

64/19 Fixed term appointment for the Archbishop

(A report from the Standing Committee.)

Key Points

- By resolution 64/19, the Synod requested the Standing Committee to provide the merits and difficulties involved in introducing a set term of appointment for the Archbishop, along with information on clergy tenure in other metropolitan dioceses.
- A set term of appointment (with opportunity for re-election) is intended to increase the likelihood of an Archbishop with a lengthy and strategically significant episcopate, while also broadening the pool of potential candidates at any Election Synod. However, significant difficulties arise upon consideration of the impact on the initial term of the Archbishop (e.g., decisions made to remain popular in light of 're-election'), and the political fallout of a re-election Synod (where any grievances aired against the sitting Archbishop may significantly hinder his second term), among others.
- Consideration is given to the Standing Committee's *extending* the term of the Archbishop at an earlier age than current. Such an extension is likely to allow a handful of Standing Committee members the power to block an extension of the sitting Archbishop, thereby introducing again the possibility of the Archbishop making decisions in an effort to remain popular in light of a vote to extend.
- All other metropolitan dioceses have all clergy retiring at 70 years of age. Brisbane, Melbourne and Perth have limited tenure for parish rectors, being periods of five or ten years, or tenure for only a portion of incumbents.

Purpose

1. The purpose of this report is to provide the known merits and difficulties of introducing a fixed term of appointment for the Archbishop of Sydney, as requested in the terms of resolution 64/19.

Recommendation

2. Synod receive this report.

Background

3. At its session in October 2019, the Synod passed an ordinance put forward by the Standing Committee amending the *Archbishop of Sydney Election Ordinance 1982* (the **Ordinance**). In the course of the debate, the Synod also considered a further amendment that would introduce a fixed term appointment for the Archbishop. The amendment proposed inserting the following new clause 42 in the Ordinance –

'42. Term of Office

- (1) A person who has been elected Archbishop in accordance with this Ordinance holds office as Archbishop until the earlier of –
 - (a) the 12th anniversary of the date the person was last declared to be elected Archbishop in accordance with clause 40, and
 - (b) the date on which a vacancy in the See of Sydney arises for any other reason.
- (2) For the avoidance of doubt, a person is not prevented from being nominated for the office of the Archbishop again by virtue of having ceased to hold office under subclause 42(1)(a).'

4. Ultimately, the amendment was not passed and a fixed term was not introduced, however at the same session, the Synod passed resolution 64/19 in the following terms –

‘Synod requests the Standing Committee to report to the next session of Synod on the merits and difficulties of a fixed term of appointment for the Archbishop of Sydney, with or without the possibility for extension of that term, including providing clarification on whether a change in ordinance would apply to the sitting Archbishop. Synod members are invited to send succinct submissions on the proposal to the Standing Committee via the Diocesan Secretary by 30 November 2019.

Synod further requests that the report provide information of the tenure arrangements in the dioceses of Brisbane, Sydney, Melbourne, Adelaide and Perth for incumbents, assistant bishops and deans.’

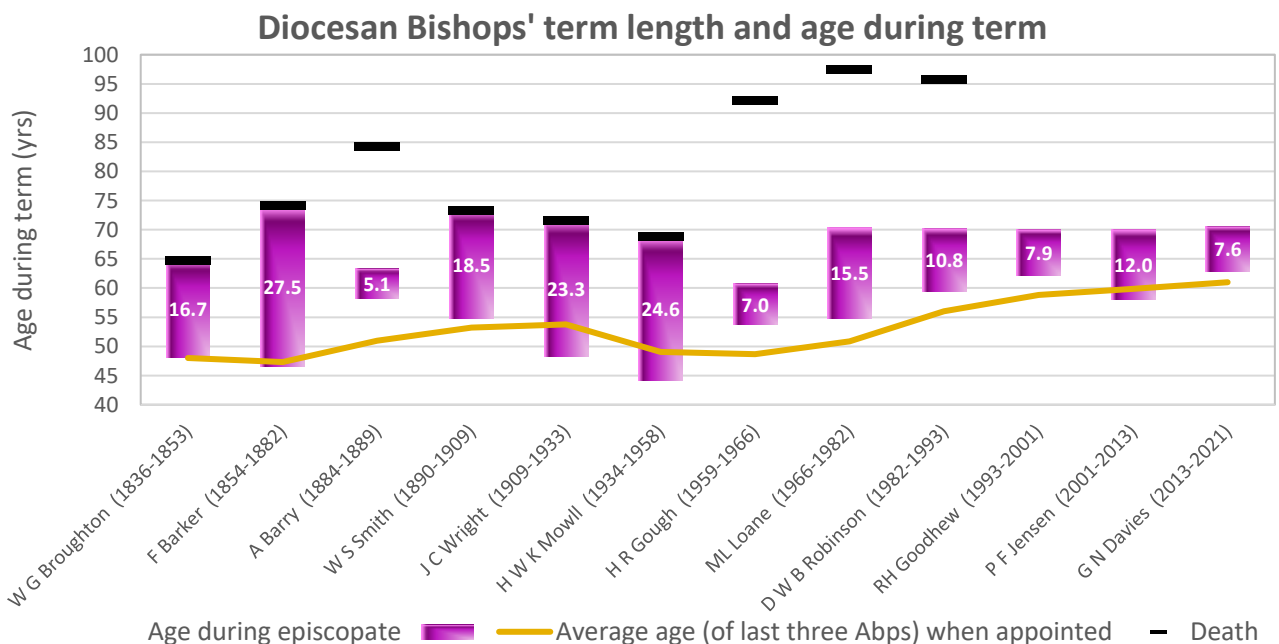
5. At its November meeting, the Standing Committee asked the committee that reviewed the *Archbishop Election Ordinance* in 2019, along with the mover of the Synod resolution (Mrs Stacey Chapman), to address the requests of the resolution and provide a report to the Standing Committee for promotion to the next ordinary session of the Synod. The full membership of the 2020 Committee is as follows –

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|---------------------------|---------------------|
| Dr Robert Tong AM (Chair) | The Rev Caitlin Orr |
| Mrs Stacey Chapman | The Rev Gavin Poole |
| Bishop Peter Hayward | Dr Laurie Scandrett |
| Mr Doug Marr | Dr Claire Smith |

6. Submissions were invited from all Synod members, and received from only two members of Synod, the Rev Dr Ed Loane and the Rev Anthony Douglas. A subsequent submission was received from Canon Sandy Grant.

7. In preparing for the discussion, the Committee reviewed the following material –

- Document provided to Synod in 2019 in support of original amendment, from the Rev Dominic Steele (attached as appendix 1)
- [Retirements Ordinance 1993](#)
- [Archbishop of Sydney Election Ordinance 1982](#)
- Report to Synod in 1999: [14/97 Synod Committee on Clerical Tenure \(1999\)](#)
- Report to Synod in 2000: [38/99 Clerical Tenure \(2000\)](#)
- The following chart, showing the relative duration of term of previous Diocesan Bishops of Sydney, along with their age of commencement.



Discussion

8. The *Retirements Ordinance 1993* governs the retirement age of the Archbishop of Sydney as follows –
 - (a) Subclause 4(2) provides that the Archbishop retire at 68 years of age.
 - (b) Subclause 5(1)(a) provides that after the Archbishop reaches 65 years of age, the Standing Committee by three-quarters majority of members present and entitled to vote in each house, may extend the retirement age of the Archbishop to 70 years.
 - (c) Subclause 5(3) provides that, “since it is desirable to hold an election Synod in the first half of the year, a further extension up to six months may be given to the Archbishop, by resolution of the Standing Committee passed by a three-quarters majority of members present and entitled to vote in each house”.
9. Accordingly, the initial retirement age of the Archbishop of Sydney is 68 years, but this may be extended to 70 or even 70 years and six months in certain circumstances.

Merits of a fixed term appointment

The principle that a lengthy episcopate is advantageous

10. The merits of a fixed term appointment rely on a principle that the Diocese will be better served by a single suitable Archbishop over a longer episcopate (giving plenty of time to shape the Diocese) than by two (or more) equally suitable Archbishops over the same period. The longer episcopate provides opportunity for the Archbishop to strategically shape the Diocese over a long term, ultimately also bringing lengthy experience to bear in his later years. One of the submissions received expressed the view that ‘the longest episcopacies (of Bishop Barker and Archbishop Mowll – both over 25 years) are generally thought to be the best’.
11. In contrast to the longer term, shorter episcopates remove the opportunity for a lengthy process of change towards a consistent goal, possibly making necessary change harder to achieve; and in these circumstances, the Diocese suffers from a succession of Archbishops unable to provide consistent strategic direction for the Diocese.
12. Assuming this principle to be true, it would be desirable to elect a candidate, say, in his late 40s or early 50s, allowing for an episcopate of 20 years or so.

Reluctance of Synod to appoint a younger candidate

13. A recurring feature of Archbishop Election Synods has been arguments made against a candidate based on his young age, warning that if he is ineffective or in some way unsuitable, or even incapacitated in the role of Archbishop, he will remain until he reaches 68 years of age.
14. Section 39 in the *Anglican Church of Australia Trust Property Act 1917* makes provision regarding the incapacity of a bishop of a diocese arising from illness and other causes; however the scenario is not unknown in Australia where a sitting diocesan bishop is incapacitated and remained in office until retirement.
15. A fixed term appointment for any Archbishop, for say 12 years, should have a mitigating effect on such concerns, allowing that an ‘unsuitable’ or incapacitated Archbishop would not have his term extended; while a suitable Archbishop would be granted an extension and continue in his strategic work, benefitting the Diocese.
16. Accordingly, a fixed term (with opportunity for extension) removes a key argument against the appointment of a younger candidate and provides greater likelihood of a younger appointment resulting in a lengthy, and strategically significant, episcopate.
17. As a further benefit, a fixed term and consequent increased likelihood of electing a younger candidate allows the Synod to select from a wider age-range of candidates, providing a greater pool from which to draw.

18. Younger candidates have been nominated, but recently (since Archbishop Loane's term) not elected. The claim that it was only those candidates' relative youth that prevented their election cannot be made without surveying the relevant election synod members, but goes against anecdotal evidence and requires a limited view of the Synod's ability to make wise and godly decisions in which age is just one factor.
19. Prayer has been a feature of past Archbishop elections. We ask for the election of the man who will be God's instrument to advance his kingdom, and once elected, we continue in prayerful dependence upon God to enable and equip the Archbishop to fulfil his ministry, including overcoming any perceived disadvantages of age.

Introduction of a decision point

20. A set term for an Archbishop introduces a 'decision point' whereby an Archbishop, prompted by the end of his term, may make a godly decision not to stand again. This may be related to failing health or energy, or other factors.
21. A younger nominee may be daunted by the expectation of a long episcopate and therefore be unwilling to stand. A set term would reduce his commitment to the length of the term, conceivably making it more likely that a younger nominee would stand for election.
22. While both of these factors are legitimately 'merits' of the fixed term, the current arrangements for the term of the Archbishop allow him to resign at any time, suggesting that the merit is not to be a strong consideration.

Difficulties of a fixed term of appointment

23. A fixed term of appointment as set out in the amendment put to the Synod in 2019 (paragraph 4 above) would result in a maximum term of 12 years for any Archbishop. At the end of the 12 year period, a special session of Synod would be called to elect a new Archbishop, at which he is able to be re-elected. This arrangement introduces a number of difficulties outlined below.

Undermining the first term

24. The Archbishop needs to be able to make both strategic and difficult (even unpopular) decisions. If the Archbishop is facing re-election it introduces the possibility (or *appearance* of the possibility) that he may be tempted to make such decisions with a view to whether he will lose support for re-election. Similarly, the Archbishop may be tempted to refrain from acting against the wishes of certain influential people or groups in order to avoid their opposition in a future (re-)election Synod.
25. Similarly, the strategic direction of a limited-term Archbishop is more likely to be undermined by anyone in the Diocese desiring to follow a different strategic direction, who may choose to ignore his leadership and thereby contribute to the likelihood that he would not be re-elected on the grounds that he lacks support.
26. A fixed term introduces the risk that every Archbishop will plan and lead (even subconsciously) as if he only has 12 years in leadership. This immediately stifles the opportunity to have a lengthy and strategically significant episcopate (which is one of the principal intentions of introducing the limited term of appointment); even if the Archbishop is extended, their strategic decisions would have been influenced by the thought of not being in 'power' or 'wishing to remain popular' for the election.
27. If the sitting Archbishop is not swayed in his decision-making by such considerations as desire to be re-elected, but in the course of his term must make one or more difficult and wide-reaching decisions (i.e., with an element of unpopularity), a fixed term would introduce the opportunity for such decisions to be used against him in re-election or for the election debate to function as a de facto referendum on those decisions – particularly if his rationale in making the decision(s) includes elements that are confidential and therefore unable to be shared. In listing this 'difficulty', we note that this consideration assumes that an Election Synod may include exaggeration or misrepresentation of the factors behind the difficult decision(s), or at the very least, that the Archbishop's rationale is not able to be explained to the Synod sufficient to preserve his position. Accordingly, if Synod contemplates introducing a set term for Archbishops, Synod members should consider carefully whether this type of politicking is likely to be an element in Election Synods.

Difficulty of standing for re-election

28. An Archbishop Election Synod is a difficult time for each nominee. In addition to any (understandable) hesitation to commit again to the stresses associated with being a nominee in an election Synod, it is entirely conceivable that an Archbishop may choose not to stand for re-election in any of the following circumstances –
- (a) out of a desire to avoid the critical commentary on his episcopate and the attendant likelihood of losing support in the Diocese as a result of aired grievances (even if re-elected),
 - (b) if he considers it possible that he would not be re-elected, to spare himself the embarrassment of being 'voted out of office',
 - (c) if there are standout nominees that he in humility does not wish to hinder from serving as Archbishop,
 - (d) similarly, if there are popular nominees that he does not wish to be seen to be preventing from election by standing for re-election, or
 - (e) if there is strong support for another nominee and he does not wish to see the Diocese divided on the issue.
29. While paragraph (c) and possibly (e) above could describe a godly reason for not standing again, it is worth noting that there is nothing in the present circumstances preventing Archbishops from resigning prior to their retirement. In the case of paragraph (e), the possible division would only arise as a result of a set term; suggesting that the positive aspects of (c) and (e) are available in the present system, while potential negative aspects are introduced with a set term.

Loss of current flexibility in retirement

30. Having a degree of flexibility in the term of the Archbishop has proved useful. As recently as this year, the Standing Committee was able to extend the term of Archbishop Davies by six months in order to, among other things, provide continued leadership for the Diocese during a time of unprecedented upheaval resulting from the COVID-19 pandemic. A fixed term would reduce flexibility.

Incongruity of a set term in order to increase term length

31. One of the key aims of the introduction of a set term length is to allow younger nominees to be elected, so that the Diocese can then enjoy the benefit of Archbishops with lengthy episcopates. However, there is a clear element of incongruity to introduce a set term in order to allow for longer terms.
32. It would be unfortunate to find that the introduction of set terms increases the likelihood of a younger nominee being elected on the one hand; while on the other hand introducing the possibility that the younger Archbishop who could otherwise have led for a lengthy period is limited to one term and fails in re-election. Conceivably, the introduction of a set term could increase the chances of electing a younger Archbishop while simultaneously decreasing the chances of a lengthy episcopate.

Disincentive for potential candidates

33. The incentive for other candidates to stand for election is significantly compromised if the Archbishop also stands in the election and is widely expected to be re-elected. The decision-making process to be nominated for election as Archbishop involves considerable disruption to family and ministry life, with much personal reflection and, once the decision is known publicly, the likelihood that existing pastoral responsibilities and parish relationships will be negatively impacted. Accordingly, the willingness of potential candidates to stand against an incumbent Archbishop would seem to rest on some significant level of discontent with his arch-episcopacy (and act as a filter for who would stand), as otherwise the risk and impost would not be considered justified.

Reflection of the Committee

34. While 'on paper' it appears reasonable and attractive to set a term limit after which the former Archbishop may stand for re-election, upon consideration such a process would likely undermine the first term while simultaneously reducing the likelihood that any sitting Archbishop would stand for,

and be successful in, re-election. The Committee considering this matter believes that overall this possibility would be counterproductive and unworkable.

Introduction of further extensions to the Archbishop's term

35. During the course of discussion the possibility of introducing earlier stages of extension was considered as an alternative to a term limit, as follows –
- (a) If an Archbishop is under the age of 50 when elected, following his 60th and prior to his 62nd birthday, his term may be extended to 68 years of age by special majority of the Standing Committee.
 - (b) If an Archbishop is over the age of 50 and under 55 when elected, following his 63rd and prior to his 65th birthday, his term may be extended to 68 years of age by special majority of the Standing Committee.
 - (c) If an Archbishop is over the age of 55 when elected, he will not require any extensions to remain in office until 68 years of age.
 - (d) The current extensions from 68 to 70 (and 70 years and six months) by special majority of the Standing Committee would remain.
36. A suggestion was considered in this scenario to restrict release of the quantitative result of the vote, limiting any report to the Standing Committee and beyond to a simple 'carried' or 'not-carried'. Restricting the publication of the number of votes for and against would preserve the possibility that the Archbishop enjoys unanimous support in the event that he is extended; while preserving the possibility that only 25% of one house did not support him if his term is not extended.

Merits of an 'extension' approach

37. The possibility of introducing further predefined points at which an Archbishop's term may be extended seems preferable to set term limits followed by an election Synod, primarily because the authority to extend an Archbishop rests with the Standing Committee, thereby avoiding much of the political devastation expected should a sitting Archbishop stand for re-election by the Synod.

Difficulties of an 'extension' approach

Beyond the reasonable authority of the Standing Committee?

38. While it seems appropriate for the Standing Committee to extend the Archbishop's retirement by two or two and a half years in the Archbishop's late 60s, extending a sitting Archbishop for ten or more years is an entirely different proposition and is questionable as to sitting rightly in the authority of the Standing Committee, without support from the Synod.
39. For illustration, according to subclause 5(3)(b) of the *Delegation of Powers Ordinance 1998*, any three members of Standing Committee can cause a proposed ordinance being considered by the Standing Committee to be referred to the Synod. If this occurs, Standing Committee may not pass the proposed ordinance. The extension of an Archbishop for such a significant length of time is surely of more importance than any ordinance; however any recourse to refer the extension to the Synod would become in effect a 're-election' Synod, undesirable and 'unthinkable' for the reasons outlined above.

Difficult to implement in any reasonable way

40. Should the Standing Committee be given the authority to extend an Archbishop at certain points during his episcopate, problems arise in relation to securing the extension.
41. Accepted wisdom and the current practice for extensions suggests that a super majority of the Standing Committee (75% of both houses) would need to support the extension so as both to demonstrate overwhelming support for the Archbishop if he is re-elected, while also not being a crushing indictment on his term if not extended. It would hardly be advantageous to have an Archbishop extended for a lengthy period having secured e.g., only 52% of the vote(!).

42. There are 24 clerical members of Standing Committee and 32 lay. If a super majority is required to extend the Archbishop, the corollary is that a handful of members could successfully oppose the extension. For example, seven clergy members voting against the extension would be enough to successfully oppose the extension – even if the other 47 members all voted for the extension. This assumes that all 54 members of Standing Committee are present. If even one member of clergy is absent from the relevant meeting, six clergy would be sufficient to oppose an extension. By the same reasoning, 9 lay persons could oppose an extension. Accordingly, requiring a super majority to support the extension seems unfairly opposed to the sitting Archbishop.
43. Instead of 75% of both houses being required to extend the Archbishop, a majority of 2/3rds in both houses, or even a simple majority could be considered, and in either of these scenarios the extension of the Archbishop would become more likely based on the numbers. However, a super majority decision of the Standing Committee to extend an Archbishop would have dispelled any suggestion that the Synod would have decided otherwise (while enjoying the benefit of the matter not going to Synod and encountering the problems listed above). A lower threshold however, would take some of the legitimacy out of any extension, suggesting that the Synod may not have extended the Archbishop had it had the opportunity.
44. In this way, the ‘threshold’ question highlights the problem of Standing Committee making a decision about a significant extension in place of the Synod: the Standing Committee is intended to make somewhat ‘routine’ decisions on the Synod’s behalf when the Synod is not in session; it is not intended to make significant decisions in place of Synod in order to avoid e.g., the pitfalls of an Election Synod.

Impact upon first term and ‘re-election’

45. Taking an ‘extension’ approach seems preferable to a term-limit approach, mainly because it reduces the political fallout and other problems expected with a ‘re-election Synod’, by limiting the decision within the forum of the Standing Committee. However, while limiting the impact of these difficulties, it does not remove them entirely, with many of the problems associated with an Election Synod remaining in some form in the ‘extension’ scenario.

Application of any amendments to the term of appointment to the sitting Archbishop

46. The resolution of the Synod requested ‘clarification on whether a change in ordinance would apply to the sitting Archbishop’.
47. In short, any ordinance passed by the Synod (or Standing Committee) does not come into force until assented to by the Archbishop or his Commissary, or the Administrator of the Diocese if the See is vacant. It is unlikely that an Archbishop would assent to an ordinance if it effectively removes himself from office or imposes upon him the types of hardships described earlier in the report associated with facing re-election. It may be assumed therefore, that such an amendment is unlikely to apply to the next Archbishop of Sydney, unless an amendment is passed at a session of Synod prior to his installation as Archbishop, to be assented to by the Administrator.

Tenure arrangements in other dioceses

48. In accordance with the last paragraph of the Synod’s request, the tenure arrangements in various dioceses for incumbents, assistant bishops and deans are described briefly below. In this context, ‘tenure’ is the term often used to refer to the ongoing right of a rector (or curate in charge, priest in charge etc) to whatever spiritual and temporal privileges and authority go with the office. Questions of removal from office in circumstances of incapacity, misconduct or offence are considered outside the scope of this report.

Retirement ages

49. The four metropolitan dioceses surveyed in accordance with the Synod’s request (Adelaide, Brisbane, Melbourne and Perth) each have a retirement age of 70 for all clergy. Officials from the dioceses of Brisbane, Melbourne and Perth each indicated that a review of their arrangements was expected in the coming year.

Tenure

50. In Adelaide, their 'Retirement Ordinance 1988' requires that all clergy, "upon reaching the ages of 63 and 68 years and upon being summoned by the Bishop to do so shall confer with the Bishop on the subject of the retirement of that member of the clergy, the pastoral care of that member of the clergy in retirement and any matters incidental to the retirement of that member of the clergy, and such conference shall take into account the views of such persons or bodies as are likely to be affected by such retirement."
51. In Brisbane, only incumbents appointed to a benefice have tenure; and the Archbishop has power only to appoint every third incumbent to a benefice. First time incumbents and ministers that have moved from another diocese are typically appointed a Priest in Charge (PIC) to non-benefice parishes. This can be upgraded to a Rector's licence after 3 years. A PIC licence may be suspended or revoked by the Archbishop for any cause which to him shall appear good and reasonable.
52. In Melbourne, clergy appointed as "priest in charge" to their first parish have an initial tenure of three years with the possibility upon review of a transition to incumbent. Once an incumbent (including the Dean), the clergy have a tenure of ten years with the possibility of extensions in five year intervals pending review (until retirement at 70).
53. In Perth, it is understood that the general practice is that licences for parish clergy are given on five year terms with opportunity for extension on review.
54. In Sydney, rectors, the Dean and the Archbishop have tenure until retirement. Assistant ministers do not, and assistant bishops may not (depending on the terms of their licence).
55. It is worth noting that the Bishop of Grafton has a fixed term of ten years, while the Bishop of Newcastle has no retirement age, subject to health checks.

For and on behalf of the Standing Committee.

DR ROBERT TONG AM
Chair of subcommittee

20 July 2020