

Archbishop in Council Act 2018

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No 4 of 2018

Serial Act No 256

Reprinted as at 1 July 2024 with amendments to Act No. 3/2024²

Archbishop in Council Act 2018

AN ACT

relating to the governance of the Diocese and for other purposes

BE IT ENACTED by the Archbishop, the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Melbourne in Victoria duly met in Synod according to law as follows:

Part 1 – Preliminary

1 Short title

This Act may be cited as the **Archbishop in Council Act 2018**.

2 Commencement

This Act comes into operation on 1 November 2019 except that—

- (a) at its first ordinary session of that year Synod may elect members of the Archbishop in Council constituted pursuant to section 10 of the Act; and
- (b) following that first ordinary session of 2019 and the election for the members of the Archbishop in Council, the Archbishop may appoint members to the Archbishop in Council pursuant to section 10 of the Act.

s 3 am and sub-sec (2) repealed by No. 10/2022 by Sch item 1.1; am Act No. 1/2023

3 Interpretation

In this Act, unless the context otherwise requires—

Archbishop means the Archbishop of Melbourne and includes—

- (a) a Vicar-General or Commissary¹ duly authorised to act on behalf of the holder of the office of Archbishop; and
- (b) the Administrator of the Diocese²;

Archbishop in Council means the governing body referred to in section 5.

Council member means a member of the Archbishop in Council other than the Archbishop;

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

Diocesan Corporation means the Melbourne Anglican Diocesan Corporation Ltd;

disqualified person has the meaning in section 33;

* * * * *

eligible person has the meaning in section 11;

member means a member of the Archbishop in Council;

* * * * *

¹ *Archbishopric Act 1980*, s 16.

² *Archbishopric Act 1980*, s 19.

Trust Corporation means the Melbourne Anglican Trust Corporation.

4 Purpose of the Act

The purpose of this Act is to provide for the governance of the Diocese in relation to the temporal affairs of the Diocese.

Part 2 – Functions of the Archbishop in Council

5 Establishment

There shall be a governing body known as the Archbishop in Council.

s 6(2) am Act No. 1/2023

6 Functions

- (1) Subject to the **Melbourne Anglican Diocesan Corporation Act 2015** and any other applicable Act of the Synod, the Archbishop in Council is responsible for the temporal affairs of the Diocese including setting and monitoring strategies for mission and ministry and formulating policies.
- (2) The Archbishop in Council has the other functions conferred on it by Synod.

7 Archbishop in Council to be a Diocesan council

For the purposes of the definition of "Diocesan council" in section 74(1) of the Constitution of this Church³, the Archbishop in Council is determined to be the diocesan council.

s 8 am Act No. 1/2023

8 Assent to bills for Canons of this Church

- (1) Subject to this section—

³ 'this Church' is defined in the National Constitution to mean the Anglican Church of Australia.

- (a) the power to assent to a bill under sub-sections (2) and (3) of section 28A of the Constitution of this Church is delegated to the Archbishop in Council; and
 - (b) the Archbishop in Council is permitted to assent to a bill under those sub-sections by resolution.
- (2) A resolution referred to in sub-section (1)(b)—
- (a) must state that it is necessary or desirable for the assent to be given by the Archbishop in Council before the next session of the Synod;
 - (b) must be passed either by—
 - (i) two-thirds of the Council members who are clerks and two-thirds of the Council members who are not clerks; or
 - (ii) two-thirds of the Council members present at the meeting and voting; and
 - (c) must in either case be assented to by the Archbishop.

9 Recording and publication of such a resolution

A resolution made under section 8 must be as soon as reasonably possible, and at any event within 14 days—

- (a) recorded by the Registrar in the registry as if it were an Act of the Synod;
- (b) notified to the members of the Synod by notice given electronically or in a publication generally available to members of Synod; and

- (c) made available on the Diocesan website together with a copy of the bill and any explanatory memorandum.

Part 3 – Composition and term of office

s 10 subs Act No 1/2023

10 Number and eligibility

- (1) The Archbishop in Council comprises the Archbishop and between 12 and 16 Council members.
- (2) The Council members comprise—
- (a) 12 Council members elected by Synod being—
- (i) 3 female clerks;
 - (ii) 3 male clerks;
 - (iii) 3 female lay persons; and
 - (iv) 3 male lay persons; and
- (b) not more than 4 persons appointed by the Archbishop after consultation with the Council members elected under paragraph (a) as to the need for appropriate skills, experience and diversity.
- (3) A Council member must be and remain an eligible person.

s 11 am by No 9/2022 Sch 1 cl 2 and No 1/2022 Sch 2 item 1; No 1/2023

11 Eligibility

- (1) An eligible person is a person who —
- (a) is aged 18 years or more;
 - (b) is a communicant member;

- (c) is on the electoral roll of a parish, an authorised Anglican congregation or the Cathedral or who holds a licence of the Archbishop;
 - (d) is not ineligible to be elected or appointed under section 12(3); and
 - (e) is not a disqualified person.
- (2) A person who is—
- (a) the Chancellor;
 - (b) the Deputy Chancellor;
 - (c) the Advocate of the Diocese;
 - (d) the Registrar of the Diocese
 - (e) an assistant bishop of the Diocese; or
 - (f) the Chief Executive Officer of the Diocesan Corporation—
- is not an eligible person.

s 12 am Act Nos. 1/2023, 3/2024

12 Term of office

- (1) The term of a Council member commences—
- (a) in the case of a person who is declared to have been elected following the first ordinary session of a Synod and before the first meeting of the Archbishop in Council following that declaration—on the day of the first meeting of the Archbishop in Council following that declaration; and

- (b) in any other case—on the date of their appointment or the declaration of their having been elected.
- (1A) The term of a Council member ends on the day before the day on which the Archbishop in Council first meets following the first ordinary session of each Synod.
- (2) Subject to subsection (3), a Council member whose term of office has expired is eligible for election or appointment for a further term.
- (3) A Council member who has been, or but for their resignation or disqualification would have been, a Council member for 3 consecutive terms is not eligible to be elected or appointed as a Council member until the first ordinary session of the Synod that next follows the Synod at which they became not eligible under this subsection.
- (4) For the purpose of subsection (1), a person who under section 16 fills a casual vacancy is taken to have been elected on the date they fill that vacancy.

s 13 subs by Act No 1/2023

13 Automatic vacancy

The office of a Council member becomes vacant if—

- (a) they resign by notice in writing given to the Archbishop;
- (b) within one month of having been appointed or elected, they have not become a member of the Diocesan Corporation;
- (c) they cease to be a member of the Diocesan Corporation;

- (e) they cease to be a director of the Diocesan Corporation;
- (f) they cease to be an eligible person;
- (h) they complete any applicable term of office;
- (i) they die; or
- (j) they become a disqualified person.

s 14 am Act No. 1/2023

14 Absence and vacancy

If any Council member be absent without the permission of the Archbishop in Council from three consecutive ordinary meetings of the Archbishop in Council the office of that member may be declared vacant by the Archbishop in Council.

s 15 am Act No. 1/2023

15 Removal from office

- (1) An elected Council member may be removed from office by resolution of the Synod.
- (2) An appointed Council member may be removed from office by the Archbishop on one month's written notice.

s 16 am Act No. 1/2023

16 Filling of Vacancies

- (1) A vacancy in the office of an elected Council member may be filled for the remainder of their term by an eligible person, in accordance with section 21 of the **Regulation of Elections Act 1980** and regulations under that Act.

- (2) If a vacancy in the office of an elected member cannot be filled under sub-section (1), the vacancy is to be filled for the remainder of the term by an election at or before the next ordinary session of Synod.
- (3) A vacancy in the office of an appointed Council member may be filled for the remainder of their term by an eligible person.

Part 4 – Proceedings of the Archbishop in Council

s 17 am Act No 1/2023

17 Meetings

- (1) The Archbishop in Council may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (2) The simultaneous linking together by telephone or other electronic means of a sufficient number of the Archbishop in Council to constitute a quorum constitutes a meeting of the Archbishop in Council.
- (3) All the provisions in this Act relating to meetings of the Archbishop in Council apply, as far as they can and with any necessary changes, to meetings of the Archbishop in Council by telephone or other electronic means.
- (4) A person who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (5) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as either the Archbishop or one Council member involved was at that place for the duration of the meeting.
- (6) If, before or during the meeting, a technical difficulty occurs which means that one or more of the Archbishop and the members of the Council cease to participate, the chair may adjourn the meeting until the difficulty is

remedied or may, if a quorum remains present, continue with the meeting.

s 18 am Act No 1/2023

18 Convening meetings

- (1) The Archbishop must convene a meeting of the Archbishop in Council at least six times each year and may convene a meeting of the Archbishop in Council at other times at his or her discretion.
- (2) Five Council members may bring a matter before the Archbishop in Council by written notice given to the Archbishop and the Secretary.
- (3) The Secretary must place a matter of which written notice has been received under subsection (2) on the business paper of the next meeting of the Archbishop in Council that is more than 14 days after the day on which they received the notice.
- (4) If a matter is brought before the Archbishop in Council under subsection (2), the terms of the notice and the name of each Council member must be recorded in the minutes.

s 19 am Act No 1/2023

19 Notice of meetings

- (1) Subject to this Act, notice of a meeting of the Archbishop in Council must be given to each person who is at the time of giving the notice a Council member or an office holder entitled to attend.

- (2) A notice of a meeting of the Archbishop in Council—
 - (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and
 - (c) may be given in person or by post, telephone, fax or other electronic means.
- (3) A Council member or an office holder entitled to attend may waive notice of a meeting of the Archbishop in Council by notifying the Secretary to that effect in person or by post, telephone, fax or other electronic means.
- (4) The non-receipt of notice of a meeting of the Archbishop in Council by, or a failure to give notice of a meeting of the Archbishop in Council to, a Council member or an office holder entitled to attend does not invalidate anything done or resolution passed at the meeting if—
 - (a) the non-receipt or failure occurred by accident or error;
 - (b) the person has waived or waives notice of that meeting under the preceding subsection before or after the meeting;
 - (c) the person has notified or notifies the Secretary of their agreement to that thing or resolution personally or by post, telephone, fax or other electronic means before or after the meeting; or
 - (d) the person attended the meeting.

- (5) Attendance by a person at a meeting of the Archbishop in Council waives any objection which that person may have to a failure to give notice of the meeting.

20 An assistant bishop of the Diocese may attend and speak

An assistant bishop of the Diocese is entitled to attend and speak at meetings of the Archbishop in Council but may not vote.

s 21 am by No. 10/2022 Sch 1 cl 1.2; Act No 1/2023

21 Certain other office holders may attend and speak

The following are entitled to attend and speak at meetings of the Archbishop in Council but may not vote—

- (a) if not a Council member, the Dean of Melbourne;
- (b) the Chancellor;
- (c) the Deputy Chancellor;
- (d) the Advocate; and
- (e) the Registrar of the Diocese.

22 Other attendees may attend and speak

- (1) The Archbishop in Council may invite any other person to attend and speak at meetings of the Archbishop in Council.
- (2) The Secretary is entitled to attend and with the leave of the meeting, speak at meetings of the Archbishop in Council but may not vote.

s 23 am Act No 1/2023

23 Quorum at meetings

- (1) No business may be transacted at a meeting of the Archbishop in Council unless a quorum is present at the time the business is dealt with.
- (2) A quorum consists of the Archbishop and one third of the Council members.
- (3) If there is a vacancy in the office of a Council member, then the remaining Council members may act.

s 24 am Act No 1/2023

24 Chair of meetings

- (1) The Archbishop must preside as chair at each meeting of the Archbishop in Council if present within 10 minutes after the time appointed for the meeting and willing to act.
- (2) If the Archbishop⁴ is not so present or willing to act, the Council members present must elect one of their number as chair of the meeting.

s 25 am Act No 1/2023

25 Decisions of the Archbishop in Council

- (1) A meeting of Archbishop in Council at which a quorum is present may exercise all the powers and discretions

⁴ Note that “Archbishop” has the wider definition given in s3(1) above.

vested in or exercisable by the Archbishop in Council under this Act.

- (2) Except where the Synod by legislation has authorised a decision on a particular matter or type of matter to be made by the Council of the Diocese or Council members meeting when the Archbishop is not present, questions arising at a meeting of the Archbishop in Council must be decided both by:
- (a) the vote of the Archbishop; and
 - (b) a majority of votes cast by the Council members present.

Such a decision is for all purposes a decision of the Archbishop in Council.

- (3) Where the votes of the Council members present on a proposed resolution are equal the chair of the meeting does not have a second or casting vote.
- (4) Where the Synod by legislation has authorised a decision on a particular matter or type of matter to be made by the Council of the Diocese or Council members meeting when the Archbishop is not present, the decision must be made by the vote of the majority of votes cast by those Council members present.

s 26 am Act No 1/2023

26 Written resolutions

- (1) A resolution is taken to have been passed by a meeting of the Archbishop in Council if the Archbishop and a majority of the Council members excepting any person—
 - (a) on leave of absence approved by the Archbishop in Council; or
 - (b) who disqualifies himself or herself from considering the resolution in question; or
 - (c) who would be prohibited by this Act from voting on the resolution in question—sign or consent to a written resolution of which at least 48 hours notice in writing is given.

- (2) A member may consent to a resolution by—
 - (a) signing the document containing the resolution (or a copy of that document);
 - (b) giving to the Secretary a written notice (including by fax or other electronic means) addressed to the Secretary or to the Archbishop signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (c) telephoning the Secretary or the Archbishop and signifying assent to the resolution and clearly identifying its terms.

s 27 am Act No 1/2023

27 Delegation

The Archbishop in Council may delegate any portion of its powers to any committee consisting of persons of whom at least two are Council members either with or without an obligation to report to the Archbishop in Council but the powers so delegated shall be strictly defined and shall be revocable by the Archbishop in Council at any time.

s 28 substituted by Act no 1/2023

28 Diocesan conflicts of interest policy and procedures

- (1) The Archbishop in Council may establish a policy or procedures for the identification and management of actual, potential or perceived conflicts of interest.
- (2) Policies and procedures established under this section may be expressed to apply to any of—
 - (a) the Archbishop in Council, its members and those entitled to be in attendance and speak at its meetings;
 - (b) the Diocesan Corporation, its directors and officers and those entitled to be in attendance and speak at its meetings;
 - (c) the Trust Corporation and the Corporation Trustees and those entitled to be in attendance and speak at its meetings; and
 - (d) the members of the Cathedral Chapter.
- (3) Policies and procedures established under this section must at least satisfy any requirements and standards in—

- (a) the Corporations Act 2001 (*Cth*);
- (b) Governance Standards or other similar standards set by the Australian Charities and Not-for-profits Commission; and
- (c) any other law of the Commonwealth of Australia or the State of Victoria—

and must stipulate that a person who has an actual, potential or perceived conflict of interest in relation to a matter may not vote on a motion relating to it except where voting on such a matter is permitted by an Act of this Synod.

- (4) The Archbishop in Council, its members and those entitled to be in attendance and speak at its meetings must adhere to the requirements of any policy or procedures expressed to apply to them under subsection (2).

s 29 repealed by Act no 1/2023

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s 30 subs by Act no 1/2023

30 Members of Archbishop in Council may contract with the corporation and hold other offices

- (1) The Archbishop, a Council member or a committee member is not disqualified from contracting or entering into an arrangement with the Trust Corporation or the Diocesan Corporation as vendor, purchaser or in another capacity, merely because they hold office as Archbishop,

Council member or committee member or because of the fiduciary obligations arising from that office.

- (2) A contract or arrangement entered into by or on behalf of the Trust Corporation or the Diocesan Corporation in which the Archbishop, a Council member or a committee member is in any way interested is not invalid or voidable merely because that person holds that office or because of the fiduciary obligations arising from that office.
- (3) The Archbishop, a Council member or committee member who is interested in an arrangement involving the Trust Corporation or the Diocesan Corporation is not liable to account to the Trust Corporation or the Diocesan Corporation for any profit realised under the arrangement merely because they hold that office or because of the fiduciary obligations arising from that office, if they comply with—
 - (a) the applicable disclosure requirements under any policy, procedures or other requirements made by the Archbishop in Council; and
 - (b) the requirements of this Act—
regarding that interest.
- (4) The Archbishop, a Council member or committee member may be or become—
 - (a) a director of;
 - (b) another officer of; or

(c) interested in—

the Diocesan Corporation or a related body corporate or other body corporate associated with the Diocesan Corporation, and need not account for remuneration or other benefits the person receives as a director or officer of, or from having an interest in, that body corporate.

s 31 am Act No 1/2023

31 Minutes of meetings and minutes of resolutions

(1) The Archbishop in Council must ensure that—

(a) minutes of proceedings; and

(b) resolutions of meetings of the Archbishop in Council (including committees of the Archbishop in Council)—

are recorded in books kept for the purpose, within a reasonable period after the relevant meeting is held.

(2) The Archbishop in Council must ensure that minutes of resolutions passed by the Archbishop in Council (and committees of the Archbishop in Council) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.

(3) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

32 The Secretary

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

Part 5 – Disqualification

s 33 am Act No. 1/2023

33 Disqualification from holding office as a Council member

- (1) Subject to subsection (3) a Council member who is—
- (a) an undischarged bankrupt; or
 - (b) a person who has been convicted of an offence punishable by more than 5 years imprisonment; or
 - (c) permanently or for a period of more than 12 months incapable to a substantial degree by reason of mental incapacity or physical disability to discharge the duties of the role office or position; or
 - (d) a member of the immediate family of another Council member or of the Archbishop or of a person entitled to be present pursuant to section 20 or section 21—

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

- (2) A Council member who is subject to a prohibition order under the **Professional Standards Act 2009** or the **Professional Standards Uniform Act 2016** may not hold office as Council member if they are prohibited from holding or carrying out that office under that Act, and that person is a disqualified person to the extent, but only to the extent, of that prohibition.

Part 6 heading am Act No. 1/2023

Part 6 – Reports and records

s 34 heading am Act No. 1/2023

34 Accounts and annual report to Synod

- (1) The Archbishop must in every session of the Synod within four days after it has met lay statements before it in accordance with this section.
- (2) A statement must be approved by the Archbishop in Council and must—
 - (a) include a statement of all acts done by the Archbishop in Council during that year⁵;
 - (b) report on how the functions given to the Archbishop in Council by Acts of the Synod have been discharged;
 - (c) report on acts done by the Archbishop in Council in relation to matters in which it has been directed or requested by the Synod to act; and
 - (d) report on acts done by the Archbishop in Council to formulate policies and to ensure their implementation.
- (3) A statement must be approved by the board of directors of the Diocesan Corporation and must—
 - (a) report on how the functions given to the Diocesan Corporation have been discharged;

⁵ See also the *Financial Governance Act 2018*, ss 8(1)(a) and 12(1).

- (b) report on acts done by the Diocesan Corporation in relation to matters in which it has been directed or requested by the Synod to act; and
- (c) report on acts done by the Diocesan Corporation to formulate policies and to ensure their implementation.

s 34A ins Act No. 1/2023

34A Information to be published by the Archbishop in Council

The Archbishop in Council must make regulations requiring that there be published on the Diocesan website information in relation to those holding offices, roles and positions in the Diocese and statistics and other matters relevant to parishes and Authorised Anglican Congregations, including—

- (a) the clerical and lay officers of the diocese;
- (b) active licensed clergy with their current and former ecclesiastical appointments;
- (c) extra-diocesan clergy permitted to officiate in the diocese;
- (d) clergy no longer licensed but whose orders are recognised by the diocese;
- (e) lists of diocesan committees and their members;
- (f) information about St Paul's Cathedral;
- (g) organisation charts for areas of episcopal care, archdeaconries, area deaneries, parishes and authorised Anglican congregations;

- (h) lists of parishes and authorised Anglican congregations with the names of their principal office bearers and Synod representatives;
- (i) parish statistics; and
- (j) a synopsis of the proceedings of Synod including the text of legislation enacted.

s 34B ins Act No. 1/2023

34B Review of 2023 governance changes

- (1) The Archbishop in Council must during 2027 commence a review of the changes in Diocesan governance effected by and resulting from the **Diocesan Governance Legislation Amendment Act 2023**.
- (2) A report on the outcomes of the review under this section must be tabled at the first ordinary session of Synod after 1 July 2028.

Part 7 – Miscellaneous matters

s 35(1) subs Act No 1/2023

35 Validity of acts

- (1) An act done by the Archbishop in Council or by a person acting as a Council member, or by a meeting of the Archbishop in Council, or by a meeting of the Council of the Diocese is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person or the Archbishop in Council or the Council of the Diocese when the act was done:
 - (a) there being any vacancy in the number of Council members at the time of such proceeding;
 - (b) a defect in the appointment of the person as a Council member;
 - (c) the person being disqualified as a Council member or having vacated office; or
 - (d) the person not being entitled to vote.

- (2) An act done by a committee of the Archbishop in Council or by any person acting as a committee member, or by a meeting of a committee of the Archbishop in Council, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person or committee when the act was done:
 - (a) there being any vacancy in the number of committee members at the time of such proceeding;
 - (b) a defect in the appointment of the person as a member;

- (c) the person being disqualified as a member or having vacated office;
- (d) a defect in the appointment of the person as a committee member;
- (e) the person being disqualified as a committee member or having vacated office; or
- (f) the person not being entitled to vote.

36 Archbishop in Council may make amend or repeal regulations

- (1) The Archbishop in Council may by resolution from time to time make amend or repeal regulations, not inconsistent with the provisions of this Act—
 - (a) for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
 - (b) providing for records or forms arising out of or incidental to the operation of this Act.
- (2) Regulations made under this Act may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance; and
 - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body.

ACTS OF THE ANGLICAN DIOCESE OF MELBOURNE
Archbishop in Council Act 2018

NOTES

1. The Archbishop in Council Act 2018 was passed on 24 October 2018 and assented to on 24 October 2018 came into operation on 1 November 2019 except that—

- (a) at its first ordinary session of that year Synod may elect members of the Archbishop in Council constituted pursuant to section 10 of the Act; and
- (b) following that first ordinary session of 2019 and the election for the members of the Archbishop in Council, the Archbishop may appoint members to the Archbishop in Council pursuant to section 10 of the Act.

2. This reprint incorporates the amendments made to the **Archbishop in Council Act 2018** by the following Acts:

Name	No.	Date of Assent	Date of Commencement
<i>Interpretation of Diocesan Legislation Amendment (Communicant member) Act 2022</i>	9/2022	18 October 2022	18 October 2022
<i>Diocesan Acts (Revisions and Repeals) Act</i>	10/2022	21 December 2022	21 December 2022
<i>Clergy Act</i>	1/2022	18 October 2022	1 March 2023
<i>Diocesan Governance Legislation Amendment Act 2023</i>	1/2023	24 October 2023	All except ss 8, 10(1) and 11, 24.10.2023; remaining provisions 14.12.2023
<i>Archbishopric Legislation Amendment Act 2024</i>	2/2024	4 June 2024	4 June 2024
<i>Statute Law Amendment Bill 2024</i>	3/2024	4 June 2024	4 June 2024

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