

## Archbishop Election Amendment Ordinance 2019

### 14/18 The role of the Archbishop of Sydney

(A report from the Standing Committee.)

#### Key Points

- By resolution 14/18, the Synod requested the Standing Committee to bring a Bill to the 2019 session of Synod to amend the *Archbishop of Sydney Election Ordinance 1982* which incorporates the characteristics of the Archbishop of Sydney as expressed in the Doctrine Commission report, 'An Evangelical Episcopate'.
- While reviewing the ordinance, a number of anomalies regarding the timeline of Standing Committee resolving 'that a vacancy be filled' and the date for the first day of Synod were identified. The Bill proposes amendments to address these.
- A number of further changes are proposed in the Bill, notably –
  - Requiring the administration of a Safe Ministry Check to nominees
  - Guiding the tone of speeches on the first day of an election Synod
  - Providing additional flexibility in the retirement date for an Archbishop, allowing up to six months (by special majority resolution of the Standing Committee)
  - Re-ordering of clauses and cleaning up of terminology.

#### Purpose

1. The purpose of this report is to address the request of Synod resolution 14/18, while also explaining proposed amendments to the *Archbishop of Sydney Election Ordinance 1982* and the *Retirements Ordinance 1993* proposed in the Bill for the Archbishop Election Amendment Ordinance 2019.

#### Recommendations

2. Synod receive this report.
3. Synod pass the Bill for the Archbishop Election Amendment Ordinance 2019.

#### Background

4. At its ordinary session in 2018, the Synod noted a report from the Doctrine Commission, 'An Evangelical Episcopate', and passed resolution 14/18 in the following terms –

'Synod expresses its sincere thanks to the Doctrine Commission for preparing the report entitled 'An Evangelical Episcopate' in response to the request made by Synod Resolution 6/15. Synod further agrees to adopt paragraphs 44-50 of the report as the Diocese's definitive statement on the role of the Archbishop of Sydney, as a key reference point for archiepiscopal elections, and requests the Standing Committee to prepare, for consideration at the next session of Synod, a Bill to amend the *Archbishop of Sydney Election Ordinance 1982* which incorporates the characteristics of the Archbishop of Sydney as expressed in paragraphs 44-50 of the report.'

5. At its meeting on 12 November 2018, the Standing Committee noted the terms of the resolution and resolved as follows –

‘Standing Committee –

- (a) establishes a committee of 7 members to consider Synod Resolution 14/18 and any other matters relevant to the election of an Archbishop and report to Standing Committee with any recommendations, and
- (b) appoints as members of the committee Dr Robert Tong AM (Chair), Bishop Peter Hayward, Mr Doug Marr, Dr Laurie Scandrett, Dr Claire Smith, the Rev Caitlin Orr and the Rev Gavin Poole.’

## Discussion

6. The Committee met twice to consider this matter, and supports the passing of the Bill for the Archbishop Election Amendment Ordinance 2019 (the **Bill**).
7. A number of specific matters related to the consideration of the Bill are addressed below, and attached as Attachment 1 is a clause by clause comparison of the first 8 clauses of the current form of the *Archbishop of Sydney Election Ordinance 1982* (the **Ordinance**), and the form of the Ordinance incorporating the changes proposed in the Bill.

## Amendment to the *Retirements Ordinance 1993*

8. According to clause 4 of the *Retirements Ordinance 1993*, it is a term of appointment of a person elected as the Archbishop that, subject to clause 5 of that ordinance, such person retires at age 68 years. Clause 5 goes on to provide that such retirement date may be extended to an age not beyond 70 years, by resolution of the Standing Committee passed by a three-quarters majority of members present and entitled to vote in each house of clergy and laity at the relevant meeting (after the Archbishop has reached the age of 65 years).
9. The Bill amends the *Retirements Ordinance 1993* to provide a further extension up to six months to the retirement date of the Archbishop, to allow the Standing Committee more flexibility in establishing the retirement date of an Archbishop. This is desirable so as to more readily allow for an election Synod to be held in the first half of the year, without requiring the Archbishop to resign. Such an extension would require a resolution of the Standing Committee passed by a three-quarters majority of members present and entitled to vote in each house of clergy and laity at the relevant meeting.

## Amendments to the Preamble and clauses 1-8 of the *Archbishop of Sydney Election Ordinance 1982*

10. The comparison table accompanying this report sets out the amendments proposed in the Bill to clauses 1-8, in comparison with the current form of the Principal Ordinance. The following paragraphs provide context to those changes.

### Adopting the Statement on the role of the Archbishop

11. In accordance with the request of the Synod resolution, the Bill incorporates the characteristics of the Archbishop of Sydney as expressed in paragraphs 44-50 of the Doctrine Commission report, ‘An Evangelical Episcopate’ into the Ordinance. This is accomplished by providing the full text of the paragraphs as a schedule to the Ordinance, and replacing the preamble of the Ordinance with a summary of the paragraphs. The inclusion of these characteristics in the preamble and schedule of the Ordinance, does not have any impact on the requirements in the Ordinal and the service of Consecration of a Bishop.

### Resignation of an Archbishop and timing of Synod

12. As a part of the review of the Ordinance, a number of opportunities for improvement were found. These are each discussed briefly below, and addressed in the Bill.

*Declaring the vacancy*

13. Currently, the Ordinance (at clause 2) requires the Standing Committee to 'resolve that the vacancy be filled in accordance with this Ordinance' in order to commence the process to elect a new Archbishop. The Bill substitutes this requirement with a declaration of vacancy.

*Resignation with less than three months' notice*

14. Subclause 2(2) of the Ordinance provides for the circumstance where an Archbishop resigns with notice of more than 14 and less than 20 weeks' notice. Subclause 2(1) provides for circumstances where there is an existing vacancy in the See of Sydney (presumably upon immediate resignation or incapacity). Whether the resolution is made in accordance with subclause 2(1) or 2(2) impacts the timing of the summons to Synod, the nomination period and the date of the first day of the session of Synod, as set out in clause 5 of the Ordinance.
15. The current provisions of the Ordinance do not contemplate an Archbishop providing less notice than 14 weeks prior to his resignation. In such a circumstance under the current provisions, the Standing Committee would not be able to make a resolution under clause 2 (that the vacancy be filled) until after the resignation had occurred – potentially three months later than the notice given, delaying the summons and the first day of the session of Synod. The current provisions also do not allow the Standing Committee to make a resolution under clause 2 prior to 20 weeks prior to a known resignation or retirement.
16. The Bill contains an amendment to clauses 2 and 5 of the Ordinance to ensure that a declaration of vacancy may be made any time up to a year prior to an expected vacancy, allowing the date of Synod to be set at a suitable time following.

*Appointment of Returning Officers*

17. Currently, the Ordinance requires the Returning Officers to be appointed at least 7 days prior to any resolution made by the Standing Committee in accordance with clause 2 that a vacancy in the office of the Archbishop be filled. Returning Officers are appointed by the Standing Committee, so if this requirement were observed, it may result in delaying the resolution in clause 2 for a month for the sake of appointing Returning Officers. There doesn't appear to be a reason for this requirement. Accordingly, the Bill proposes that Standing Committee 'appoint returning officers as soon as practicable'.

*Timeline to the first day of Synod*

18. The amendments proposed to address the notice period issue described above require significant amendment in clause 5 of the Ordinance in order to set suitable boundaries for key dates in the timeline leading to the first day of a session to elect an Archbishop. Additionally, the Ordinance at present allows under one scenario to validly hold an election Synod where there had been less than 1 week of a nomination period. Accordingly, clause 5 has been significantly reworked in order to address these issues.
19. Key considerations in setting dates in the timeline for an election Synod are as follows –
  - (a) Notice of a declared vacancy should be sent to Synod members as soon as possible, and a summons should be sent as soon as practicable.
  - (b) The first day of the session should not be held earlier than 14 weeks from the summons. This provides a minimum of an 8 week period in which nominations may be made (the nomination period closes 6 weeks prior to the first day of the session).
  - (c) If there has been a 'sudden' vacancy in the See of Sydney (e.g., through immediate resignation or incapacity) a lengthier nomination period may be desired than the circumstance where the date of retirement of an Archbishop has been known for years.
  - (d) The Ordinance needs to provide a suitable range of dates for the first day of the session so as to –
    - (i) accommodate impractical times of year (e.g., Christmas and Easter, and the ordinary session of Synod) and venue availability,
    - (ii) ensure that there is at least three weeks and not more than 20 weeks between the resignation or retirement of an Archbishop and the commencement of a Synod to elect a new Archbishop,

- without being so broad as to allow an unhelpfully extended period of time between Archbishops.
- (e) Given the number of factors involved and the complexity of adequately providing for them, the Standing Committee should by overwhelming majority (75% of both houses present and voting) be able to set a date outside of the ranges prescribed in the Ordinance.

20. The Bill contains amendments to clause 5 of the Ordinance addressing each of these issues.

### Making of nominations

21. Currently, the Ordinance –
- (a) requires a nomination (form) to be submitted by at least any two members of Synod (current clause 7(1)) (although a person is not deemed to have been nominated “unless one or more nominations signed by not less than 20 members of Synod are received” [clause 7(3)]),
  - (b) requires that upon receipt of a nomination (signed by at least two members) the National Register is consulted by the Director of Professional Standards, and
  - (c) provides that a notice is not made to Synod members regarding a suitably nominated person until after the close of nominations (current clause 8), being 6 weeks prior to the commencement of the session.
22. The amendments proposed in the Bill provide that –
- (a) any one (rather than two) or more members may make a nomination,
  - (b) following the receipt of nominations by ten (rather than two) members, the National Register is to be consulted and also the Safe Ministry Check administered, and
  - (c) a notice is made available to Synod members listing the name of a suitably nominated (by 20 members) person, 7 days after a determination is provided to the nominee by the Director of Professional Standards following a National Register and Safe Ministry checks.

### Suitability of nominees

23. The Bill includes the requirement that any nominee, having been nominated by 10 nominators must –
- (a) make a declaration of the solemn promises contained in the Second Schedule of this Ordinance, and
  - (b) consent to a search being undertaken for information in the National Register in relation to the nominee, and
  - (c) complete Safe Ministry Check for the purpose of this nomination.
24. On the basis of the search of the National Register and the results of the Safe Ministry Check, the Director of Professional Standards makes a determination regarding fitness for episcopal ministry which is advised to the nominee. Presuming the nominee does not withdraw, that determination is made available as part of the notification of valid nominees under clause 8, at the close of the nomination period.

### Ordering of clauses

25. Some effort has been made to ensure that clauses 1-7 provide a logical sequence, and where possible, existing clause references are retained while eliminating ‘inserted’ subclauses (where for example a clause has subclauses: (1),(2),(2A),(3),(3A), these have been renumbered to remove the ‘A’s).

## **Amendments to clauses 9-45 of the *Archbishop of Sydney Election Ordinance 1982***

### Order of Business – petitions and tabling of minutes

26. The Bill, at paragraph 2(2)(f), proposes removing the requirement to table the Minute Book of the Standing Committee, and removing opportunity for petitions to be made on the first day of proceedings. At paragraph 2(2)(g), the Bill proposes removing opportunity for petitions and notices

of questions on day two and following. Both proposals are made noting that an election Synod is a special session of the Synod, having the purpose of electing an Archbishop, rather than dealing with business considered at an ordinary session.

### Announcement as to voting

27. The Bill proposes amendment to clause 14 of the Ordinance, intended to simplify the language used.

### Purpose of the proposer and seconder's speeches

28. The Bill provides a further amendment designed to guide the tone of speeches on the first day of an election Synod. Clause 15 is proposed to be amended to include –

“The purpose of the proposer and seconder's speeches is to promote the characteristics of their candidate.”

### Ballot Procedure

29. The Bill provides a number of amendments to clauses 15A, 16A, 17 and 18, 27 simplifying the language and requirements of the procedure.

### Definitions and terminology

30. The Ordinance repeats several expressions throughout, for which the Bill provides definitions –

- (a) “the person who, on the occurrence of a vacancy in the See of Sydney, is entitled under the Constitutions to exercise the powers vested in the Archbishop” is defined as the “Administrator”,
- (b) “the Archbishop of the See of Sydney” is defined as “the Archbishop”,
- (c) “the specified person referred to in paragraph (d) of clause 5(3)” is defined as the “Nomination Officer”,
- (d) “that date determined in accordance with clause 7(2)(d)” is defined as the “Nomination closing date”,

and the Interpretations clause is moved from the end of the Ordinance to become a new clause 1A.

31. Throughout the Ordinance, subclauses and paragraphs have been referred to in the manner, “paragraph (a) of subclause (2) of clause 3”, rather than the more efficient, “paragraph 3(2)(a)”. The Bill, at paragraphs 2(2)(d) and (e) updates each of these references.

For and on behalf of the Standing Committee.

Daniel Glynn  
**Diocesan Secretary**

29 August 2019

## Archbishop Election Amendment Ordinance 2019 – Comparison table (clauses 1-8)

The following table sets out the material amendments to clauses 1-8 of the *Archbishop of Sydney Election Ordinance 1982* (the **Principal Ordinance**), which would result from passing the Bill for the Archbishop Election Amendment Ordinance 2019 (the **Bill**). The table compares the proposed clause with the equivalent in the Principal Ordinance.

As well as the specific amendments listed in the table, a number of terms are defined in the interpretations clause (new 1A). References within the Principal Ordinance to other subclauses and paragraphs have been updated to the shortened form of reference (e.g., rather than “paragraph (c) of subclause (2)”, it will now read ‘paragraph 2(c)’ etc).

Proposed clause	Ref. in Principal Ordinance	Comment
Preamble	Preamble	The former preamble is replaced by a summary reference to an excerpt from the Diocesan Doctrine Commission Report, ‘An Evangelical Episcopate’, with the full excerpt attached as a schedule to the Ordinance. The addition of these paragraphs was the specific request of the Synod.
Clause 1A	44	Interpretation clause moved from end of ordinance to the beginning, with additional defined terms.
Clause 2	Clause 2	<ul style="list-style-type: none"> <li>In the Principal Ordinance, subclause 1 provides for the situation where the vacancy has occurred without notice (e.g. in the case of a death); subclause 2 provides that the Standing Committee may act within the period 20-14 weeks prior to the vacancy. There is no provision for the Standing Committee to resolve the vacancy be filled between 14 weeks prior to the vacancy, and the vacancy.</li> <li>In the proposed amendments, subclause 2 provides that the Standing Committee will make a ‘declaration of vacancy’, and more flexibility is given as to the timing of this declaration.</li> </ul>
3(1)(a)	3(a)	The principal ordinance required the Returning Officer and Deputy to be appointed not less than 28 days prior to the date of the summons in cl.5. Clause 5 in turn required the summons to be given within 21 days of the resolution of Synod. This resulted in the Returning Officer and Deputy needing to be appointed at least 7 days prior to the resolution in clause 2; which seemed unnecessary. The proposed amendment simply requires Returning Officer and Deputy to be appointed as soon as practicable following the resolution of the Standing Committee in clause 2.
3(1)(b)	–	<ul style="list-style-type: none"> <li>The current ordinance at 5(2)(d) required a person to identified “to whom nominations shall be given” and referred to that person by reference to the paragraph and clause throughout. In practice, this person is appointed by the Standing Committee (in 2013, the Diocesan Secretary at the time was appointed).</li> <li>To aid comprehension, the person is assigned a title for the purposes of this election (the “Nomination Officer”)</li> </ul>
-	3(1)(b)	The Secretary of the Synod will no doubt be informed of the appointment as a matter of course. However, if the notice is required by ordinance, the requirement is likely to be formally overlooked when the Secretary of the Synod is also the Secretary of the Standing Committee (our standard practice) due to its inherent redundancy. So, the Bill removes the formal requirement that the Standing Committee inform the Secretary of Synod (noting that typically, the Secretary of Standing Committee is also the Secretary of the Synod).

Proposed clause	Ref. in Principal Ordinance	Comment
3(2)-(4)	4	The subclauses defining the functions of the returning officers are moved to be listed under the clause providing their appointment. The terms remain unchanged.
4	6	Since the Administrative committee would be appointed prior to the summons, it seems best to move it prior to the summons in the ordinance. The terms of the clause remain unchanged.
5(1)	5(1), 5(1A) and 5(3)	<p>The only difference between 5(1) and 5(1A) in the Principal Ordinance is that in one circumstance the Archbishop summons, in the other the Administrator summons. The proposed amendment deals with both scenarios in one clause.</p> <p>The proposed amendments also require a notice to be given to members of Synod of a declaration of vacancy within 7 days, and a summons to be sent as soon as practicable.</p> <p>The specifics of the session of Synod are listed at 5(1) rather than 5(3), since 5(1) includes the requirement to issue the summons.</p>
5(2)	5(2) and 5(2A)	<ul style="list-style-type: none"> <li>• The Principal Ordinance allows the Standing Committee to make a resolution under clause 2 prior to a vacancy only if the Archbishop gives 14 weeks' notice. (If the Archbishop decides to resign with 13 weeks' notice, the Standing Committee would need to wait until the vacancy occurred before making a resolution under clause 2).</li> <li>• The Principal Ordinance allows Synod to commence 9 weeks following an 'unplanned' occurrence of vacancy, which may in one scenario allow a Synod to commence having had only a 1 week nomination period. The proposed amendment inserts a clear requirement that the Synod is at least 14 weeks following the date of the summons, which ensures that there are 8 weeks for nominations to be received.</li> <li>• The proposed date range avoids entirely the current confusion of different time periods for different types of resolution made under clause 2 of the Principal Ordinance. Rather, the proposed amendments accommodate the eventualities of an Archbishop giving up to a year's notice of resignation, or immediately vacating his office, and everything in between; allows reasonable time for the Standing Committee to declare a vacancy under clause 2 and the Archbishop or Administrator to issue a Summons; ensuring – <ul style="list-style-type: none"> <li>○ There is always at least 14 weeks between the summons and the 1<sup>st</sup> day of Synod (allowing 8 weeks nomination period)</li> <li>○ There is always at least 3 weeks from the occurrence of the vacancy before the Synod</li> <li>○ The Synod must occur within 20 weeks of the latter of the vacancy or the summons.</li> <li>○ There is always at least a six week range in which Synod may commence (to accommodate holidays, availability of venues, etc)</li> </ul> </li> </ul>
5(3)	–	Given that in some circumstances it is reasonable to assume that the ordained period of dates is unsuitable to hold an election Synod (for example, occurring over the Christmas or Easter period, too close to an ordinary session of Synod, no venues available, or other unforeseen circumstance), this suggested clause would allow Standing Committee with an overwhelming majority of both houses to set the commencement of the special session on any date beyond the range specified.
6	6A	No substantial changes, short of the change of clause number and defined terms.
7	-	Throughout clause 7 & 7A, subheadings are proposed to help understand the flow of nominations.

Proposed clause	Ref. in Principal Ordinance	Comment
7(1)	7(1)	The proposed amendment would allow a valid nomination form to be submitted by one or more members of Synod (rather than two or more, as previous); and the form need not certify the willingness of the nominee to undertake anything (see 7A(1)).
7A	-	Insertion of clause to more helpfully describe the flow of nomination process – in this clause, describes the work carried out by the Nomination officer and the Director of PSU to administer a nomination.
7A(1)	7(2)(b)	The proposed amendments require the Nomination Officer, upon ten or more members having nominated the nominee, to seek confirmations from the nominee directly that he is willing to make declaration, consents to search on National Register, willing to undertake Safe Ministry Check.
7A(2)	7(2A)	The proposed amendment includes current requirement to request the Director of Professional Standards to access the National Register, and adds requirement for – (a) the Director to administer the Safe Ministry Check; (b) the nominee to provide birth, baptism and ordination certificates, etc.
7A(3)	-	The Director of Professional Standards makes a determination regarding fitness for episcopal ministry.
7A(4)	7(4)	Renumbering of subclauses.
7A(5)	7(4A)	Renumbering of subclauses.
7A(6)	-	Where a nominee has not withdrawn their name, one week after the result of the Safe Ministry Check, the name of the nominee is added to a public list of nominees, but the Nomination Officer need not alert all Synod members to each addition.
7B(1)	7(5)	Renumbering of clauses
7B(2)	-	Where the nominee has not confirmed willingness for a National Register and Safe Ministry check, they shall be deemed not to have been nominated.
8	8	Inserts the requirement (in paragraph 8(c)) that the Administrator of the Diocese forward to each member of the Synod, the determination of the Director of Professional Standards.