

Anglican Church of Australia Constitutions Act 1902 (Private Act)

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New South Wales

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

Notes—

- **Previously named**
Church of England Constitutions Act Amendment Act of 1902

Authorisation

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New South Wales

An Act to repeal the Act 30 Victoria, intituled An Act to enable the members of the United Church of England and Ireland in New South Wales to manage the property of the said Church; to authorise the substitution of the name Church of England for the name hitherto used of United Church of England and Ireland; to give legal force and effect to the constitutions for the management and good government of the Church of England within the State of New South Wales contained in the Schedule to this Bill; and for other purposes connected with or incidental to the above objects.

Preamble

WHEREAS by an ordinance duly passed by the Church of England Provincial Synod of the Province of New South Wales, intituled the Amendment of Constitutions Application Ordinance of 1895, it was ordained and ruled that application should be made to Parliament to pass an Act to repeal the Act thirty Victoria, intituled An Act to enable the members of the United Church of England and Ireland in New South Wales to manage the property of the said Church, assented to on the fourth day of October, in the year one thousand eight hundred and sixty-six, but without prejudice to anything done under the said Act before the repeal thereof, and to authorise the substitution in all statutes, acts, grants, deeds, and other instruments of the name Church of England for the name hitherto used of United Church of England and Ireland, and to give legal force and effect to certain constitutions contained in the Schedule to the said ordinance now in recital: And whereas the executive committee of the said Synod were, by the said ordinance now in recital, authorised and empowered to carry into effect the provisions of the same so soon as the Metropolitan should have reported to them that every diocese in the said Province had accepted the same: And whereas every diocese in the said Province has accepted the said ordinance, and the Metropolitan has so reported to the said executive committee: and whereas legal force and effect cannot be given to the said constitutions so far as regards the management of the property of the Church of England without the aid of the Legislature in the manner hereinafter provided: And whereas the constitutions contained in the Schedule to the said ordinance are embodied and contained in the Schedule to this Act:

Be it therefore enacted by the King'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 Constitutions Act 1902*.

2 Repeal

The Act thirty Victoria, intituled An Act to enable the members of the United Church of England and Ireland in New South Wales to manage the property of the said Church, is hereby repealed, but such repeal shall not prejudice or affect the previous operation of the said Act, or any proceeding, matter, or thing lawfully done or contracted to be done under the said Act before the commencement of this Act.

3 Name of Church

The name Church of England shall be substituted and read in all statutes, acts, grants, deeds, ordinances, and rules of Synod, and other instruments now in force or in existence for and instead of the name United Church of England and Ireland whenever occurring in any such statute, act, grant, deed, ordinance, rule, or other instrument.

4 Constitutions to be binding

The several articles and provisions of the constitutions contained in the Schedule to this Act, and any ordinances and rules to be made under or by virtue or in pursuance thereof, are and shall be for all purposes connected with or in any way relating to the property of the Church of England within the State of New South Wales binding upon the members of the said Church.

5 Church property to be held subject to constitutions

All persons now or at any time hereafter holding any real or personal estate in trust for or in any way on behalf or for the use of the Church of England, except in so far as such real or personal estate may be the subject of any express trust, and then so far as such express trust shall not extend, and except lands, the management of which may be already specially provided for by ordinance of Synod or by Act of Parliament, shall hold the said real and personal estate subject to the provisions of the said constitutions and of any ordinances or rules made thereunder, and shall be bound thereby as fully in all respects as if the said constitutions, ordinances, and rules were contained in a deed of conveyance and trust of the said real and personal estate.

6 No ordinance or rule to be in contravention of law

No ordinance or rule to be made under or by virtue or in pursuance of the said constitutions shall be in contravention of any law or statute in force for the time being in this State.

7 Not to affect other Church Acts

This Act shall not repeal or in any way cut down or abridge the provisions of the *Church of England Trust Property Incorporation Act 1881*, the *Sydney Bishopric and Church Property Act 1887*, the *Church of England Property Act of 1889* or the *Church Acts Repealing Act of 1897*.

Schedule Constitutions for the management and good government of the Church of England within the State of New South Wales

Diocesan Synod to be held

- 1** The members of the Church of England in Australia in any Diocese within the State shall meet in Synod as hereinafter provided.

President and time of holding

- 2** The Synod in each Diocese shall be convened in the manner herein provided, save in so far as the same may be altered by a Synod acting under the provisions hereinafter contained. And such Synod shall be convened and holden once in every year by summons of the Bishop of the Diocese, stating the time and place of meeting. And the Bishop of the Diocese, or in his absence a commissary appointed by him in writing, shall be president of the Synod, and may adjourn, prorogue, and dissolve the same with the concurrence of the Synod. And a new Synod shall be elected and convened at least once in every three years. And it shall not be lawful for the president to vote on any question or matter arising in the Synod. And the provisions hereinbefore contained shall be applicable to any Diocese which may be hereafter constituted within the State.

Power of Synod generally

- 3** The Synod of each Diocese may make ordinances upon and in respect of all matters and things concerning the order and good government of the Church of England and the regulation of its affairs within the Diocese, including the management and disposal of all Church property, moneys, and revenues (not diverting any specifically appropriated, or the subject of any specific trust, nor interfering with any vested rights), except in accordance with the provisions of any Act of Parliament, and for the election or appointment of church-wardens and trustees of churches, burial grounds, church lands, and parsonages. And all ordinances of the Synod shall be binding upon the Bishop and his successors, and all other members of the Church within the Diocese, but only so far as the same may concern their respective rights, duties, and liabilities as holding any office in the said Church within the Diocese.

Rules for conduct of business

- 4** The Synod of each Diocese may make rules for the conduct of all business coming before it, and for trying the validity of the election of any representative, and for supplying any vacancy in the Synod which may be occasioned by death, resignation, or

any other cause, and for determining for what reason any representative shall be disqualified from sitting and voting in the Synod.

Rules for future Synods

- 5** The Synod of each Diocese may make rules for altering the periods within which and the manner in which subsequent Synods shall be convened, and the mode of electing representative members, and for regulating the number of the clergy and representative members to be respectively summoned to any future Synod, and as to the manner in which such regulation shall be effected, and as to the number necessary to constitute a quorum: Provided that the declarations hereinafter imposed and no other shall be required either from members of the Church voting at the election of representatives or from such representatives when elected.

Mode of voting and quorum

- 6** At the first meeting of a Synod in any Diocese the presence of not less than one-fourth of the members of each order shall be necessary to constitute a quorum. And every rule or ordinance of a Synod shall be made by a majority of the clergy and representative members present and voting collectively: Provided that in any Synod if any eight members of one order shall so desire the votes shall be taken by orders and, if a vote be taken by orders, a majority of members of each order present and voting shall be required: Provided that no such rule or ordinance shall take effect or have any validity unless within one month after the passing of the same the Bishop shall signify his assent thereto in writing: Provided also that any such rule or ordinance to which the Bishop shall not assent may be the subject of reference to and determination by any Provincial Synod composed of the representatives of the Diocesan Synods of the State of New South Wales.

Synod may call for accounts

- 7** The Synod of each Diocese may call upon any person holding property belonging to the Church in the Diocese or in any parish thereof, or in which the Church or any such parish is in any manner interested, to render a full account of all such property, and of the manner in which the same and every part thereof is applied and disposed of.

Mode of convening Synod

- 8** Subject to any other provision to be made by the Synod of a Diocese, the Bishop shall summon to the Synod of his Diocese each clergyman licensed to a separate cure of souls therein and representatives as hereinafter provided. And for electing such representatives the Bishop of the Diocese shall require each clergyman licensed to a separate cure of souls to summon a meeting of the members of the Church of the age of eighteen years or over who are occupiers of seats in any church within his cure of souls or declare that they usually attend the regular church services in such a church, at such time within limits which may be prescribed by the Bishop in such manner and at

such place within the parish as to such clergyman may seem convenient; and every member so summoned and attending the meeting shall be entitled to vote at such election, but the clergyman summoning the meeting shall not be entitled to vote at such election save to give a casting-vote.

Conduct of meeting

- 9** The clergyman, if present, shall act as chairman of the said meeting, and so soon as six persons in addition to the chairman are assembled, the meeting may proceed to business, and the chairman shall cause a list to be made of those who are present, and add thereto the names of any who subsequently attend before the proceedings are closed, and the chairman shall cause minutes to be taken of the proceedings. And every lay member of the Church shall, before taking part in or voting at such meeting, subscribe the following declaration:

“I, the undersigned A. B., do declare that I am a member of the Church of England and not a member of any other Church.”

Representatives to be elected

- 10** Every such meeting shall, subject to any other provision to be made by the Synod of the Diocese, elect as representatives two persons of the age of eighteen years or over, each such person being a communicant of the Church.

Mode of election

- 11** In case at any such meeting the persons proposed for election exceed the number which the meeting is authorised to elect, the chairman shall take in writing the votes of the qualified persons present, each of whom may give one vote for such persons proposed as he may think fit, but not exceeding the number to be elected, and where the votes for two or more are equal, the chairman, who shall have no other vote, shall give a casting-vote in favour of either one or more of such persons as the case may require, and the chairman shall declare to the meeting the names of the persons elected.

Certificate of election

- 12** The chairman shall cause to be delivered to each person elected a certificate of his election, and shall sign the minutes of the meeting in token of their correctness, and shall forward them to the Bishop of the Diocese, together with the subscribed declarations, the lists which have been laid before the said meeting, and a certificate of the names, callings, and addresses of the persons elected to be laid before the Synod at its opening.

Vacancy in cure or absence of clergyman

- 13** If the cure be vacant, or the clergyman be absent or unable from any other cause to act, the Bishop of the Diocese shall appoint a person to perform all the functions

devolving on such clergyman under any of the five preceding sections of these constitutions.

Summoning of Chancellor and Registrar

- 14** The Bishop shall summon to the Synod as members thereof the Chancellor and the Registrar of the Diocese, who shall have the same rights, powers, and privileges as representative members, and may, also, summon such clergymen holding distinct official positions in the Diocese as the Bishop may determine: Provided that for every clergyman so summoned, a layman shall be elected as a representative member under regulations of the Synod made for the purpose.

Representation of St. Paul's College

- 15** The Warden of St. Paul's College, within the University of Sydney, shall always be summoned to the Synod of that Diocese as a clerical member thereof, and two lay members of the Church, to be elected by the council of the said College from amongst themselves, shall likewise always be summoned to such Synod as representative members thereof, and the said Warden shall cause to be delivered to each member of the said council so elected and shall also forward to the Bishop a certificate of such election.

Electing representatives for districts

- 16** When a clergyman has several districts having separate churches under his parochial charge, the Bishop may require such clergyman to summon a meeting in connection with each of such churches in accordance with the provisions of clause eight to elect one representative for each such district: Provided that no parochial district shall elect more than three representatives in the aggregate.

Declaration to be made

- 17** Each representative shall, before taking part in or voting at any Diocesan Synod, sign and deliver to the president the following declaration:

"I, the undersigned A. B., do declare that I am a communicant member of the Church of England and not a member of any other Church."

18, 19 (Repealed)

Provision for incapacity

- 20** The Synod of each Diocese may also by ordinance make provision for dealing with cases of incapacity for, or inefficiency in, the discharge of ministerial duty by clergymen licensed by the Bishop within the Diocese, and may also make provision for the apportionment of any emoluments appertaining to the office of any such clergyman between the clergyman found incapable or inefficient and his successor.

Clergyman's licence when to be withdrawn

21 The Synod of each Diocese shall have power to determine by ordinance in what cases the licence of a clergyman licensed within the Diocese may be suspended or revoked. Such licence may be suspended or revoked by the Bishop of the Diocese at a clergyman's own request, or (after opportunity given to him to show cause) in such of the said cases as the Synod shall by ordinance determine. Save as aforesaid, the licence shall not be suspended or revoked, except as a consequence of a judgment or finding of the tribunal or of some other court of competent jurisdiction.

Provision as to new Dioceses

22 The provisions of these constitutions shall, save as hereinbefore provided, be held to be binding upon any new Diocese which shall be hereafter constituted in the State.

Provincial Synod may be held

23 The Bishops and clerical and lay representatives of the Church in the several dioceses in the State of New South Wales shall meet in Provincial Synod under such articles and provisions as may have been, or may be from time to time, passed by the Provincial Synod, and assented to by all the said Dioceses. And, for the purpose of holding any session of the Provincial Synod the Bishop of Sydney as the Metropolitan Bishop shall, by writing under his hand and seal, summon the Bishop of each of the said Dioceses, and also require such Bishop to convene representatives of the Church in his Diocese at such time and place as the Metropolitan may deem fit.

24 (Repealed)

Defects and errors as to elections etc not to vitiate proceedings

25 No rule, ordinance, or determination of any Diocesan Synod, or of any Provincial Synod, shall be vitiated by reason of the non-election, or non-appointment, or non-summoning of any person necessary to be elected, or appointed, or summoned thereto, respectively, or of any informality in or respecting any such election, appointment, or summoning.

Absence etc of Bishop

26 In case of the absence from the Province of the Bishop of any Diocese, the powers by these constitutions vested in him shall be exercised by a commissary appointed by him, and in case no such commissary shall have been appointed, or the See be vacant, such powers shall be exercised by the person who shall have been appointed to administer the Diocese under the provisions of an ordinance of Synod or if no such appointment has been made by the person who shall then be the next in ecclesiastical rank or degree in the diocese, and resident therein, until the return of the Bishop or the assumption of office by his successor.

Nothing in contravention of law

27 Provided always that no rule, ordinance, or determination of any Diocesan or

Provincial Synod shall be made in contravention of any law or statute in force for the time being in the State.

Ordinances to be transmitted to the Archbishop of Canterbury

- 28** Two copies of ordinances passed by the Synod of each Diocese shall be sent by the Bishop thereof to the Metropolitan, who shall send one copy, together with all ordinances passed by the Synod of his own Diocese, and the ordinances and determinations passed by any Provincial Synod to the Primate of the Church.

Amendments

- 29** These articles and provisions may be amended by an ordinance passed by the Provincial Synod of the Church in the Province of New South Wales and adopted by the Synod of each Diocese in that Province if the amendment is ratified by, or made in accordance with, a canon of the General Synod of the Church.