

There shall be a diocesan tribunal of each diocese, the special tribunal and the appellate tribunal, and there may be a provincial tribunal of any province.

54.

(1)

A diocesan tribunal shall be the court of the bishop and shall consist of a president, who shall be the bishop, or a deputy president appointed by him and not less than two other members as may be prescribed by ordinance of the synod of the diocese.

The members other than the president and deputy president shall be elected in such manner, hold office for such period, have such qualifications and be subject to such disqualifications, and vacancies shall occur and be filled in such manner, as may be prescribed by ordinance of the synod of the diocese.

In any province the provincial synod if so requested by the synod of a diocese may by ordinance of the provincial synod prescribe any matter directed or permitted by this section to be prescribed by ordinance of the synod of the diocese, provided that the synod of the diocese may at any time otherwise prescribe.

(2)

A diocesan tribunal shall in respect of a person licensed by the bishop of the diocese, or any other person in holy orders resident in the diocese, have jurisdiction to hear and determine charges of breaches of faith ritual ceremonial or discipline and of such offences as may be specified by any canon ordinance or rule.

(3)

A person appointed by the bishop of a diocese or any five adult communicant members of this Church resident within the diocese may promote a charge against any person licensed by the bishop of the diocese or against any other person in holy orders resident in the diocese in respect of breach of faith ritual or ceremonial either before the diocesan tribunal or before the provincial tribunal in its original jurisdiction. Provided that if a charge be preferred against an incumbent of a parish with reference to an offence alleged to have been committed within that parish the

aforesaid communicants shall be bona fide parishioners of that parish.

Provided further that before any charge relating to faith ritual or ceremonial be heard by the tribunal it shall be referred to a board of enquiry appointed by ordinance of the diocesan synod and may proceed to a hearing if the said board allows it as a charge proper to be heard.

(4)

In matters involving any question of faith ritual ceremonial or discipline an appeal shall lie from the determination of a diocesan tribunal to the appellate tribunal, provided that in any province in which there is a provincial tribunal and appeal thereto is permitted by ordinance of the diocesan synod, an appeal may lie in the first instance to the provincial tribunal, and provided that in any such case an appeal shall lie from the determination of the provincial tribunal to the appellate tribunal.

In other matters an appeal shall lie in such cases as may be permitted by ordinance of the diocesan synod from a determination of the diocesan tribunal to the provincial tribunal, if any, or to the appellate tribunal, and from a determination of the provincial tribunal to the appellate tribunal.

55.

(1)

A provincial tribunal shall consist of a president who shall be the Metropolitan, or a deputy president appointed by him, and not less than two other members as may be prescribed by ordinance of the synod of the province.

The members other than the president or deputy president shall be elected in such manner, hold office for such period, have such qualifications and be subject to such disqualifications and vacancies shall occur and be filled in such manner, as may be prescribed by ordinance of the synod of the province.

(2)

A provincial tribunal shall have jurisdiction to hear and determine appeals from any determination of any diocesan tribunal of the province in any case in which an appeal lies therefrom to the provincial tribunal.

Every appeal to a provincial tribunal shall be by way of rehearing.

(3)

A provincial tribunal shall, in respect of a person licensed by the bishop of a diocese within the province, have original jurisdiction to hear and determine charges of breaches of faith ritual ceremonial or discipline, and of such offences as may be specified by any canon ordinance or rule, provided that such original jurisdiction shall not be exercised except as prescribed by ordinance of the synod of the diocese.

(4)

An appeal shall lie to the appellate tribunal from a determination of a provincial tribunal in its original jurisdiction.

56.

(1)

The special tribunal shall consist of a president and not less than two diocesan bishops as hereinafter appointed.

The Primate shall be the president, or if he is not entitled to act, the Metropolitan or bishop who would exercise the authorities powers rights and duties of the Primate, if the office were then vacant, shall be the president.

No person by or against whom the charge is brought shall be a member of the tribunal.

(2)

The special tribunal shall have jurisdiction to hear and determine charges against any member of the house of bishops of breaches of faith ritual ceremonial or discipline and of such offences as may be specified by canon.

(3)

Before determining any charge the tribunal shall consult a board of assessors, being bishops, priests and laymen, as hereinafter appointed.

The members of the special tribunal (other than the President) and the members of the board of assessors shall be appointed in such manner hold office for such period and be subject to such disqualifications and vacancies shall occur and be filled in such manner as may be prescribed by or under canon of general synod.

(4)

An appeal shall lie from the determination of the special tribunal to the appellate tribunal.

57.

(1)

The appellate tribunal shall consist of seven members three of whom shall be diocesan bishops and four of whom shall be laymen.

The members shall be appointed by the general synod as follows, that is to say, a bishop and a layman on the nomination of the house of bishops, a bishop and a layman on the nomination of the house of clergy and a bishop and two laymen on the nomination of the house of laity.

A president and deputy president shall as often as may be necessary be chosen from among the lay members of the tribunal by the house of bishops, or, if general synod be not in session, by a meeting of the members of the house of bishops.

A layman shall not be a member unless he is qualified to be a lay representative of a diocese, and is or has been a Justice of the High Court of Australia, a Justice of the Supreme Court of a State, or a practising barrister or solicitor, of at least ten years' standing of the Supreme Court of a State.

(2)

The members of the tribunal shall be nominated and appointed in such manner, hold office for such period and be subject to such disqualifications, and vacancies shall occur and be filled in such manner, as may be prescribed by or under canon of general synod.

No party to an appeal shall be a member of the tribunal for any purpose of the appeal and his place shall be filled for the purpose of the appeal by the other members co-opting a person qualified for the office.

The appellate tribunal shall have jurisdiction to hear and determine appeals from any determination of the special tribunal and from any determination of any diocesan or provincial tribunal in any case in which an appeal lies therefrom to the appellate tribunal.

Every appeal to the appellate tribunal shall be by way of re-hearing.

Any person charged before a diocesan tribunal and aggrieved by any sentence recommended by it who has no right of appeal under this constitution or under an ordinance of the diocesan synod may petition the Metropolitan of the province or, if the diocese be not part of a province, the Primate that his case be reviewed and the Metropolitan or Primate as the case may be may refer the same to the appellate tribunal for review and any case so referred shall be heard and determined as an appeal provided however that no such petition may be presented in respect of an order for costs only.

(3)

Unless otherwise prescribed by canon of general synod, the appellate tribunal may hear and determine any appeal question or matter made or referred to it although all the members thereof be not present at such hearing or determination, provided that there be present at least two bishops and three laymen. And provided further that if during the hearing of any appeal a member attending the tribunal should die or become unable to continue with the hearing the appeal may proceed so long as the President two bishops and one other lay member or the Deputy President two bishops and one other lay member be present provided further that if the number of those present on any appeal should be evenly divided on any question of evidence or procedure the President (or in his absence the Deputy President) shall have a casting as well as a deliberative vote.

58.

(1)

Before determining any appeal or giving an opinion on any reference the appellate tribunal shall in any matter involving doctrine upon which the members are not unanimous upon the point of doctrine and may, if it thinks fit, in any other matter, obtain the opinion of the house of bishops, and a board of assessors consisting of priests appointed by or under canon of general synod.

(2)

In any case where the house of bishops is consulted under this section, the house of bishops shall aid the tribunal with such information in writing as it thinks proper, provided that if all members of the house of bishops do not concur each of the members at the time in Australia may aid the tribunal with such information in writing as he thinks proper. For the purposes of this subsection the house of bishops shall not include the bishops who are members of the appellate tribunal.

59.

(1)

In all appeals and references to the appellate tribunal in any matter involving any question of faith ritual ceremonial or discipline the concurrence of at least two bishops and two laymen and in any other matter the concurrence of at least four members, shall be necessary for the determination of an appeal or the giving of an opinion upon a reference.

(2)

General synod may by canon prescribe any matter incidental to the exercise of any jurisdiction vested by this Constitution in the special tribunal or in the appellate tribunal including the power to award costs.

(3)

Unless otherwise prescribed by or under any canon of general synod, the procedure with respect to hearings and determinations of the special tribunal, and with respect to appeals or references to the appellate tribunal shall be regulated in such manner as the tribunal thinks fit.

(4)

The person who brings a charge before a diocesan or provincial tribunal or before the special tribunal if dissatisfied with its determination or recommendation and the person so charged if dissatisfied with the recommendation or sentence pronounced upon such recommendation may within twenty-eight days or within such further time as the President of the appellate tribunal may in writing allow after the making of the determination recommendation or the pronouncing of the sentence as the case may be, institute an appeal to the appellate tribunal by lodging a notice of appeal in the registry of the Primate and in the registry of the bishop of the diocese or metropolitan concerned and in the case of any sentence of deprivation of or suspension from office the bishop or metropolitan who has pronounced such sentence may thereupon if he sees fit intermit the operation of such sentence.

60.

(1)

A tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following, that is to say, monition, suspension from office, expulsion from office, deprivation of rights and emoluments appertaining to office, deposition from holy orders.

Except as otherwise provided herein such recommendation shall be made to the bishop of the diocese concerned.

The recommendation of the special tribunal, or of the appellate tribunal on an appeal from the special tribunal, shall be made to the Primate, provided that if the Primate be a party to the appeal, the recommendation shall be made to the Metropolitan or bishop who would exercise the authorities powers rights and duties of the Primate, if the office were then vacant.

(2)

The person to whom the recommendation is made shall give effect thereto, provided that if any

sentence is recommended, he may consult with the tribunal and in the exercise of his prerogative of mercy (a) mitigate the sentence or (b) suspend its operation or (c) mitigate the sentence and suspend its operation. In each case he shall pronounce the sentence recommended even though he mitigate or suspend it. Provided that if the operation of a sentence or mitigated sentence has been suspended and remains suspended for a period of two years such sentence shall thereafter have no operation.

(3)

If in any case the appellate tribunal is precluded from determining the appeal, either because the members present at the hearing are equally divided or because there is no such concurrence as is required by this Constitution, the provisions of this subsection shall have effect, that is to say:

- (a) Where any recommendation adverse to the person charged made by a diocesan or a provincial tribunal or by the special tribunal, or
- (b) Where any sentence pronounced against him would but for this subsection continue in force, the person to whom the recommendation was made or who pronounced the sentence shall in consultation with the appellate tribunal review the recommendation or sentence, and after such review may give effect or abstain from giving effect to the recommendation, or may confirm, mitigate or annul the sentence and may give or abstain from giving directions for restoration of office rights and emoluments as he shall think proper and for such compensation where compensation is available as in the circumstances he may deem to be fair and reasonable.

(4)

The provisions of this Constitution with respect to an appeal from the determination of a tribunal shall extend to and authorise an appeal from a recommendation or sentence but shall not extend to a ruling of a tribunal of an interlocutory nature.

61.

Where a charge is pending before a tribunal against any person licensed by the bishop of a diocese, the bishop with the concurrence of the diocesan council may suspend such person from the duties of his office until the determination of the charge, and may make such arrangements for the performance of the duties of the office as may be authorised by any canon ordinance or rule or in the absence of such canon ordinance or rule as the bishop may deem proper.

62.

For the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise a tribunal shall be deemed to be an arbitrator within the meaning of any law in force in the State or territory in which the tribunal sits and shall have power to administer an oath to or take an affirmation from any witness and for the same purpose any party to a proceeding before a tribunal or any person permitted by a tribunal to submit evidence to it shall be deemed to be a party to a reference or submission to arbitration within the meaning of any such law.

63.

(1)

Wherever a question arises under this Constitution and in the manner provided and subject to the conditions imposed by this Constitution the question is referred for determination or for an opinion to the appellate tribunal the tribunal shall have jurisdiction to hear and determine the same or to give its opinion as the case may require provided that if provision is not otherwise made under this Constitution for the reference of such question to the tribunal the Primate may and shall at the request of general synod by resolution or at the written request of twenty-five members thereof or at the request by resolution of the provincial or diocesan synod affected refer the question to the tribunal which shall have jurisdiction as aforesaid.

(2)

The tribunal may direct that any synod person or class of persons or association claiming to be interested in the question shall be notified of the hearing and be entitled to appear or be represented thereat.

CHAPTER 10 THE CORPORATE TRUSTEES

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64.

(1)

There shall be a body corporate to be known as “The Church of England in Australia Trust Corporation”, and in this section referred to as the corporate trustees.

The body corporate shall be deemed to be constituted as soon as this Constitution takes effect.

(2)

The corporate trustees shall have perpetual succession and a common seal, may sue and be sued in and by their corporate name, and may acquire and hold any real and personal property or any estate or interest therein.

(3)

The corporate trustees shall consist of seven or such less number of persons as may be prescribed by canon of the general synod, and such persons shall be elected or appointed and hold office, and may be removed therefrom, as may be prescribed by canon of the general synod.

(4)

The corporate trustees may be appointed to be the trustees of any church trust property, whether the appointment is made by a person giving or settling property by will or otherwise or by a person entitled under the trust instrument, if any, or by law to appoint a trustee, provided that where the property is under the control of the synod of a diocese or is held exclusively for the benefit of or in connection with a diocese or any part thereof the appointment shall not be made unless the consent of the synod of the diocese is first obtained, and provided that where the property is not under such control or is not so held but is under the control of any society council board agency or authority, whether a body corporate or otherwise, the appointment shall not be made unless the consent of the society council board agency or authority is first obtained.

(5)

Nothing contained in this section or done thereunder shall remove any church trust property from

the control of any diocesan synod or from the control of any such society council board agency or authority.

CHAPTER 11 THE ALTERATION OF THIS CONSTITUTION

65.

This Constitution shall not be altered except in accordance with the provisions of this chapter.

66.

This Church takes no power under this Constitution to alter sections one, two and three and this section other than the name of this Church.

67.

Subject to the provisions hereinafter mentioned other sections of this Constitution may be altered subject to the following conditions:

- (a) The bill shall be submitted for its first reading by leave of general synod, the three houses thereof voting together.
- (b) A bill altering the provisions of this Constitution mentioned at the foot of this clause shall not come into effect unless it has been assented to on its second and third readings by an affirmative vote of at least two-thirds of the members of each house and by a majority of all dioceses of which two at least shall be metropolitan dioceses; the assent of a diocese shall be deemed to be given if a majority of its lay representatives and a majority of its clerical representatives and the bishop thereof have voted in favour of the bill.

Sections 11-14 inclusive; 18-25 inclusive; 27; 31-35 inclusive; 64 (1) (2) and (3); 67 (a); 68-70 inclusive; 75.

- (c) A bill altering the name of this Church or the provisions of this Constitution mentioned at the foot of this clause if passed at its second and third readings shall not come into effect unless and until every diocesan synod this Church has assented to it by ordinance and such assents be in force at the same time.

Sections 64 (4) (5); 67 (c).

- (d) A bill altering the provisions of this Constitution mentioned at the foot of this clause if passed at its second and third readings shall not come into effect unless and until at least three-quarters of the diocesan synods of this Church including all the metropolitan sees have assented to it by ordinance and all such assents be in force at the same time.

Sections 4-10 inclusive; 15-17 inclusive; 26; 28-30 inclusive; 36-63 inclusive; 65; 67 (b) and (d); 71-74 inclusive: the Table annexed to the Constitution.

CHAPTER 12 THE OPERATION OF THIS CONSTITUTION

68.

(1)

This Constitution shall take effect on and from a day to be appointed in accordance with this section.

The day shall not be appointed until the Parliaments of five States have passed Acts for giving effect to this Constitution.

The day shall be appointed by a deed signed by the diocesan bishops of not less than eighteen dioceses of the Church of England in Australia and Tasmania declaring that their respective dioceses have assented to this Constitution.

The bishops signing the deed shall include at least two Metropolitans.

(2)

The day appointed shall be notified in the Commonwealth Gazette by one or more of the Metropolitans by whom the deed appointing the day is signed and shall also be notified in the Government Gazette of each State concerned by any one or more of the diocesan bishops by whom the deed appointing the day is signed.

A copy of the Commonwealth Gazette containing a notification of the appointed day which purports to be signed by one or more of the Metropolitans shall be conclusive evidence that the day has been duly appointed in accordance with this section.

(3)

The diocesan bishops signing the deed or such of them as shall still be in office shall be a commission for convening the first session of general synod, and notwithstanding any other provision of this Constitution the commission may do or cause to be done anything necessary or convenient for the convening and holding of the session.

The commission shall appoint the place for the session and the time which shall be not later than twelve months after the day on which this Constitution takes effect, and shall at least three months before the time for the session in such manner as the commission deems proper summon the diocesan bishops of the dioceses to which this Constitution applies, and require them to convene the prescribed number of clerical and lay representatives of their respective dioceses at the appointed time and place.

69.

(1)

Subject to all necessary Parliamentary enactments this Constitution shall apply to every diocese of the Church of England in Australia and Tasmania which assents to the Constitution, whether before or after this Constitution takes effect, and to every diocese formed or admitted to general synod under this Constitution. The assent of a diocese shall be given by an ordinance of its synod or if there be no synod or diocesan council by a certificate of its bishop.

(2)

Where all the dioceses of any province so assent to this Constitution, it shall apply to the province as well as to each diocese.

If four or more dioceses of a province assent such dioceses shall constitute a province under this

Constitution.

(3)

If any diocese in Australia does not assent to this Constitution such diocese shall not by reason only of that fact cease to be in fellowship or communion with this Church or with the Church of England in the Dioceses of Australia and Tasmania, but may have association with this Church on such terms and conditions as may be agreed upon by ordinance of the diocesan synod of the diocese and by canon of general synod.

70.

This Constitution and all canons and rules passed and made hereunder shall be binding on the bishops clergy and laity as members of this Church and for all purposes connected with or in any way relating to church trust property.

71.

(1)

Every consensual compact and every enactment in force in the Church of England in the Dioceses of Australia and Tasmania, or in any province or diocese which has become or becomes a province or diocese to which this Constitution applies shall insofar as they are not inconsistent with this Constitution, continue in force in this Church or in the province or diocese, until altered under this Constitution or under the constitution of the province or diocese.

This subsection extends to any determination rule or regulation made by the synod known as the general synod of the Church of England in the Dioceses of Australia and Tasmania, any constitution act canon or ordinance made by the provincial synods of New South Wales, Victoria, Queensland, and Western Australia respectively, and any constitution act canon ordinance rule or regulation made by the diocesan synod of any diocese in Australia.

Nothing in this Constitution shall authorise the synod of a diocese or of a province to make any alteration in the ritual or ceremonial of this Church except in conformity with an alteration made by general synod.

(2)

The law of the Church of England including the law relating to faith ritual ceremonial or discipline applicable to and in force in the several dioceses of the Church of England in Australia and Tasmania at the date upon which this Constitution takes effect shall apply to and be in force in such dioceses of this Church unless and until the same be varied or dealt with in accordance with this Constitution.

72.

Where any question arises as to the faith ritual ceremonial or discipline of this Church or as to the authorities powers rights and duties of bishops priests and deacons of this Church, or of any officer or member thereof, nothing in this Constitution shall prevent reference being made to the history of the Church of England in England to the same extent as such reference might have been made for the purposes of the Church of England in the Dioceses of Australia and Tasmania immediately before the day on which this Constitution takes effect.

73.

(1)

In determining any question as to the faith ritual ceremonial or discipline of this Church any tribunal may take into consideration but shall not be bound to follow its previous decisions on any such question or any decision of any judicial authority in England on any questions of the faith ritual ceremonial or discipline of the Church of England in England.

(2)

A determination of any tribunal which is inconsistent or at variance with any decision of such a judicial authority in England shall have permissive effect only and shall not be obligatory or coercive.

(3)

A determination of a provincial tribunal shall be binding upon a diocesan tribunal in the province and a determination of the appellate tribunal shall be binding upon the special tribunal the provincial tribunal and the diocesan tribunal provided however that the synod of a diocese may by ordinance direct that a diocesan tribunal shall not follow or observe a particular determination of the appellate or provincial tribunal which has permissive effect only.

74.

(1)

In the Constitution unless the context or subject matter otherwise indicates:

“Alteration” includes repeal, and **“alter”** and **“altered”** have a meaning corresponding with that of alteration.

“Australia” includes the Commonwealth of Australia and any Territory under the control of the Commonwealth of Australia whether by trusteeship or otherwise.

“Canonical fitness” means the qualifications required in the Church of England in England for the office of a bishop, at the date when this Constitution takes effect.

“Canonical Scriptures” means the canonical books as defined by the sixth of the Thirty-nine Articles.

“Ceremonial” includes ceremonial according to the use of this Church, and also the obligation to abide by such use.

“Church trust property” means property held in trust for or on behalf of or for the use of this Church and includes property held for the benefit of or in connection with any diocese or parish or otherwise.

“Diocesan bishop” means the bishop of a diocese.

“Diocesan council” in a diocese where there is a synod means the body exercising powers and functions of the synod on its behalf when it is not in session.

“Diocesan synod” and **“synod of a diocese”** include a diocesan council where there is no

diocesan synod.

“Diocese” means a diocese of this Church.

“Discipline” includes the rules of this Church and the rules of good conduct.

“Doctrine” means the teaching of this Church on any question of faith.

“Faith” includes the obligation to hold the faith.

“General synod” or **“synod”** means the general synod under this Constitution.

“Licence” means a licence under seal of the bishop of a diocese, and **“licensed”** has a meaning corresponding with that of licence.

“Member of this Church” means a baptised person who attends the public worship of this Church and who declares that he is a member of this Church and not a member of any other church.

“Metropolitan” includes the bishop exercising the authorities powers rights and duties of the Metropolitan.

“Missionary Diocese” means each of the following: the Diocese of New Guinea, the Diocese of North-West Australia, the Diocese of Carpentaria, and any other diocese formed as a missionary diocese under this Constitution.

“Ordinance” includes any act canon constitution statute legislative measure or provision of a provincial or diocesan synod or of the competent authority in or with respect to a missionary diocese.

“Parish” includes any parochial district or similar pastoral division constituted by or under ordinance of the synod of a diocese.

“Parishioner” means a member of this Church who is entitled to vote at a meeting of a parish for the election of churchwardens, or who if no such meeting is provided for is at least twenty-one years of age.

“Primate” includes the Metropolitan or bishop exercising the authorities powers rights and duties of the Primate.

“Printing” shall include typing, duplicating or any other method of producing facsimile copies.

“Provincial Synod” includes a provincial council.

“Ritual” includes rites according to the use of this Church, and also the obligation to abide by such use.

“See” means a see of this Church.

“State” means a State of the Commonwealth of Australia.

“This Church” means the Church of England in Australia.

“This Constitution” or **“the Constitution”** means the Constitution of this Church.

“Voting by Houses” means the procedure whereby three distinct votes are taken, that is to say, a vote of the house of laity, a vote of the house of clergy, and a vote of the house of bishops.

(2)

In this Constitution **“the Book of Common Prayer”** means the Book of Common Prayer as received by the Church of England in the Dioceses of Australia and Tasmania before and in the year of our Lord one thousand nine hundred and fifty-five, that is to say, the book intituled “The Book of Common Prayer and Administration of the Sacraments and other rites and ceremonies of the Church according to the use of the Church of England together with the Psalter or psalms of David pointed as they are to be sung or said in churches and the form or manner of making ordaining and consecrating of bishops, priests and deacons”, and generally known as the Book of Common Prayer 1662.

(3)

In this Constitution “the doctrine and principles of the Church of England embodied in the Book of Common Prayer” and the “articles of religion” sometimes called the “Thirty-nine Articles” means the body of such doctrine and principles.

(4)

In this Constitution, unless the context or subject matter otherwise indicates, any reference to faith shall extend to doctrine.

(5)

In this Constitution “decision of any judicial authority” shall include any judgment order decree sentence or order in council and the reasons report or recommendation therefor, and “judicial authority” shall include any court judge tribunal body or person having either secular or ecclesiastical jurisdiction whether before or after the date on which this Constitution takes effect, and without affecting the generality of any other provision of this Constitution it is hereby declared that “judicial authority” shall include the Court which was commonly called the High Court of Delegates, the King’s Majesty in Council to which the powers of that Court were transferred, and the Judicial Committee of the Privy Council.

(6)

In the case of lay but not clerical persons words in this Constitution importing the masculine shall include the feminine.

(7)

This Constitution shall, unless the context or subject matter otherwise indicate, be construed as if the [Acts Interpretation Act 1901-1948](#) of the Parliament of the Commonwealth of Australia applied to this Constitution.

75.

This Constitution is divided into the following parts and chapters:

Part 1

Chapter 1—Fundamental Declarations (Sections 1–3).

Chapter 2—Ruling Principles (Sections 4–6).

Part 2—The Government of the Church

Chapter 3—Of the Bishops (Sections 7–14).

Chapter 4—Of the General Synod (Sections 15–25).

Chapter 5—Of the Powers of General Synod (Sections 26–33).

Chapter 6—Committees, Board and Commissions (Sections 34–35).

Chapter 7—The Provinces and Provincial Synods (Sections 36–42).

Chapter 8—The Dioceses and Diocesan Synods (Sections 43–52).

Chapter 9—The Tribunals (Sections 53–63).

Chapter 10—The Corporate Trustees (Section 64).

Chapter 11—The Alteration of this Constitution (Sections 65–67).

Chapter 12—The Operation of this Constitution (Sections 68–75).

THE TABLE ANNEXED TO THE CONSTITUTION

Clerical and Lay Representatives in General Synod

1.

The number of clerical and lay representatives respectively of each diocese shall be in proportion to the number of clergymen of the diocese and shall be determined by dividing that number by a quota, namely, twenty, and if on the division there is a remainder of ten or more the diocese shall be entitled to one more clerical and one more lay representative.

2.

Notwithstanding any other provision in this table each diocese shall be entitled to at least one clerical and one lay representative.

3.

In this table “clergyman” means persons licensed by the bishop of the diocese to the cure of souls in a parish or in charge of a parochial district or similar pastoral division, or assistant curate licensed in a parish, such persons being in priests’ orders and resident in the diocese concerned.

This definition shall extend to a bishop, dean, archdeacon, canon, principal, vice-principal and tutors in priest’s orders of a university or theological college headmaster of a school or chaplain or other clergyman in priest’s orders licensed to other distinct official position in the diocese so resident and holding the licence of the bishop of the diocese, provided that in the case of a chaplain of a school college hospital or other institution the chaplaincy involves regular spiritual ministrations to persons therein resident or students attendant thereat.