

# Presbyterian Church of Australia Act 1971 No 42

[1971-42]



New South Wales

## Status Information

### Currency of version

Current version for 4 March 1996 to date (accessed 17 May 2024 at 16:17)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Presbyterian Church of Australia Act 1971 No 42



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An Act to enable certain arrangements made between Church of Australia and the State Presbyterian Churches to be carried into effect; to provide for the consequential variation of the trusts upon which certain church property is held and the consequential amendment of certain Acts; and for purposes connected therewith.

## 1 Name of Act

- (1) This Act may be cited as the *Presbyterian Church of Australia Act 1971*.
- (2) (Repealed)

## 2 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**new basis of union** means the Basis of Union set forth in the Schedule.

**old scheme of union** means the Basis of Union and Articles of Agreement set forth in the Schedule to the *Presbyterian Church of Australia Act 1900*.

**State Presbyterian Churches** means the Presbyterian Church of Australia in New South Wales, the Presbyterian Church of Victoria, the Presbyterian Church of Queensland, the Presbyterian Church of South Australia, the Presbyterian Church of Tasmania and the Presbyterian Church in Western Australia.

## 3 (Repealed)

## 4 Union with other branches of the Christian church

- (1) (Repealed)
- (2) All interests in property that, immediately before the third day of December, one thousand nine hundred and seventy-one, were held by or in trust for some or all of the purposes of the Presbyterian Church of Australia in New South Wales or the General Assembly thereof or any presbytery, session, board or committee of management, congregation, committee, council, board or fund in connection with the Presbyterian Church of Australia in New South Wales shall be so held, and shall be deemed to have

been on and from that day so held, subject to Part 3 of the new basis of union.

(3) For the purposes of this section:

- (a) the General Assembly of the Presbyterian Church of Australia constituted under the old scheme of union may exercise all the powers and functions of the General Assembly under Part 3 of the new basis of union,
- (b) a reference in Part 3 of the new basis of union to synods is a reference to State General Assemblies or, if so required by the context, to State Presbyterian Churches,
- (c) the provisions of Part 3 of the new basis of union apply, with such modifications as may be necessary, to the Presbyterian Church of Australia constituted under the old scheme of union, the General Assembly thereof, State Presbyterian Churches and the General Assemblies, presbyteries, sessions and congregations thereof,
- (d) decisions of the General Assembly of the Presbyterian Church of Australia constituted under the old scheme of union and of any commission appointed by it under clause eighteen of Part 3 of the new basis of union shall operate with respect to the Presbyterian Church of Australia so constituted, State Presbyterian Churches and the General Assemblies, presbyteries, sessions and congregations thereof as if they were the Presbyterian Church of Australia constituted under the new basis of union and the courts and congregations thereof, as the case may require,
- (e) a reference in Part 3 of the new basis of union to the new basis of union shall be construed as a reference to the old scheme of union or, as the case may require, to the constitution of the State Presbyterian Churches.

(4) If a union is entered into under Part 3 of the new basis of union and there is in New South Wales a continuing congregation within the meaning of that Part but a continuing State Presbyterian Church is unable to function in New South Wales, the General Assembly of the Presbyterian Church of Australia may, so far as is necessary, place that congregation under the jurisdiction of the church courts in subordination to that General Assembly for so long as that inability persists.

(5) This section does not prejudice or affect the operation of section 3.

## **5 (Repealed)**

## **6 Powers of commission**

The commission referred to in the new basis of union may give effect to its powers out of the property to which this Act applies.

## **7-9 (Repealed)**

## Schedule Basis of Union

(Section 2)

### Parts 1, 2

#### 1-14 (Repealed)

### Part 3 Union with other churches

**15** The general assembly shall have the right and power to negotiate with other branches of the Christian church with a view to the Presbyterian Church of Australia entering the union with any of them, and the Presbyterian Church of Australia may pursuant to a resolution of the general assembly enter into such union provided that the proposed basis of union with any such church or churches (which shall include a section setting out basic principles of constitutional structure and practice) shall first be remitted to synods and presbyteries under the Barrier Act procedure and may be approved by the general assembly only when approved by a majority of synods and at least three-fifths of the presbyteries of the whole church and three-fifths of the members present when the final vote of the general assembly is taken.

**16** Before the final vote is taken in the general assembly communicants aged sixteen years and over whose names are on the roll of a congregation shall be given an opportunity to answer the following questions:

- (a) Do you desire this congregation to become a congregation of the church which may result from the proposed union?
- (b) Should the required majority vote for union be obtained in presbyteries, synods and the general assembly of Australia do you desire to remain in membership of any Presbyterian Church of Australia continuing to function on the present basis?

#### **17**

- (1) For the purpose of enabling communicants to vote upon the questions prescribed in the last preceding section the general assembly shall prescribe a date by which all sessions shall be required to have purged their communion rolls and to have submitted to the presbytery of the bounds a voting register in duplicate consisting of all eligible names on the communion roll at the date of submission to the presbytery.
- (2) Both copies of the said voting register shall be certified by the moderator and clerk of the session as being the voting register.
- (3) The presbytery of the bounds shall at the earliest opportunity following the submission to it of the voting register attest both copies and shall return one copy to the session from which it was received and shall retain the other copy.
- (4) Only those persons whose names are on an attested voting register may take part in the vote.
- (5) Sessions shall make available voting papers containing the said questions at least

fourteen days before a date to be prescribed by the session for the close of voting, upon which the voters shall indicate whether their answer is “Yes” or “No” to each of the questions.

- (6) Voting papers must be signed by the voter and returned prior to the close of voting.
- (7) The session shall count votes and transmit the number of “Yes” votes and the number of “No” votes cast with respect of each question to the clerk of the presbytery of the bounds for transmission to the clerk of the general assembly through the clerk of synod.
- (8) The clerk of the general assembly shall advise the commission to be appointed as hereinafter provided of the results.

**18** Upon the general assembly resolving to enter a union pursuant to section 15, it shall provide just and equitable safeguards of the rights of minorities who do not concur in the decision to unite, which safeguards shall include the following provisions:

- (a) The general assembly shall set up a commission consisting of two groups of equal numbers, one representing those approving and one disapproving such union, together with three independent persons acceptable to both groups one of whom shall be chairman,
- (b) In any case where at least one-third of the communicants of a congregation who participate in the vote in accordance with the last preceding section (hereinafter called **a continuing congregation**), shall prior to the date of the final vote of the general assembly approving such union have recorded votes indicating their desire to continue in membership of the Presbyterian Church of Australia, such communicants shall not become a congregation of the church to result from the union but shall be recognized as a congregation of the Presbyterian Church of Australia continuing to function on this basis of union and shall be entitled to retain the congregational property, unless the commission appointed pursuant to this section shall for special reasons otherwise determine, in which case the said commission is required to ensure that what it deems to be adequate and suitable congregation property is provided including a due and proper share of any congregational endowments,
- (c) Where in any district or locality less than one-third of the communicants who participate in the said vote and whose names appear on the roll of a congregation purged as aforesaid, shall prior to the date of the final vote of the general assembly approving such union have recorded votes indicating their desire to remain in membership of the Presbyterian Church of Australia continuing to function on this basis of union and:
  - (i) the presbytery of the bounds is of the opinion that such minorities of such congregations are not able to be related in membership with some continuing congregation or congregations as a charge or charges, and
  - (ii) the said commission is satisfied as to the capacity of the said minorities to continue as such, it shall have power to arrange in a suitable locality or localities for such groupings of communicants to be provided with a church, manse and other necessary buildings to be used for congregational purposes, or with sufficient funds to provide such buildings,
- (d) The said commission, upon its being satisfied that the continuing congregations are capable of

functioning as a continuing Presbyterian Church of Australia under this basis of union, shall, in addition to the powers functions and discretions otherwise conferred upon it in this section, have the power to determine what specific items, if any, of the general property of or held in trust for the purposes of the Presbyterian Church of Australia and the several State synods shall for the efficient functioning of the said continuing church be retained by or for the purposes of the said church, and what compensation if any for the loss of a just and equitable share of such property should be payable to the said church, which shall have the right to use the name Presbyterian Church of Australia,

- (e) The said commission in making its determinations as aforesaid shall have regard to the just and equitable rights of minorities and shall, inter alia, provide for the following requirements of a continuing church, including a due and proper share of endowments existing at the date of union and shall include provision for and maintenance of:
  - (i) a centre for the theological training of the ministry of the said continuing church, including a centre of residence and staffing, having regard to the aim of the Presbyterian Church of Australia to have theological halls equipped with not fewer than three professors,
  - (ii) a centre for the administration of the said continuing church, including provision for a clerk, treasurer and such other staff and buildings deemed necessary by the said commission for continuing the activities of the said church, and also a centre for administration with provision for adequate staff for its requirements in any State where the strength of the said continuing church is deemed by the commission to warrant it,
  - (iii) at least one school for girls and one school for boys in each State where at the date of the said union there is more than one Presbyterian school for girls and more than one Presbyterian school for boys, and in any State where there is only one Presbyterian school for girls and/or only one Presbyterian school for boys the commission shall determine whether ownership of any such school shall be vested in the said continuing church or in the church to result from the said union, or make other adequate provision if the strength of the said continuing church warrants it.