

Queensland



**ROMAN CATHOLIC
CHURCH
(INCORPORATION OF
CHURCH ENTITIES) BILL
1994**

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**ROMAN CATHOLIC CHURCH
(INCORPORATION OF CHURCH
ENTITIES) BILL 1994**

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1994

A BILL

FOR

**An Act to provide for the incorporation of certain entities of the
Roman Catholic Church and for related purposes**

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Church Entities)*

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *Roman Catholic Church (Incorporation of Church Entities) Act 1994*.

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Commencement

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2. This Act commences on a day to be fixed by proclamation.

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Definitions

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3. In this Act—

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“**AI Act**” means the *Associations Incorporation Act 1981*.

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“**AI Act corporation**” see section 14(a).

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“**Bishop**” means a person holding appointment as the Bishop of a Church diocese, or the Archbishop of a Church archdiocese, under the Code of Canon Law.

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“**Church**” means the Roman Catholic Church.

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“**Church entity**” means—

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(a) a diocese or archdiocese, or the trustees of a diocese or archdiocese, of the Church; or

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(b) a religious order, society or institution of the Church or the members of the order, society or institution; or

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(c) the holder of an office, or the holders of offices, of the Church under the Code of Canon Law;

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and includes a discrete service, work, activity or part of a church entity.

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“**Code of Canon Law**” means the Code of Canon Law of the Church.

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“constituent documents” , for a Church entity or an incorporated Church entity, mean the constitution, rules, articles or other similar documents of the entity.	1 2 3
“Corporation of the Bishops” means the Corporation of the Roman Catholic Bishops of Queensland.	4 5
“existing Church corporation” see section 15.	6
“incorporated Church entity” means an entity established under this Act, and includes the Corporation of the Bishops, and an AI Act corporation and RECI Act corporation established under this Act.	7 8 9
“officer” of an incorporated Church entity includes—	10
(a) a person who constitutes the entity (whether alone or with others) under the Code of Canon Law; and	11 12
(b) an employee of the entity.	13
“RECI Act” means the repealed <i>Religious Educational and Charitable Institutions Act 1861</i> ¹ .	14 15
“RECI Act corporation” see section 14(b).	16
 Interpretation and application of Code of Canon Law	 17
4. For the purpose of applying the Code of Canon Law to matters under this Act, the Code must be interpreted and applied in a way consistent with decisions about the matters by Church authorities who ordinarily decide them.	18 19 20 21

¹ The RECI Act was repealed by s 4 of the *Associations Incorporation Act 1981*. However, letters patent under the RECI Act were continued in force by the section.

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**PART 2—ESTABLISHMENT AND COMPOSITION
OF THE CORPORATION OF THE BISHOPS**

Establishment of Corporation of Bishops

5. A corporation called the Corporation of the Roman Catholic Bishops of Queensland is established.

Composition of Corporation

6. The Corporation of the Bishops consists of the persons for the time being holding appointment as Bishop.

Perpetual succession etc. of Corporation

7. The Corporation of the Bishops—

- (a) has perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

Certificate of incorporation

8. The chief executive must immediately issue a certificate of incorporation for the Corporation of the Bishops and give it to the person holding appointment as Archbishop of Brisbane under the Code of Canon Law.

PART 3—INCORPORATION OF CHURCH ENTITIES

Request to incorporate Church entity

9.(1) A Bishop may ask the chief executive to incorporate a Church entity functioning in the Bishop's diocese or archdiocese.

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- (2) The Corporation of the Bishops may also ask the chief executive to incorporate a Church entity. 1
2
- (3) The request must— 3
- (a) be in a form approved by the chief executive; and 4
 - (b) state the Church entity; and 5
 - (c) state the entity is a Church entity; and 6
 - (d) state the proposed name for the Church entity. 7
- (4) If there are constituent documents for the church entity and these are readily available to the Bishop or Corporation of the Bishops, a copy of the documents certified as correct by the Bishop or Corporation must accompany the request. 8
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Certificate of incorporation 12

10.(1) If the chief executive receives a request under section 9 (Request to incorporate Church entity) and is satisfied that the section has been complied with, the chief executive must issue a certificate of incorporation for the Church entity. 13
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(2) The Church entity becomes a corporation established under this Part on the issue of the certificate. 17
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(3) The corporation has the name specified in the certificate. 19

(4) The chief executive must give the certificate to the Corporation of the Bishops. 20
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Composition of corporation 22

11.(1) If persons constitute the church entity under the Code of Canon Law, the corporation consists of those persons. 23
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(2) If the Church entity consists of the holder of an office or the holders of offices, the corporation consists of the person or persons holding the office or offices from time to time. 25
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Seal etc. of corporation

12.(1) The corporation—

(a) has a seal; and

(b) may sue and be sued in its corporate name.

(2) If the corporation has corporators, the corporation has perpetual succession.

Person acting for corporation

13. Anything done in the name of or for the corporation by a person who may act for the corporation under the corporation’s constituent documents or the Code of Canon Law is taken to have been done by the corporation.

**PART 4—ESTABLISHMENT UNDER THIS PART OF
CERTAIN CHURCH CORPORATIONS
ESTABLISHED UNDER OTHER ACTS**

Application of Part

14. This Part applies to—

(a) an incorporated association under the AI Act consisting of a Church entity (an “**AI Act corporation**”); or

(b) a corporation, established by letters patent, under the RECI Act consisting of a Church entity (an “**RECI Act corporation**”).

Meaning of “existing Church corporation”

15. In this Part—

“**existing Church corporation**” means an AI Act corporation or a RECI Act corporation.

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Request to establish existing Church corporation under this Part

16.(1) A Bishop may ask the chief executive to establish, under this Part, an existing Church corporation functioning in the Bishop's diocese or archdiocese.

(2) The Corporation of the Bishops may also ask the chief executive to establish an existing Church corporation under the Part.

(3) The request must—

(a) be in a form approved by the chief executive; and

(b) state the existing church corporation; and

(c) state whether the corporation is an AI Act or RECI Act corporation.

(4) If there are constituent documents for the church entity which the corporation consists of and these are readily available to the Bishop or Corporation of the Bishops, a copy of the documents certified as correct by the Bishop or Corporation must accompany the request.

Certificate of incorporation under this Act

17.(1) If the chief executive receives a request under section 16 (Request to establish existing Church corporation under this Part) and is satisfied that the section has been complied with, the chief executive must issue a certificate of incorporation for the existing Church corporation.

(2) On the issue of the certificate, the existing Church corporation is established under this Part as a corporation with the same name and constitution.

(3) The chief executive must give the certificate to the Corporation of the Bishops.

Composition of corporation

18.(1) If, under the Code of Canon Law, persons constitute the Church entity of which an existing Church corporation established under this Part consists, the corporation consists of those persons.

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(2) If the Church entity consists of the holder of an office or the holders of offices, the corporation consists of the person or persons holding the office or offices from time to time. 1
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Seal etc. of existing Church corporation 4

19.(1) An existing Church corporation established under this Part— 5

(a) has a seal; and 6

(b) may sue and be sued in its corporate name. 7

(2) If the corporation has corporators, the corporation has perpetual succession. 8
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Person acting for existing Church corporation 10

20. Anything done in the name of or for an existing Church corporation established under this Part by a person who may act for the corporation under the corporations's constituent documents or the Code of Canon Law is taken to have been done by the corporation. 11
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Establishment under this Part does not affect legal personality etc. 15

21.(1) The establishment of an existing Church corporation under this Part does not— 16
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(a) affect the corporation's legal personality or identity; or 18

(b) affect a right, entitlement or liability of the corporation or anyone else; or 19
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(c) make legal proceedings by or against the corporation defective; or 21

(d) nullify any exemption given to, or benefit enjoyed by, the corporation because of its incorporation under the AI Act or the RECI Act. 22
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(2) Without limiting subsection (1), the establishment of the corporation under this Part does not affect any right, entitlement, liability, exemption or benefit the corporation would have had or enjoyed apart from its establishment under this Part. 25
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(3) In addition, but without limiting subsection (1), if a legal proceeding might have been continued or started by or against the existing Church corporation before the establishment, it may be continued or started by or against it after the establishment.

Establishment under this Part does not affect existing legal relationships

22. Without limiting section 21(1) (Establishment under this Part does not affect legal personality etc.), the establishment of an existing Church corporation under this Part—

- (a) does not place the corporation in breach of contract or otherwise make it guilty of a civil wrong; and
- (b) does not make the corporation in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and
- (c) is not taken to fulfil a condition—
 - (i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or
 - (ii) requiring any amount to be paid before its stated maturity; and
- (d) does not release a surety or other obligee (in whole or part) from an obligation.

Incorporation under AI Act ceases

23. On the issue of a certificate of incorporation under this Act for an AI Act corporation, the corporation ceases to be an incorporated association under the AI Act and its certificate of incorporation under that Act is cancelled.

Letters patent under RECI Act cancelled

24. Despite section 4(2) of the AI Act, on the issue of a certificate of

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incorporation under this Act for a RECI Act corporation the letters patent
under the RECI Act for the corporation are cancelled.

PART 5—LEGAL CAPACITY AND POWERS OF INCORPORATED CHURCH ENTITIES

Division 1—Powers and legal capacity generally

Powers and legal capacity generally

25.(1) In performing its objects or functions, an incorporated Church
entity has all the powers, and the legal capacity, of an individual.

(2) The entity may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) invest and deal with money; and
- (d) do other things necessary or convenient to be done in performing
its objects or functions.

(3) The entity may exercise its powers—

- (a) inside and outside Queensland; and
- (b) inside and outside Australia.

(4) The fact that the doing of an act by the entity would not be, or is not,
in its best interests does not affect its power or legal capacity to do the act.

Division 2—Abolition of doctrine of ultra vires

Objects of Division

26. The objects of this Division include—

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- (a) abolishing any application of the doctrine of ultra vires to incorporated Church entities; and 1
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- (b) ensuring that incorporated Church entities give effect to any restrictions on their powers, but without affecting the validity of their dealings with third persons. 3
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Restrictions on powers 6

27.(1) Section 25 (Powers and legal capacity generally) applies to an incorporated Church entity subject to any restrictions on its powers under its constituent documents and the Code of Canon Law. 7
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(2) The entity contravenes this subsection if— 10

- (a) the entity exercises a power contrary to a restriction mentioned in subsection (1); or 11
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- (b) the entity's constituent documents or the Code of Canon Law sets out the entity's objects or functions and the entity does an act that does not promote the objects or functions. 13
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(3) The exercise of the power, or the act, is not invalid merely because of the contravention. 16
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(4) An officer of the entity who is involved in the contravention contravenes this subsection. 18
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(5) An act of the officer is not invalid merely because, by doing the act, the person contravenes subsection (4). 20
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(6) The entity or officer does not commit an offence merely because of a contravention of this section. 22
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(7) The fact that— 24

- (a) by exercising a power as mentioned in subsection (2)(a), or doing the act as mentioned in subsection (2)(b), the entity contravened, or would contravene, subsection (2); or 25
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27
- (b) by doing a particular act, the officer contravened, or would contravene, subsection (4); 28
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may only be asserted or relied on in proceedings brought by the Corporation of the Bishops, or with the written authority of the Corporation 30
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of the Bishops given under its seal.	1
(8) In this section—	2
“ restriction ” includes prohibition.	3
Persons having dealings with incorporated Church entities etc.	4
28.(1) A person having dealings with an incorporated Church entity is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding about the dealings, any assertion by the entity that the matters that the person is entitled to assume were not correct must be disregarded.	5 6 7 8
(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from an incorporated Church entity (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding about the dealings, any assertion by the entity or the second person that the matters the first person is entitled to assume were not correct must be disregarded.	9 10 11 12 13 14
(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—	15 16
(a) that, at all relevant times, this Act, the entity’s constituent documents and the Code of Canon Law have been complied with; and	17 18 19
(b) that a person who is held out by the entity to be an officer or agent of the entity has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and	20 21 22 23 24
(c) that an officer or agent of the entity who has authority to issue a document for the entity has authority to warrant that the document is genuine and that an officer or agent of the entity who has authority to issue a certified copy of a document for the entity has authority to warrant that the copy is a true copy; and	25 26 27 28 29
(d) that a document has been properly sealed by the entity if—	30
(i) it bears what appears to be an imprint of the entity’s seal; and	31 32

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- (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer of the entity; and
- (e) that the entity’s officers and agents have properly performed their duties to the entity.
- (4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—
 - (a) the person has actual knowledge that the assumption would be incorrect; or
 - (b) because of the person’s connection or relationship with the entity, the person ought to know that the assumption would be incorrect.
- (5) If, because of subsection (4), a person is not entitled to make a particular assumption—
 - (a) if the assumption is about dealings with the entity—subsection (1) does not apply to an assertion by the entity about the assumption; and
 - (b) if the assumption is about dealings about an acquisition or purported acquisition from the entity of title to property—subsection (2) does not apply to an assertion by the entity or someone else about the assumption.

PART 6—CHANGE OF NAME AND DISSOLUTION

Division 1—Change of names of incorporated Church entities

Change of name of incorporated Church entity

29.(1) An incorporated Church entity may apply to the chief executive to change its name.

(2) Subsection (1) applies only if a Bishop in whose diocese or archdiocese the entity is functioning or the Corporation of the Bishops

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consents in writing to the application being made.	1
(3) The application must be in a form approved by the chief executive.	2
(4) One of the following must accompany the application—	3
(a) the entity’s certificate of incorporation;	4
(b) if the Bishop or Corporation of the Bishops is satisfied that the entity’s certificate of incorporation is lost or destroyed—a certificate by the Bishop or Corporation of the Bishops stating the fact.	5 6 7 8
(5) The chief executive may grant the application.	9
(6) If the chief executive grants the application, the chief executive must amend the entity’s certificate of incorporation or issue a new certificate.	10 11
(7) The chief executive must send the certificate of incorporation to the Corporation of the Bishops.	12 13
 Change of name does not affect legal personality etc.	 14
30.(1) A change of name of an incorporated Church entity does not—	15
(a) affect the entity’s legal personality or identity; or	16
(b) affect a right, entitlement or liability of the entity or anyone else; or	17 18
(c) make legal proceedings by or against the entity defective; or	19
(d) nullify any exemption given to, or benefit enjoyed by, the entity under a former name.	20 21
(2) Without limiting subsection (1), the change of name of the entity does not affect any right, entitlement, liability, exemption or benefit the entity would have had or enjoyed apart from the change of name.	22 23 24
(3) In addition, but without limiting subsection (1), if a legal proceeding might have been continued or started by or against the entity under its former name, it may be continued or started by or against it under its new name.	25 26 27 28

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Change of name does not affect existing legal relationships

31. Without limiting section 30(1) (Change of name does not affect legal personality etc.), a change of name of an incorporated Church entity—

- (a) does not place the entity in breach of contract or otherwise make it guilty of a civil wrong; and
- (b) does not make the entity in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and
- (c) is not taken to fulfil a condition—
 - (i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or
 - (ii) requiring any amount to be paid before its stated maturity; and
- (d) does not release a surety or other obligee (in whole or part) from an obligation.

Recording of change of name of corporation

32.(1) This section applies if—

- (a) an incorporated Church entity's name is changed under this Division; and
- (b) an interest in land was registered in the name of the entity before the change of name.

(2) No fee is payable for recording the change of name for the interest by a public official or authority responsible for registering land or interests in land.

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Division 2—Dissolution of incorporated Church entities

Request to dissolve entity

33.(1) A Bishop may ask the chief executive to dissolve an incorporated Church entity functioning in the Bishop’s diocese or archdiocese.

(2) The Corporation of the Bishops may also ask the chief executive to dissolve an incorporated Church entity.

(3) The request may only be made if dissolution of the entity accords with the Code of Canon Law.

(4) The request must —

- (a) be in a form approved by the chief executive; and
- (b) state the entity; and
- (c) state the reason for the request; and
- (d) state the Church or other entity (the “**successor entity**”) in whom the entity’s assets and liabilities vest on dissolution; and
- (e) state whether or not the entity’s dissolution accords with the Code of Canon Law.

(5) One of the following must accompany the request—

- (a) the entity’s certificate of incorporation;
- (b) if the Bishop or the Corporation of the Bishops is satisfied that the entity’s certificate of incorporation is lost or destroyed—a certificate by the Bishop or Corporation of the Bishops stating the fact.

Dissolution of entity

34.(1) On receiving the request under section 33 (Request to dissolve entity), the chief executive may, by Gazette notice—

- (a) dissolve the incorporated Church entity; and
- (b) vest the assets and liabilities of the entity in the successor entity.

(2) The assets and liabilities vest in the successor entity without a

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transfer.	1
(3) Assets vested in the successor entity remain subject to any debt, liability, trust or obligation affecting the assets.	2 3
(4) The chief executive must give a copy of the Gazette notice to the Corporation of the Bishops.	4 5
Recording of vesting of interest in land	6
35.(1) This section applies if—	7
(a) an incorporated Church entity is dissolved under this Division; and	8 9
(b) an interest in land vested in the entity vests in its successor entity.	10
(2) No fee is payable for recording the vesting of the interest in the successor entity by a public official or authority responsible for registering land or interests in land.	11 12 13

PART 7—RECORDS THAT MUST BE KEPT

Records to be kept by chief executive	15
36.(1) The chief executive must keep a register showing the names of incorporated Church entities.	16 17
(2) The chief executive must keep all requests, constituent documents and applications made or given to the chief executive under this Act.	18 19
(3) The register, requests, constituent documents and applications must be available for inspection by members of the public, without fee.	20 21
Records to be kept by Corporation of Bishops	22
37.(1) The Corporation of the Bishops must keep—	23
(a) a register of the current addresses of incorporated Church entities (other than the Corporation of the Bishops); and	24 25

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- (b) a copy of the constituent documents (if any) of incorporated Church entities. 1
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- (2) The register and documents— 3
- (a) must be kept at the office of the Corporation of the Bishops in Brisbane; and 4
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- (b) must be available for inspection by members of the public, without fee. 6
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- (3) The Corporation of the Bishops must notify its address in Brisbane by Gazette notice. 8
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- (4) The Corporation of the Bishops must also notify a change in the address by Gazette notice. 10
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PART 8—MISCELLANEOUS 12

Evidence of address 13

38. A certificate purporting to be under the seal of the Corporation of the Bishops, or signed by a person authorised by the Corporation for the purpose, stating that a stated address of a stated incorporated Church entity is the address of the entity shown in the register kept under section 37 (Records to be kept by Corporation of Bishops) is evidence of the certificate's contents. 14
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Service of documents on corporation 20

39. If a law permits or requires a document to be given or served on an incorporated Church entity, the document may be given or served on the entity— 21
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(a) if the entity is the Corporation of the Bishops—at its address in Brisbane last notified in the Gazette; or 24
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(b) in any other case—at the entity's address shown in the register 26

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kept under section 37 (Records to be kept by Corporation of Bishops).	1 2
Incorporated Church entities are exempt bodies under Corporations Law of Queensland	3 4
40. An incorporated Church entity is an exempt body for the purposes of the Corporations Law of Queensland.	5 6
Replacement certificate of incorporation	7
41.(1) This section applies if a Bishop in whose diocese or archdiocese, an incorporated Church entity is functioning—	8 9
(a) is satisfied that the entity’s certificate of incorporation is lost or destroyed; and	10 11
(b) gives the chief executive a certificate stating the fact.	12
(2) This section also applies if the Corporation of the Bishops—	13
(a) is satisfied that an incorporated Church entity’s certificate of incorporation is lost or destroyed; and	14 15
(b) gives the chief executive a certificate stating the fact.	16
(3) The chief executive may issue a replacement certificate of incorporation for the incorporated Church entity.	17 18
(4) The chief executive must give the certificate to the Corporation of the Bishops.	19 20
Delegation of chief executive’s powers	21
42. The chief executive may delegate the chief executive’s powers under this Act to an officer of the department.	22 23
Regulations	24
43.(1) The Governor in Council may make regulations under this Act.	25
(2) Without limiting subsection (1), a regulation may exempt an	26

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incorporated Church entity from the provisions of another Act.

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(3) An exemption under subsection (2) may be subject to conditions.

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