

## THE CHURCH OF ENGLAND ACT OF 1895

### An Act to Make Better Provision for the Management of the Property and Affairs of the Church of England in Queensland (Assented to 30 October 1895)

Whereas by a consensual compact made by and between the Bishop, Clergy and Laity of the Church of England (then called the United Church of England and Ireland) in the Diocese of Brisbane, on the eighteenth day of June, one thousand eight hundred and sixty-eight, a Constitution was agreed to for the management and good government of the said Church in the said Diocese: And whereas the original instrument containing the said consensual compact has been lost or destroyed. And whereas by another consensual compact made by and between the Bishop, Clergy and Laity of the said Church in the Diocese of Rockhampton on the twenty-ninth day of June, one thousand eight hundred and ninety-three, a constitution was agreed to for the management and good government of the said Church in the said last-mentioned Diocese: And whereas by Letters Patent, dated the second day of November, one thousand eight hundred and seventy, and issued under the hand of the Governor for the time being and the Seal of the Colony of Queensland by virtue of the provisions of "The Religious Educational and Charitable Institutions Act of 1861", certain persons holding and exercising certain offices in the said Church in the said Diocese of Brisbane were constituted a body corporate by the name of "The Corporation of the Synod of the Diocese of Brisbane": And whereas Acts of Parliament have from time to time been passed for the purpose of regulating the management of the property and affairs of the said Church, and it is desirable to make better provision for this purpose, and to preserve records and facilitate proof in manner hereinafter provided of consensual compacts, acts, Canons and resolutions made or passed by the Bishops, Clergy and Laity of the said Church: 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 Queensland in Parliament Assembled, and by the authority of the same, as follows:-

1. In this Act, unless the context otherwise indicates, the following terms have and include the meanings set against the same respectively, that is to say-

"The Church" - The branch of the Church of England in Queensland;

"The Diocese of Brisbane" - That part of the Colony of Queensland which is situated to the south of the southern boundaries of the Central District as defined in "The Real Property (Local Registries) Act of 1887", together with such other territory as may from time to time be assigned to such Diocese, or so much thereof as for the time being has not been assigned to any other Diocese;

"The Diocese of Rockhampton" - So much of the Colony of Queensland as is situated between the twenty-second parallel of south latitude and the southern boundaries of the Central District aforesaid, together with such other territory as may from time to time be assigned to such Diocese, or so much thereof as for the time being has not been assigned to any other Diocese;

"Synod" - The Bishop, Clergy and Representatives of the Laity for the time being constituting the governing body for the management of the affairs of the Church in the Diocese for which such governing body is constituted in pursuance of any consensual compact;

"Property" - All property, real or personal, including money or securities for money.

2. The constitution contained in the First Schedule to this Act shall be deemed and taken to be a true copy of the consensual compact firstly hereinbefore recited and a copy of this Act printed by the Government Printer shall be received as sufficient evidence of the

contents of such consensual compact, and of the same having been duly made by the Bishop, Clergy and Laity of the Church in the Diocese of Brisbane.

3. From and after the passing of this Act the Corporation constituted by the Letters Patent hereinbefore recited (and hereinafter called the old Corporation) shall be dissolved, and thereupon the Synod of the Diocese of Brisbane (hereinafter called "the new Corporation") shall be constituted a Corporation under the provisions of this Act by the name of "The Corporation of the Synod of the Diocese of Brisbane".
4. All property which at the time of the passing of this Act was vested in the old Corporation shall, from and immediately after the passing of this Act, and without any conveyance, transfer, assignment, or other assurance thereof, be vested in the new Corporation, subject however to such trusts, conditions, charges and encumbrances as the same was subject to immediately before such vesting as aforesaid.
5. All mortgages, liens, securities, bonds, guarantees, agreements, contracts, wills, deeds, documents, instruments, canons, and writings whatsoever relating to any property or affecting any rights or interests therein, and giving a right to or against any person, and in which the name of the old Corporation appears and which were in existence at the time of the passing of this Act shall immediately upon the passing of this Act be read and construed as if the name of the new Corporation appeared therein in the place of the name of the old Corporation, and shall operate and take effect accordingly, provided that any debtor of the old Corporation shall be entitled to set off any debt against the new Corporation which but for the passing of this Act he would have been entitled to set off against the old Corporation.
6. All actions, demands, caveats, notices, or other proceedings commenced, made, entered, or given by to on behalf of or against the old Corporation previous to the passing of this Act may be prosecuted, acted upon, or otherwise dealt with by or in the name of or against the new Corporation as if such actions, caveats, notices and other proceedings had been commenced, made, entered or given by to on behalf of or against the new Corporation and the benefit or burden of any decree, judgment order, verdict, award, demand, caveat, notice, or proceedings to which the old Corporation was at the passing of this Act entitled or subject shall ensure to or be binding upon the new Corporation.
7. As soon as conveniently may be after the passing of this Act the consensual compact secondly hereinbefore recited shall be recorded under the provision of this Act, and thereupon the Synod of the Diocese of Rockhampton shall be constituted a Corporation under the provisions of this Act by the name of "The Corporation of the Synod of the Diocese of Rockhampton".
8. Any consensual compact, whether made before or after the passing of this Act, and in pursuance whereof a Synod other than those hereinbefore mentioned has been or may hereafter be constituted in any Diocese may at any time hereafter be recorded in manner aforesaid, and thereupon such Synod shall be constituted a Corporation under the provisions of this Act by the name of "The Corporation of the Synod of the Diocese of (name of Diocese)":

Provided that no such consensual compact shall be recorded under the provisions of this Act except in pursuance of a resolution passed by such Synod.

Every Synod constituted a Corporation under the provisions of this Act shall be a body corporate with perpetual succession and a common seal and subject to the provisions of this Act may take, hold, lease, mortgage, charge, alienate, and otherwise deal with any property, and sue and be sued in its corporate name, and in all other respects shall have and enjoy all rights and privileges usually incidental or appertaining to a body corporate:

Provided that for the performance of any of its functions as such body corporate as aforesaid, the Synod may act by any committee, officers, persons, or other agents duly authorised in that behalf in accordance with the provisions of the constitutions, acts, canons, and resolutions of the Synod for the time being in force. And any person making or permitting to be made any transfer or payment bona fide in reliance on any instrument to which the corporate Seal of the Synod is affixed shall be indemnified and protected in respect of such transfer or payment notwithstanding any defect in or other circumstance affecting the execution of such instrument

10. When any property is vested in any person or persons as trustee or trustees for the Church, or for the holder of any office therein in any Diocese the Synod whereof has been constituted a Corporation under the provisions of this Act, such trustee or trustees, or a majority of them, may if they think fit transfer such property to the Synod upon the trusts to which the same is subject.
11. If any property which is by virtue of the next preceding section authorised to be transferred to the Synod of a Diocese cannot be so transferred by reason of any disability affecting any trustee thereof, or his absence from the Colony, or the death of a sole trustee thereof, the Bishop of the Diocese may give notice of his intention to join in executing, or to execute any transfer which such trustee could have executed if he had been alive and present in the Colony and not subject to any such disability as aforesaid.  
  
Such notice shall be published in the "Gazette" and in some newspaper circulating in the district in which such property is situated, and if within one month from the publication of such notice no proceedings be taken by a majority of the persons in whom such property is vested, the Bishop may join in executing or may execute such transfer accordingly.
12. Every such transfer, as in the next two preceding sections mentioned, shall be as effectual as if the same had been duly executed by all persons in whom such property was vested immediately before the execution thereof, and shall operate as a discharge to such persons from the duties of the trust.
13. All property which is hereby or shall hereafter be vested in or in any manner acquired by any Synod constituted a Corporation under the provisions of this Act shall, so far as the same is subject to any express trusts created by the original donor thereof, or declared or contained in any Act of Parliament in which such property is specially mentioned, be held, managed and dealt with by such Synod in conformity with such trusts and shall, so far as the same is not subject to any such trusts as aforesaid, or so far as any such trusts shall not extend, be held and managed, and may be mortgaged, charged, alienated, or otherwise dealt with and disposed of in such manner as the Synod or any committee to which the Synod may delegate its function in that behalf may from time to time direct, and all property so vested in such Synod shall, as to the management thereof, be subject to the acts, canons and resolutions of the Synod for the time being in force and applicable thereto, and subject as aforesaid, all moneys in respect of any sale, mortgage, or lease of such property shall be applied for such purposes and generally in such manner for the benefit of the Church as the Synod or any such committee as aforesaid may from time to time direct.
14. No act, canon, or resolution made or passed by any Synod constituted a Corporation under the provisions of this Act, whether before or after its incorporation, shall be effectual unless the same or a copy thereof certified by the Bishop of the Diocese to which such Synod belongs, be recorded under the provisions of this Act within a period of three months from the date of the making or passing thereof or the incorporation of such Synod, whichever date shall last happen, but when so recorded the same shall take effect from the date of the making or passing thereof.

15. Any document recorded under the provisions of this Act shall be so recorded by filing the same at the office of the Supreme Court nearest to the See of the Bishop of the Diocese to which such document relates, and the Registrar of the said Court and other officers in charge of the records thereof are hereby authorised and required to file all such documents in accordance with the provisions of this Act.
16. A copy of the whole or any part of any consensual compact, act, canon, or resolution recorded under the provisions of this Act, certified by the Registrar or other officer in charge thereof, shall be received as sufficient evidence of the contents of such consensual compact, act, canon, or resolution and of the same having been duly made or passed, and no consensual compact, act, canon, or resolution recorded under the provisions of this Act shall be held to be invalid by reason only of any irregularity or informality in the convening of the Synod by which the same purports to have been made or passed, or in the election or summoning of any member of such Synod, or by reason of the absence of any member of such Synod who may have been elected or summoned thereto.
17. Nothing in this Act contained shall give any validity to any consensual compact, act, canon, or resolution which contravenes any law or statute now or hereafter to be in force.

And save as herein otherwise expressly provided, nothing in this Act contained shall prejudice or affect the power or authority of the Synod of any Diocese to make, pass, amend and repeal any consensual compact, act, canon, or resolution binding on the Bishop, Clergy and Laity of the Church in such Diocese for the enforcing of discipline in the Church, the appointment deposition, deprivation or removal of any person bearing office therein, of whatever order or degrees, the alteration of the boundaries of the Diocese, the disposal and management of the property of the Church, and the convenient and orderly regulation of the affairs and interests of the Church in matters relating to and affecting only the Church and the officers and members thereof.

18. The Acts specified in the Second Schedule to this Act, are hereby repealed to the extent specified in the third column to such Schedule.

But such repeal shall not affect the past operation of the repealed enactments, or of any of them, or save as herein otherwise expressly provided any right which at the passing of this Act has been acquired and is being exercised under the authority thereof respectively.

19. This Act may be cited as "The Church of England Act of 1895".

## FIRST SCHEDULE.

### Constitution

1. The Constitution for associating together as a Branch of the United Church of England and Ireland, the members of the said Church resident in the Diocese of Brisbane, in the Colony of Queensland, agreed to at a Synod of the Bishop, the Clergy and Laity of the said Diocese, assembled in the city of Brisbane, this eighteenth day of June, one thousand eight hundred and sixty-eight.

In the name of the Father, and of the Son, and of the Holy Ghost. Amen.

Whereas it is desirable that the members of the United Church of England and Ireland in the Diocese of Brisbane should be associated together as a Branch of the said United Church, and that a representative body should be constituted for the government of the same: And whereas, until due provision shall be made in that behalf by competent authority, it is desirable that the members of the said Church should so far as they lawfully may, associate themselves together by voluntary compact, as a Branch of the said United

Church for the ordering of the affairs, the management of the property, the promotion of the discipline of the members thereof, and for the inculcation and maintenance of sound doctrine and true religion throughout the said Diocese to the glory of Almighty God, and the edification and increase of the Church of Christ: And whereas the Bishop, the Clergy and the Laity by their representatives have met together to determine the fundamental provisions on which the members of such Branch of the said Church shall be thus associated together, and for the purposes of deciding on the Constitution and defining the powers and jurisdiction of the governing body of such Branch of the said Church, and of prescribing the terms and conditions on which the property of such Branch of the said Church shall be held and administered:

Now, therefore, the said Bishop, Clergy and Laity in Synod assembled do solemnly declare and establish as follows:-

### I - FUNDAMENTAL PROVISIONS.

3. This Branch of the United Church of England and Ireland in the Diocese of Brisbane, doth hold and maintain the doctrine and sacraments of Christ, as the Lord hath commanded, and as the said United Church of England and Ireland doth receive the same, together with the Holy Scriptures and the book known as 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 bishops, priests and deacons, and also - the articles agreed upon by the archbishops and bishops of both provinces and the whole clergy in the convocation holden at London, in the year one thousand five hundred and sixty-two, And the Synod hereinafter constituted for the government of this branch of the said Church, shall also hold and maintain the said doctrine and sacraments of Christ, and all and every of the said Scriptures books and articles hereinbefore enumerated,
4. Provided always, that nothing herein contained shall prevent the said Synod from accepting such alteration of the abovenamed matters, books and formularies as may from time to time be adopted by the said United Church of England and Ireland.
5. Provided also, that in case any manner of question or dispute shall arise, as touching the interpretation or meaning of any of the aforementioned matters, doctrines, books, formularies, or articles, or any part or portion of them, such question or dispute shall be decided in conformity with any judgments, orders and decrees relative thereto, given or made in any Ecclesiastical Court, or any Court of Law in Great Britain, or any Judicial Committee of the Privy Council,

And the said Bishop, Clergy and Laity do further declare and establish as follows:-

6. There shall be a governing body for the management of the affairs of the said Church, to be called the Synod of the Branch of the United Church of England and Ireland, in the Diocese of Brisbane, in the Colony of Queensland, which shall consist of three distinct orders-viz., the Bishop, the Clergy and the Laity the consent of all of which orders, by their majorities, shall be necessary to all acts binding upon the Synod, and upon all persons recognising its authority.
7. The foregoing provisions shall be deemed fundamental provisions.

### II - PROVISIONS NOT FUNDAMENTAL.

8. The Synod shall be convened and holden at least once in every year by summons of the Bishop of the Diocese, stating the time and place of meeting; and the Bishop, or, in his

absence, a commissary appointed by him in writing, shall be President of the Synod, and may adjourn, prorogue, or dissolve the same with the concurrence of the Synod.

The Synod now sitting, having been convened in pursuance of resolutions made and passed at a Conference of the Bishop, the Clergy and Representatives of the Laity, assembled in Brisbane on the fourth, fifth and sixth days of September, in the year of our Lord one thousand eight hundred and sixty-seven, shall be taken to be the first Synod of the Branch of the United Church of England and Ireland in the Diocese of Brisbane, in the Colony of Queensland.

10. The Synod shall, from time to time, determine at what periods new elections of delegates shall be made.
11. It shall be lawful for the Synod to fix the standard of qualification, and to appoint the time and mode of registration, for the purpose of determining what persons are admissible to take part in the election of lay representatives and also to declare what qualifications shall be required of the persons so to be elected as lay representatives.
12. No person shall be permitted to take part in the proceedings of any Synod, or of any committee, whether as elector or representative, or shall hold any office, whether honorary or of emolument, who shall have been declared incompetent by any tribunal acting under the authority of the Synod, or who shall have declined when required by the same authority to sign a declaration of his adhesion and submission to the provisions of these presents.
13. The Synod shall have full power to determine how and by whom all patronage shall be exercised, and in what manner, and on what conditions every clergyman, trustee, lay reader, churchwarden, schoolmaster, or other office-bearer or agent, whether clerical or lay, shall enter upon the use and occupation of any portion of the Church property held in trust under the provisions of these presents, and in what manner and upon what conditions all such office-bearers, whether clerical or lay, shall receive their respective appointments; and the Synod shall have full power to fix the amount of all salaries, dues, fees, or other emoluments, payable to any person out of the proceeds of any property held by or in trust for the said Synod.
14. All clergymen, trustees, churchwardens, schoolmasters, lay readers, or other office-bearers or agents, who shall be appointed, or who shall receive any income or emolument from or out of the said trust property, and all office-bearers who, whether receiving any emolument therefrom or not, shall have consented to hold their appointments under and in conformity with the provisions of these presents, shall be held liable to be deposed, removed, or suspended from their respective appointments by the Synod, if from any cause whatever the Synod shall deem it expedient and proper to exercise such power, and whenever any clergyman, trustee, lay reader, churchwarden, schoolmaster, or other office-bearer or agent, whether clerical or lay, shall be deposed, removed, or suspended from his appointment he shall ipso facto cease to have or exercise such function or office under the provisions of these presents, and shall be absolutely deprived of all rights, emoluments, stipend, or salary, to which by virtue of such appointment he would thereafter have been entitled but for such disposition, removal, or suspension; and shall forthwith deliver up to the Synod, or to trustees appointed by them, all such trust property, and all such deeds books, papers, money and effects belonging, or relating thereto as may then be in his occupation, possession or power.
15. Subject to the provisions of these presents, the Synod shall constitute and appoint a Tribunal to hear and decide all questions of doctrine or discipline, as touching any person whether clerical or lay, who shall hold any office or appointment whatsoever under the control of the Synod; but the decisions of such Tribunals shall not be final until they shall have been confirmed by the Synod.

16. The Synod 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.
17. It shall be lawful for the Synod to frame such regulations as shall be found necessary from time to time, for the management and disposal of all Church property, moneys, revenues and collections, not diverting any specifically appropriated, or the subject of any specific trust, nor interfering with any vested rights, and for the government of all persons holding office under, or receiving emolument from, the Synod, and generally to make all such regulations as shall be necessary for the order, good government, and efficiency of the said Branch of the United Church of England and Ireland.
18. It shall be lawful for the Synod to appoint a Standing Committee, consisting of not less than four clerical and four lay members, to act as a Council to the Bishop, and to assist him in conducting the business of the Synod at such times as it shall not be sitting: Provided always that such committee which shall be called the Diocesan Council, shall bring up a report of their proceedings at the commencement of each session of the Synod.
19. It shall be lawful for the Synod to delegate to any board, committee, or commission, either specifically as the case may require, or under such regulations as shall be laid down by the Synod, all or any of the powers conferred upon the Synod by these presents, excepting always such provisions as are herein declared to be fundamental: Provided also all acts done by virtue of such delegated authority shall be submitted to the next session of Synod for ratification.
20. In case of the avoidance of the See, saving the rights of the Crown, if any exist, the nomination of a Bishop shall proceed from the Clergy, and shall be submitted to the Synod for approval: Provided always that it shall be lawful for the Synod to delegate the nomination of a Bishop to the Archbishop of Canterbury, or the Archbishop of York, or the Bishop of London.
21. All real or personal property now held by anyone in trust for the purposes of the said Church, or which shall hereafter be conveyed to the Synod, or to trustees on behalf of the Synod, shall be held upon trust; and such Synod or trustees shall and do stand seized and possessed of and interested in the same or otherwise shall and do convey, settle, assure, or assign the same upon and for or according to such trusts, intents, and purposes, and under and subject to such powers, provisions, declarations and agreements, and in such manner and for such objects and purposes, whether religious, missionary, ecclesiastical, collegiate, scholastic, or charitable, as the Synod of this Branch of the United Church of England and Ireland shall from time to time direct or appoint in writing under the hand of any person authorised by the Synod in that behalf, subject, however, to any special covenants and declaration of trusts imposed by any founder, donor, testator, or other benefactor, which shall have been assented to by the Synod, or by any board or other person authorised by the Synod in that behalf.
22. Any trustee in whom any property real or personal shall be vested, either solely or jointly with other persons or person, for or on behalf of the Synod, shall hold the same with the powers and subject to the limitations, restrictions, declarations, and provisos contained in the several clauses of a model trust deed, hereafter to be prepared and agreed upon, and any board or commission appointed by the said Synod for that purpose, shall possess and may exercise all and any of the powers vested in the Synod, as shall be by the said Synod in that behalf prescribed.
23. The doctrines which shall from time to time be taught or inculcated by the Bishop, Clergy, schoolmasters, lay readers, or agents and others, wholly or partially endowed or maintained by the proceeds of the property held subject to the provisions of these

presents, and the doctrines which shall from time to time be taught or inculcated in any church or chapel, whether cathedral, parochial, collegiate, or missionary, or in any college or school, or any other building which shall be either wholly or partially built out of the funds derived from the property held subject to the provisions of these presents, or upon sites held by trustees appointed under these presents, shall not be repugnant to the doctrines and sacraments of Christ as our Lord hath commanded, and as the United Church of England and Ireland doth receive the same, and as the same are explained and contained in the Holy Scriptures, in the Book of Common Prayer, and in the Thirty-nine Articles as set out in the fundamental provisions of these presents. And it shall be the duty of all trustees appointed pursuant to the provisions of these presents to obey all instructions issued to them by or on behalf of the Synod for the purpose of guarding as far as possible against any trust property or proceeds therefrom from being so applied or disposed of as to promote the teaching or inculcating of any doctrine repugnant to those of the United Church of England and Ireland as so explained.

24. Any Bishop elect shall, either before his consecration, or, if already consecrated, before exercising any episcopal function in this Diocese, sign and subscribe the following declaration:-

1, A.B., chosen Bishop of the Church and See of Brisbane, do promise that I will teach and maintain the doctrine and discipline of the United Church of England and Ireland, as acknowledged and received by the Synod of the Diocese of Brisbane; and I do also declare that I consent to be bound by all the Canons and Regulations of the said Synod which are now or may hereafter be in force; and in consideration of being appointed Bishop of the said Church or See of Brisbane, I do hereby undertake immediately to resign the said appointment, together with all the rights and emoluments appertaining thereto, if sentence requiring such resignation should at any time be passed upon me, after due examination had by the Tribunal acknowledged by the said Synod for the trial of a Bishop, saving all rights of appeal allowed by the said Synod.

25. No clergyman, trustee, churchwarden, lay representative, schoolmaster, lay reader, catechist, or other agent or office-bearer shall be admitted to any office under the provisions of these presents, or be entitled to receive any income, emolument, or benefit from or out of the property held under the same, unless and until he shall have signed a declaration of his adhesion and submission to the provisions of these presents in the following form:-

I, A.B., do declare my submission to the authority of the Synod of the Branch of the United Church of England and Ireland in the Diocese of Brisbane, in the Colony of Queensland, established by a Constitution agreed to on the eighteenth day of June, one thousand eight hundred and sixty-eight, and my consent to be bound by all the provisions of the said Constitution, and by all the Canons and Regulations which are now or may hereafter be in force by the authority of the said Synod. And I hereby undertake immediately to resign my appointment, together with all the rights and emoluments appertaining thereto, if sentence requiring such resignation should at any time be passed upon me after examination had by the Tribunal appointed by the Synod of the said Diocese, saving all rights of appeal allowed by the said Synod.

Given under my hand this ..... day of ..... 186...

In the presence of

26. In case of the absence from the Colony of the Bishop, the powers by this Constitution vested in him shall be exercised by a Commissary appointed by him; and in case no such Commissary shall have been appointed, such powers shall be exercised by the person who



shall then be 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.

27. In case of the avoidance of the See, the word Synod shall be taken to mean a majority of the Clergy and a majority of the representatives of the Laity to be convened by the Diocesan Council.
28. The foregoing Constitution for associating together as a Branch of the United Church of England and Ireland the members of the said Church residing in the Diocese of Brisbane, in the Colony of Queensland, was agreed to at a Synod of the Bishop, the Clergy and the Laity assembled in the said City of Brisbane, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight.

In witness whereof the said Bishop, Clergy and Laity have hereunto subscribed their hands.

#### SECOND SCHEDULE.

Section and No.	Title or Short Title	Extent of Repeal
8 Wm. IV., No. 5	An Act to regulate the temporal affairs of Churches and Chapels of the United Church of England and Ireland in New South Wales.	The Whole
21 Vic. No. 4	An Act to amend an Act passed in the eighth year of the Reign of His late Majesty King William the Fourth intituled "An Act to regulate the temporal affairs of Churches and Chapels of the United Church of England and Ireland in New South Wales".	The Whole
53 Vic.	"The Church of England (Diocese of Brisbane) Property Act of 1889".	Sections 2, 5, 6, 7, and 8.