

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 IX. - 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.
- (2A)²⁶ A diocesan tribunal shall also have and always be deemed to have had jurisdiction to hear a charge relating to an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for twelve months or upwards in respect of a member of clergy if:-
- (a) the act of the member of clergy which gave rise to the charge occurred in the diocese;
 - (b) the member of clergy was licensed by the bishop of the diocese or was resident in the diocese within two years before the charge was laid; or
 - (c) the member of clergy is in prison as a convicted person at the time the charge was laid, but within two years before such imprisonment was licensed by the bishop of the diocese or was ordinarily resident therein.
- (2B) Where a person has been found guilty of an offence by a diocesan tribunal in the exercise of its jurisdiction under sub-section (2A), the bishop of the diocese shall consult as to penalty with the bishop of the diocese by whom the person is licensed or in which the person resides at the time of the finding and no penalty may be imposed to which the latter bishop does not express concurrence.
- (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

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Sub-sections (2A) and (2B) added by Canon 10, 1998 as amended by Canon 8, 2001, both of which came into effect on 16 June 2003.

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 an 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 there from to the provincial tribunal.

Every appeal to a provincial tribunal shall be by way of re-hearing.

- (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.

- 56.²⁷ (1) Subject to this section, the Special Tribunal shall consist of three persons being:
 - (a) a person qualified to be a lay member of the Appellate Tribunal who shall be the President of the Special Tribunal;
 - (b) a diocesan bishop; and

²⁷ S.56 extensively amended by Canon 14, 2001 which came into effect on 16 June 2003.

- (c) a priest of at least seven years' standing.
- (2) No person by or against whom proceedings in the Tribunal are brought shall be a member of the Special Tribunal.
- (3) Members of the Special Tribunal shall be elected by or shall be appointed from a panel of persons elected by General Synod as prescribed by canon.
- (4) The period of office of members of the Tribunal shall be as prescribed by canon.
- (5) Until the Synod shall by canon otherwise prescribe:
 - (a) the members of the Special Tribunal shall be appointed by the Primate on the nomination of the Standing Committee to hold office for up to five years;
 - (b) in the absence of a member from Australia or in the event of the inability of a member to act, the Primate may appoint a person eligible to be appointed as that member to act in place of that member during the absence or inability. Such acting member shall continue to act in respect of any charge whose hearing commences whilst he or she is Acting President or member;
- (6) The Special Tribunal shall have jurisdiction to hear and determine charges against:
 - (a) any member of the House of Bishops; and
 - (b) any bishop assistant to the Primate in his capacity as Primate

of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by canon
- (7) An appeal shall lie from the determination of the Special Tribunal to the Appellate Tribunal, subject to any limitation as may be prescribed by canon.
- (8) The provisions of this section and of sections 60 and 61 as in force before the date of the coming into effect of the Constitution Alteration (Special Tribunal) Canon 2001 shall continue to apply to any proceedings commenced in the Special Tribunal before that date.²⁸
- 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

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The Constitution Alteration (Special Tribunal) Canon 2001 came into effect on 16 June 2003.

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 Territory of Australia or a Justice or Judge of a Court prescribed by canon of the General Synod or is or has been a practising barrister or solicitor, of at least ten years' standing of the Supreme Court of a State or Territory.²⁹

- (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 there from 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 deliberate 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 sub-section 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 or 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)³⁰ 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:
- (a) deposition from orders;
 - (b) prohibition from functioning;
 - (c) removal from office;
 - (d) rebuke.

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 or is disqualified from acting or considers that he should disqualify himself from acting, 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 sub-section 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 sub-section 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 the recommendation or sentence but shall not extend to a ruling of a tribunal of an interlocutory nature.
- 61³¹. (1) Where a charge has been promoted 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 or for some lesser time, 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.
- (2) The bishop of a diocese may suspend a person referred to in Section 54(2) from the duties of his office where -
- (a) the bishop or some other person authorised by ordinance proposes to promote a charge against the person;
 - (b) the charge will not allege a breach of faith, ritual or ceremonial; and
 - (c) the charge relates to an offence that is punishable by imprisonment for twelve months or upwards of which the person has been charged or convicted or in respect of which the bishop has received a report from a lay person qualified to be a member of the Appellate Tribunal stating that there is a prima facie case of the person having committed the offence.
- (3) Suspension under subsection (2) must be by written instrument signed by the bishop, served on the person to be suspended, and which states -
- (a) the intention of the bishop or any other authorised person to promote the charge;
 - (b) the conduct complained of; and
 - (c) the period of suspension.
- The period of suspension may not exceed 28 days from the date of service on the person to be suspended. Where -
- (d) a person has been suspended under subsection (2);
 - (e) the period of suspension has elapsed; and
 - (f) a charge has not been promoted during the period of suspension;

³¹ S.61 extensively amended by Canon 13, 2001 which came into effect on 16 June 2003, and further amended by Canon 14, 2001 which also came into effect on 16 June 2003.

no further suspension is possible under subsection (2) in relation to the conduct specified in the instrument.

- (4) If during the period of suspension referred to in subsection (2) the bishop or other authorised person promotes the charge the suspension of the person shall continue until the first meeting of the diocesan council thereafter.
- (5) The bishop of a diocese may revoke the suspension of a person suspended by him under this section and may do so at any time during the period of suspension.
- (6) Suspension of a person from the duties of office under this section does not deprive that person of the emoluments appertaining to that office.

61A³² Where a charge has been promoted against the bishop of a diocese, the President of the Special Tribunal with the concurrence of the Diocesan Council, meeting when the bishop is not present, may, after considering any submission from the bishop, suspend the bishop from the duties of office until the determination of such charge or for some lesser time. If such suspension is made and is from a paid office, or if the person voluntarily stands aside from performing the duties of office, the person shall be deemed to be on paid leave and to be absent from the State or Territory in which the duties of office would otherwise be performed.

- 62.³³
- (1) 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.
 - (2) In any proceeding before a tribunal, the tribunal shall admit as evidence that a person charged has been convicted of an offence, and proof of such conviction shall be evidence of the facts giving rise to such conviction. This provision shall not apply if such conviction has been quashed or set aside or in respect of which a pardon has been given.
 - (3) In any proceedings before a tribunal, the transcript of any criminal proceedings in which the member of clergy the subject of a charge before the tribunal was a party shall be admitted as evidence in the same way as if the persons whose evidence appears in the transcript had given evidence in person before the tribunal. Provided that, the tribunal may exclude the whole or any part of such evidence should it consider that admission of the same would be likely to cause a serious injustice to the member of clergy charged.

³² S.61A inserted by Canon 14, 2001 which came into effect on 16 June 2003.

³³ S.62 amended by the addition of sub-sections (2) and (3) by Canon 10, 1998 as amended by Canon 8, 2001, both of which came into effect on 16 June 2003.

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 X. - THE CORPORATE TRUSTEES

64. (1) There shall be a body corporate to be known as "The Anglican Church of Australia Trust Corporation"³⁴ 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.

³⁴ The name of the Corporation was changed from The Church of England in Australia Trust Corporation by Canon 16, 1966 which came into effect on 24 August 1981.