

Queensland



ANNO VICESIMO

ELIZABETHAE SECUNDAE REGINAE

An Act to Vary the trusts of property in the State of Queensland held for the purposes of The Presbyterian Church of Queensland and to enable certain arrangements entered into between the Presbyterian Churches of New South Wales, Victoria, Queensland, South Australia, Tasmania and Western Australia to be carried into effect and for other purposes

[ASSENTED TO 21ST APRIL, 1971]

Preamble. Whereas The Presbyterian Church of Queensland was on the thirteenth day of June 1876 duly incorporated pursuant to the provisions of *The Religious Educational and Charitable Institutions Act of 1861*:

And whereas on the twenty-fourth day of July 1901 the Presbyterian Church of New South Wales (now known as the Presbyterian Church of Australia in the State of New South Wales), the Presbyterian Church of Victoria, The Presbyterian Church of Queensland, the Presbyterian Church of South Australia, the Presbyterian Church of Tasmania and

the Presbyterian Church in Western Australia, holding the same doctrine, government, discipline and form of worship, agreed to unite on the basis of a Scheme of Union whereby there was constituted a body known as the Presbyterian Church of Australia, within which the said churches continued to exist as part of a federal ecclesiastical structure:

And whereas an Act of the Parliament of Queensland intituled the *Presbyterian Church of Australia Act of 1900* has been passed prior to the said union to enable the said union to be entered into:

And whereas pursuant to *The Presbyterian Church Property Act of 1909* certain lands situated within the State of Queensland coming within the definition of "Church Property" and formerly held by individuals as trustees have now become vested in The Presbyterian Church of Queensland:

And whereas the affairs of The Presbyterian Church of Queensland are conducted in accordance with Standing Orders prepared by the General Assembly of the Presbyterian Church of Australia and adopted by The Presbyterian Church of Queensland in conjunction with rules and forms of procedure adopted by the General Assembly of The Presbyterian Church of Queensland:

And whereas it is expedient that the federal union of the said churches constituted as aforesaid be enlarged so that the said churches be completely united within the said Presbyterian Church of Australia and that the General Assembly of the said Presbyterian Church of Australia should have all the powers and authorities usually vested in the supreme court of an ecclesiastical body holding the Presbyterian system of church government and that it have the power to enter into union with other churches subject to due and proper safeguards for minorities:

And whereas the assent of the Parliament of Queensland is necessary to effect this object:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Presbyterian Church of Australia Act 1971*.

2. Union of State Presbyterian Churches. Upon—

- (a) the Moderator for the time being of the General Assembly of the Presbyterian Church of Australia and the respective Moderators for the time being of the General Assemblies of the Presbyterian Church of Australia in the State of New South Wales, the Presbyterian Church of Victoria, The Presbyterian Church of Queensland, the Presbyterian Church of South Australia, the Presbyterian Church of Tasmania and the Presbyterian Church in Western Australia having signed a deed declaring that the said churches have agreed to vary the terms of union set forth in the Schedule to the *Presbyterian Church of Australia Act of 1900* by substituting therefor the basis of union set forth in the Schedule to this Act and have agreed to unite upon the said basis; and
- (b) the Parliament of each of the States of New South Wales, Victoria, South Australia, Tasmania and Western Australia having passed an Act enabling effect to be given to the said basis of union; and

- (c) a notice that the said churches have agreed as aforesaid to unite and that the said Acts have been passed, signed by the Moderator for the time being of the General Assembly of The Presbyterian Church of Queensland, having been published in the Government Gazette (which said notice shall be sufficient evidence that the requirements of this section have been duly complied with)—

all interests in property held immediately before the publication of the said notice by or in trust for some or all the purposes of The Presbyterian Church of Queensland or the General Assembly thereof, or any presbytery, session, committee of management, congregation, committee or council or board howsoever constituted or fund in connection with the said The Presbyterian Church of Queensland shall be held subject to the said basis of union, and

- (d) in so far as any such interests in property were held as aforesaid by or in trust for some or all the purposes of The Presbyterian Church of Queensland or the General Assembly thereof they shall be held for the same purposes of the Synod for the time being having ecclesiastical jurisdiction pursuant to the said basis in the State of Queensland; and
- (e) in so far as such interests in property were held as aforesaid by or in trust for some or all the purposes of any presbytery, session, committee of management, congregation, committee, council, board or fund in connection with the said church they shall be held for the same purposes of such presbytery, session, committee of management, congregation, committee, council, board or fund in connection with the Presbyterian Church of Australia;

and save as aforesaid the trusts upon which the said interests in property are held shall not be affected or varied by this Act.

3. Union with Other Churches. (1) If at any time prior to the adoption pursuant to section 2 of this Act of the whole basis of union set forth in the Schedule to this Act—

- (a) the Moderator for the time being of the General Assembly of the Presbyterian Church of Australia and the respective Moderators for the time being of the General Assemblies of the Presbyterian Church of Australia in the State of New South Wales, the Presbyterian Church of Victoria, The Presbyterian Church of Queensland, the Presbyterian Church of South Australia, the Presbyterian Church of Tasmania and the Presbyterian Church in Western Australia have signed a deed declaring that the said churches have agreed to implement and give effect to the provisions of Part III of the basis of union; and
- (b) the Parliament of each of the States of New South Wales, Victoria, South Australia, Tasmania and Western Australia has passed an Act enabling effect to be given to Part III of the said basis of union substantially in the manner herein provided without the necessity of implementing the basis as a whole; and

- (c) a notice that the said churches have agreed to implement Part III of the said basis of union and that the said Acts have been passed in conformity with the requirements of this section, signed by the Moderator for the time being of the General Assembly of The Presbyterian Church of Queensland, has been published in the Government Gazette (which said notice shall be sufficient evidence that the requirements of this section have been duly complied with)—

all interests in property of any of the descriptions specified in the last preceding section subsisting immediately before the publication of the said notice shall (without prejudice to the subsequent exercise of the power contained in the last preceding section) be held for the same purposes and upon the same trusts but subject in all respects to the provisions of Part III of the said basis of union.

(2) For the purposes of this section—

- (a) the General Assembly of the Presbyterian Church of Australia constituted under the said Scheme of Union agreed upon on the twenty-fourth day of July, 1901 may exercise all the powers and functions of the General Assembly under Part III of the said basis of union set forth in the Schedule to this Act;
- (b) reference to the synods in the said Part III shall be deemed to be reference to the State General Assemblies, or, where the context so requires it, to State Presbyterian Churches;
- (c) the provisions of the said Part III shall apply *mutatis mutandis* to the Presbyterian Church of Australia constituted as aforesaid, the General Assembly thereof, State Presbyterian Churches and the general assemblies, presbyteries, sessions and congregations thereof;
- (d) decisions of the General Assembly of the Presbyterian Church of Australia and of any commission appointed by it under section 18 of the said Part III shall operate as fully with respect to and have the same effect upon the Presbyterian Church of Australia constituted as aforesaid, State Presbyterian Churches and the general assemblies, presbyteries, sessions and congregations thereof respectively as if they were the Presbyterian Church of Australia constituted under the basis of union set forth in the Schedule to this Act and the courts and congregations thereof as therein provided for; and
- (e) reference to the basis of union in the said Part III shall be read and construed as reference to the aforesaid Scheme of Union of the twenty-fourth day of July, 1901 as amended, or, as the case may be, to the constitution of the said State Presbyterian Churches.

(3) If, upon a union being entered into under the said Part III pursuant to the powers conferred by this section, there should in any State be continuing congregations as defined in the said Part, but a continuing State Presbyterian Church should be unable to function in that State, the General Assembly of the continuing Presbyterian Church of Australia may so far as necessary place any such congregations under the jurisdiction of the church courts in subordination to such assembly for so long as the said inability persists.

4. Application of property held under certain trusts. Where by any gift devise bequest or declaration of trust whether contained in any will or other instrument coming into operation after the publication in the Government Gazette of a notice pursuant to either section 2 or section 3 of this Act (irrespective of whether such will or other instrument was made or executed before or after publication of the said notice) any interest in property is given in such manner or upon such trusts that if it had been so given devised bequeathed or held immediately before the publication of the said notice either section 2 or section 3, as the case may be, would have had application to such interest in property, then the said interest in property shall be deemed to be an interest in property to which section 2 or section 3, as the case may be, applied and shall be held in trust accordingly.

5. Powers of commission. The commission referred to in the basis of union set forth in the Schedule to this Act may give effect to the powers vested in it out of the property to which the Act applies.

SCHEDULE

BASIS OF UNION

PART I—CONSTITUTION

1. The supreme standard of the Presbyterian Church of Australia shall be the Word of God contained in the Scriptures of the Old and New Testaments.

2. The subordinate standard shall be the Westminster Confession of Faith read in the light of the declaratory statement.

3. The declaratory statement is as follows:—

- (1) That in regard to the doctrine of redemption as taught in the subordinate standard, and in consistency therewith, the love of God to all mankind, His gift of His Son to be the propitiation for the sins of the whole world, and the free offer of salvation to men without distinction on the ground of Christ's all-sufficient sacrifice, are regarded by this church as vital to the Christian faith. And inasmuch as the Christian faith rests upon, and the Christian consciousness takes hold of certain objective supernatural historic facts, especially the incarnation, the atoning life and death, and the resurrection and ascension of our Lord, and His bestowment of His Holy Spirit, this Church regards those whom it admits to the office of the holy ministry as pledged to give a chief place in their teaching to these cardinal facts, and to the message of redemption and reconciliation implied and manifested in them.
- (2) That the doctrine of God's eternal decree, including the doctrine of election to eternal life, is held as defined in the Confession of Faith, chap. III, sec. I, where it is expressly stated that according to this doctrine, "neither is God the author of sin, nor is violence offered to the will of the creature, nor is the liberty or contingency of second causes taken away, but rather established", and further, that the said doctrine is held in connection and harmony with the truth—that God is not willing that any should perish, but that all should come to repentance, that He has provided a salvation sufficient for all, and adapted to all, and offered to all in the Gospel, and that every hearer of the Gospel is responsible for his dealing with the free and unrestricted offer of eternal life.

- (3) That while none are saved except through the mediation of Christ, and by the grace of the Holy Spirit, who worketh when and where and how it pleaseth Him; while the duty of sending the Gospel to the heathen who are sunk in ignorance, sin and misery is imperative; and while the outward and ordinary means of salvation for those capable of being called by the Word are the ordinances of the Gospel; in accepting the subordinate standard it is not required to be held that any who die in infancy are lost, or that God may not extend His grace to any who are without the pale of ordinary means, as it may seem good in His sight.
- (4) That in holding and teaching according to the Confession of Faith the corruption of man's nature as fallen, this Church also maintains that there remain tokens of man's greatness as created in the image of God, that he possesses a knowledge of God and of duty—that he is responsible for compliance with the moral law and the call of the Gospel, and that, although unable without the aid of the Holy Spirit to return to God unto salvation, he is yet capable of affections and actions which of themselves are virtuous and praiseworthy.
- (5) That liberty of opinion is allowed on matters in the subordinate standard not essential to the doctrine therein taught, the church guarding against the abuse of this liberty to the injury of its unity and peace.
- (6) That with regard to the doctrine of the civil magistrate and his authority and duty in the sphere of religion as taught in the subordinate standard, the church holds that the Lord Jesus Christ is the only King and Head of the church, "and Head over all things to the church, which is His Body". It disclaims, accordingly, intolerant or persecuting principles and does not consider its office-bearers, in subscribing the Confession, as committed to any principles inconsistent with the liberty of conscience and the right of private judgment, declaring, in the words of the Confession, that "God alone is Lord of the conscience".

4. The text of the Westminster Confession of Faith shall be that produced by the Westminster Assembly of Divines amended as follows:—

(a) In section 4 of Chapter XXIV there shall be inserted after the words "nearer in blood than of her own", the words "except the case of the deceased wife's sister, or the case of a deceased husband's brother"; and

(b) In section 4 of Chapter XXVII there shall be inserted after the words "lawfully ordained", the words "(saving where the general assembly has made a special provision to the contrary, that the people of God may not be left without sealing ordinances.)".

5. The following formula is required to be signed by the ministers at their ordination, induction, or appointment to a ministerial office by the general assembly, a synod or a presbytery, and by probationers on receiving licence:—

"I own and accept the subordinate standard of this Church, with the explanations given in the articles contained in the declaratory statement, as an exhibition of the sense in which I

understand the Holy Scriptures, and as a confession of my faith. I further own the purity of worship practised in this Church, and the presbyterian government thereof, to be founded on the Word of God and agreeable thereto; and I promise that through the grace of God I shall firmly and constantly adhere to the same, and to the utmost of my power shall, in my station, assert, maintain, and defend the doctrine, worship and government of this Church.”.

6. The following formula is required to be signed by elders at their ordination and/or induction:—

“I confess my faith in God, revealed to us in Jesus Christ, His only Son our Lord and Saviour. I own anew the Lord Jesus Christ as my personal Saviour and Lord, and will seek, in dependence on the Holy Spirit, to order my life in accordance with His will. I acknowledge as the supreme standard of faith and duty the revelation of God recorded in the Scriptures of the Old and New Testaments and perfected in Jesus Christ. I declare my loyalty to this Church and to the principles of presbyterian polity.”.

7. Any proposed change in the Basis of Union (including amendment or replacement of the subordinate standard or the declaratory statement) or restatement of the doctrine of the Church contained therein shall, before being adopted, be remitted to synods and presbyteries and no change shall be made without the consent of a majority of synods, three-fifths of the presbyteries of the whole Church, and three-fifths of the members of the general assembly present when the final vote is taken. On any such change being made in the basis of union or restatement of the doctrine of the church, if any congregation thereupon refuses to acquiesce in the change or restatement and determines to adhere to the original basis of union as duly amended prior to such change or restatement, the general assembly is empowered to:—

- (a) allow such congregation to retain its congregational property; or,
- (b) deal in such other way with the said property as to the said assembly shall seem just and equitable;

Notwithstanding anything contained in this section Part II of the basis of union may be amended or added to in accordance with a like procedure to that laid down in the *Barrier Act of 1697* of the Church of Scotland.

PART II—GOVERNMENT

8. (1) The Supreme Court of the church is the general assembly which shall have functions legislative, administrative and judicial supreme with regard to the doctrine; worship, discipline and government of the Church.

(2) The membership of the general assembly consists of commissioners elected by presbyteries for each meeting of the general assembly. These commissioners being ministerial members of presbyteries and elders are elected in proportion to the numerical strength of each presbytery on the basis of one ministerial member and one elder for every five charges or portion thereof within its bounds served by an ordained minister either inducted or appointed by or with the sanction of the presbytery. The moderator, the immediate past moderator, clerks of

assembly, business convener, the procurator and law agent shall be members *ex officio*. Conveners of committees, boards and councils reporting to the assembly who have not been commissioned shall have the right and privilege of membership during the presentation of the report of the respective committee and the deliberations on the proposed deliverance. The assembly shall have the power to seek additional commissions from presbyteries of elders to give parity of representation in the court.

(3) The time and place of the next meeting shall be determined prior to the general assembly being dissolved.

(4) The commission of assembly shall consist of *ex officio* members of the general assembly and one minister and one elder from each presbytery for every fifteen charges or portion thereof within its bounds served by an ordained minister either inducted or appointed by or with the sanction of the presbytery. Presbyteries, when commissioning ministers and elders to the general assembly, shall indicate those of the number so commissioned who shall be members of the commission of assembly. The commission of assembly shall meet when appointed by the general assembly and when convened by the moderator for exceptional and urgent business, at a time and place determined by him, upon a requisition being presented to him by at least 12 members representing at least three synods and sustained by the moderator.

9. (1) Until the general assembly shall otherwise determine there shall be six synods intituled the Synod of New South Wales, the Synod of Queensland, the Synod of South Australia, the Synod of Tasmania, the Synod of Victoria and the Synod of Western Australia, the bounds of which synods shall be determined by the areas respectively under the jurisdiction of the presbyteries of each of the state presbyterian churches uniting upon the said basis; but save as aforesaid the general assembly shall have power to erect synods and to determine their bounds.

(2) The membership of synods shall consist of *ex officio* members to be determined by the synods and half the ministerial members of presbyteries within the bounds and an equal number of elders commissioned by the presbyteries except in the case of South Australia, Tasmania and Western Australia where all ministerial members of presbyteries and an equal number of elders shall be commissioned until such time as the general assembly determine otherwise. Synods shall have power to appoint additional elders to give parity of membership.

(3) Synods shall meet at least annually at a time and place appointed before adjournment, and meetings *pro re nata* may be convened by the moderator or on a requisition signed by nine members representing at least three presbyteries and sustained by him, provided always that in the case of the Synod of Tasmania it shall suffice if a requisition is signed by five members representing no more than one presbytery.

(4) Synods shall subject to this constitution, exercise executive, administrative, pastoral and disciplinary functions over the Church within their bounds.

10. (1) Presbyteries shall be erected or dissolved or their boundaries determined or altered only by decision of the general assembly. At the time when this constitution becomes operative the presbyteries and their bounds shall be those recognized by each state assembly.

(2) The membership of presbyteries shall consist of all ministers in pastoral charges or holding other charges under the authority of the general assembly and other ministers and elders to whom seats have been granted by rule, regulation or resolution of the general assembly, one representative elder commissioned by the kirk session of each sanctioned charge, elders who are members of a session granted seats by rule or regulation of the general assembly, and other elders of kirk sessions within the bounds invited and granted seats by the presbyteries to establish parity in the courts.

11. Sessions shall be formed with the approval of or by direction of presbyteries. The method of election to sessions and their powers and duties shall continue in each congregation as under the former state codes until such time as the general assembly determine otherwise. Until otherwise determined sessions and congregations subsisting at the time the basis of union comes into operation shall be sessions of the Presbyterian Church of Australia.

12. The general assembly, synods, presbyteries and sessions in each case appoint from time to time such committees as they think fit, prescribing their membership, purpose and duties and giving other directions usually in the form of regulations.

13. The synod shall be the final court of appeal except in cases of doctrine and/or discipline that carry deposition or excommunication as possible judgments.

14. Until a code of the Presbyterian Church of Australia is enacted the code of each of the former state presbyterian churches shall, subject to this basis of union, apply to the synod, presbyteries, sessions, and congregations within the area within which that state presbyterian church functioned, provided always that in the case of the synod the provisions relating to the state general assembly shall apply *mutatis mutandis*.

PART III—UNION WITH OTHER CHURCHES

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

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

- (a) Do you desire this congregation to become a congregation of the church which may result from the proposed union?

- (b) Should the required majority vote for union be obtained in presbyteries, synods and the general assembly of Australia do you desire to remain in membership of any Presbyterian Church of Australia continuing to function on the present basis?

17. (1) For the purpose of enabling communicants to vote upon the questions prescribed in the last preceding section the general assembly shall prescribe a date by which all sessions shall be required to have purged their communion rolls and to have submitted to the presbytery of the bounds a voting register in duplicate consisting of all eligible names on the communion roll at the date of submission to the presbytery.

(2) Both copies of the said voting register shall be certified by the moderator and clerk of the session as being the voting register.

(3) The presbytery of the bounds shall at the earliest opportunity following the submission to it of the voting register attest both copies and shall return one copy to the session from which it was received and shall retain the other copy.

(4) Only those persons whose names are on an attested voting register may take part in the vote.

(5) Sessions shall make available voting papers containing the said questions at least fourteen days before a date to be prescribed by the session for the close of voting, upon which the voters shall indicate whether their answer is "Yes" or "No" to each of the questions.

(6) Voting papers must be signed by the voter and returned prior to the close of voting.

(7) The Session shall count votes and transmit the number of "Yes" votes and the number of "No" votes cast with respect to each question to the clerk of the presbytery of the bounds for transmission to the clerk of the general assembly through the clerk of synod.

(8) The clerk of the general assembly shall advise the commission to be appointed as hereinafter provided of the results as they come to hand.

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

- (a) The general assembly shall set up a commission consisting of two groups of equal numbers, one representing those approving and one disapproving such union, together with three independent persons acceptable to both groups one of whom shall be chairman.
- (b) In any case where at least one-third of the communicants of a congregation who participate in the vote in accordance with the last preceding section (hereinafter called "a continuing congregation"), shall prior to the date of the final vote of the general assembly approving such union have recorded votes indicating their desire to continue in membership of the

Presbyterian Church of Australia, such communicants shall not become a congregation of the church to result from the union but shall be recognised as a congregation of the Presbyterian Church of Australia continuing to function on this basis of union and shall be entitled to retain the congregational property, unless the commission appointed pursuant to this section shall for special reasons otherwise determine, in which case the said commission is required to ensure that what it deems to be adequate and suitable congregational property is provided including a due and proper share of any congregational endowments.

- (c) Where in any district or locality less than one-third of the communicants who participate in the said vote and whose names appear on the roll of a congregation purged as aforesaid, shall prior to the date of the final vote of the general assembly approving such union have recorded votes indicating their desire to remain in membership of the Presbyterian Church of Australia continuing to function on this basis of union, and
 - (i) the presbytery of the bounds is of opinion that such minorities of such congregations are not able to be related in membership with some continuing congregation or congregations as a charge or charges; and
 - (ii) the said commission is satisfied as to the capacity of the said minorities to continue as such, it shall have power to arrange in a suitable locality or localities for such groupings of communicants to be provided with a church, manse and other necessary buildings to be used for congregational purposes, or with sufficient funds to provide such buildings.
- (d) The said commission, upon its being satisfied that the continuing congregations are capable of functioning as a continuing Presbyterian Church of Australia under this basis of union, shall, in addition to the powers, functions and discretions otherwise conferred upon it in this section, have the power to determine what specific items, if any, of the general property of or held in trust for the purposes of the Presbyterian Church of Australia and the several state synods shall for the efficient functioning of the said continuing church be retained by or for the purpose of the said church, and what compensation if any for the loss of a just and equitable share of such property should be payable to the said church, which shall have the right to use the name "Presbyterian Church of Australia"
- (e) The said commission in making its determinations as aforesaid shall have regard to the just and equitable rights of minorities and shall, *inter alia*, provide for the following requirements of a continuing church, including a due and proper share of endowments existing at the date of union and shall include provision for and maintenance of:—
 - (i) a centre for the theological training of the ministry of the said continuing church, including a centre of residence and staffing, having regard to the aim of the Presbyterian Church of Australia to have theological halls equipped with not fewer than three professors;

- (ii) a centre for the administration of the said continuing church, including provision for a clerk, treasurer and such other staff and buildings deemed necessary by the said commission for continuing the activities of the said church, and also a centre for administration with provision for adequate staff for its requirements in any state where the strength of the said continuing church is deemed by the commission to warrant it;
- (iii) at least one school for girls and one school for boys in each state where at the date of the said union there is more than one presbyterian school for girls and more than one presbyterian school for boys, and in any state where there is only one presbyterian school for girls and/or only one presbyterian school for boys the commission shall determine whether ownership of any such school shall be vested in the said continuing church or in the church to result from the said union, or make other adequate provision if the strength of the said continuing church warrants it.