

ROMAN CATHOLIC CHURCH TRUST PROPERTY ACT.

Act No. 24, 1936.

An Act to make certain provisions relating to property held upon any trust for or for the use, benefit or purposes of the Roman Catholic Church in New South Wales; to repeal the Roman Catholic Diocese of Lismore Church Lands Act, 1908, and the Saint Patrick's College (Manly) Act, 1914; and for purposes connected therewith. [Assented to, 4th July, 1936.]

Edward VIII,
No. 24, 1936.

WHEREAS lands held on trust for or for the use or benefit or for purposes of the Roman Catholic Church in New South Wales are vested in many different bodies of trustees, and owing to deaths and other causes, the necessity for the appointment of new trustees frequently arises: AND WHEREAS it is expedient that bodies corporate be created for the purpose of holding, managing and dealing with lands so held, that provision be made for the vesting in bodies corporate to be created

Preamble.

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created by this Act of lands so held, and that conveying transactions in respect of lands so held be facilitated and rendered less expensive: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Roman Catholic Church Trust Property Act, 1936."

(2) This Act shall commence upon the first day of August, one thousand nine hundred and thirty-six.

Definitions.

2. In this Act, unless the context or subject-matter otherwise indicates or requires—

"Bishop" means the person for the time being administering a diocese, whether as Archbishop or Bishop, Coadjutor Archbishop or Coadjutor Bishop, Vicar Capitular or Administrator.

"Church" means the Roman Catholic Church.

"Church trust property" means land situated in New South Wales, for the time being subject to any trust created before or after the commencement of this Act, for the Church or for the use or benefit or for any purpose of the Church, including the land the subject of the provisions of Saint Patrick's College (Manly) Act, 1914, but does not include land held on any trust, created before or after the commencement of this Act, for any Order or Community of the Church or for any association of members of the Church for the use or benefit of or for any purpose of any such Order, Community or association.

"Diocese" means a diocese (including an Archdiocese) for the time being of the Church, situated in New South Wales, and whether created before or after the commencement of this Act.

"Diocesan

“Diocesan Consultors” means the Diocesan Consultors for the time being of a diocese, or in relation to a diocese in which a Cathedral Chapter shall for the time being exist, the members for the time being of that Cathedral Chapter.

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“Land” includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity.

3. There shall be for each diocese trustees of Church trust property, who shall be the Bishop of the diocese and the Diocesan Consultors of the diocese.

Trustees
for
dioceses.

4. (1) The trustees of Church trust property for each Diocese shall, by virtue of this Act, be a body corporate, having perpetual succession and a common seal, and being capable of acquiring, holding and disposing of any property, real or personal, and of suing and being sued in its corporate name, and of doing and suffering all such acts and things as bodies corporate may by law do or suffer: Provided that this subsection shall not operate to incorporate the trustees of Church trust property in any diocese created after the commencement of this Act until the publication in the Gazette of the notification required by section five of this Act.

Trustees
to be
bodies
corporate.

(2) The corporate names of the trustees of Church trust property for the several dioceses existing at the commencement of this Act shall be—

- (a) for the Archdiocese of Sydney, the trustees of the Roman Catholic Church for the Archdiocese of Sydney; and
- (b) for the Diocese of Armidale, the trustees of the Roman Catholic Church for the Diocese of Armidale; and
- (c) for the Diocese of Bathurst, the trustees of the Roman Catholic Church for the Diocese of Bathurst; and
- (d) for the Diocese of Goulburn, the trustees of the Roman Catholic Church for the Diocese of Goulburn; and

(e)

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- (e) for the Diocese of Lismore, the trustees of the Roman Catholic Church for the Diocese of Lismore; and
- (f) for the Diocese of Maitland, the trustees of the Roman Catholic Church for the Diocese of Maitland; and
- (g) for the Diocese of Wagga Wagga, the trustees of the Roman Catholic Church for the Diocese of Wagga Wagga; and
- (h) for the Diocese of Wilcannia-Forbes, the trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes.

New dioceses.

5. (1) Upon the creation of a diocese after the commencement of this Act, the Bishop of the diocese so created and the Bishop of any diocese out of which the diocese is so created shall, by notification signed by them and published in the Gazette, announce the creation of the diocese, and its name and the corporate name of the trustees of Church trust property for the diocese.

(2) A printed paper purporting to be a copy of the Gazette, and to have been printed by the Government Printer, and containing what purports to be a copy of a notification published pursuant to subsection one of this section shall be conclusive evidence of the statements so published.

(3) A diocese shall not be extinguished by the creation wholly or partly thereof of a new diocese or by any other alteration of its boundaries.

Common seal and quorum.

6. The members for the time being of each body corporate created by this Act shall have the custody of its common seal, and the form of such seal and all other matters relating thereto shall, subject as in this section mentioned, be from time to time, determined at a meeting of the body corporate.

The Bishop and two other members of each such body corporate shall constitute a quorum for the purpose of any meeting of the body corporate.

Every meeting of any such body corporate at which a quorum is present shall be competent to transact any business of the body corporate.

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The common seal of any such body corporate shall not be affixed to any instrument except in pursuance of a resolution passed at a meeting of the body corporate.

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Every instrument to which the common seal is so affixed shall be signed by the Bishop who is a member of the body corporate and by two other members of the body corporate.

7. (1) Except as in this section mentioned, no capacity or power of a body corporate created by this Act shall be affected by the existence of vacancies in its membership.

Vacancies
and mem-
bership.

(2) Where for any reason a quorum of a body corporate created by this Act cannot be constituted all powers exercisable by the body corporate and its capacity for doing any act or thing shall be suspended, but shall, by virtue of this Act, revive as soon as a quorum of such body corporate is capable of being constituted.

8. (1) All Church trust property which at the time of the creation of any body corporate by this Act is situated within the diocese for which the body corporate is created shall by virtue of this Act—

Vesting
of Church
trust
property.

- (a) vest in that body corporate upon its creation; and
- (b) be thereupon divested from the person in whom it was vested before the creation of such body corporate.

(2) No vesting by virtue of this Act shall affect any encumbrance, lien, estate or interest to which, at the time of the vesting, the property so vested was subject in the hands of the person from whom it was divested.

The body corporate in which the property vests shall become jointly with the person liable at the time of the vesting and, severally, liable under every contract, engagement and cause of action, in relation to the property vested, under which the person from whom the property was divested was liable at the time of the vesting.

The body corporate shall be liable to indemnify the person from whom the property was divested his executors and administrators against every claim, action, suit

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and other proceeding which shall be made or taken in respect of any such contract engagement or cause of action.

The person from whom the property was divested shall have a charge or lien on the property divested to the extent to which and in the circumstances in which the charge or lien would have attached if the property had not been divested; but the charge or lien, or possibility thereof, shall, in favour of a person dealing for value with the body corporate in which the property is vested, be deemed to have been extinguished unless the person entitled thereto has within a period of six months after the commencement of this Act given written notice to the body corporate of its existence or of the possibility of its arising.

A statement under the common seal of the body corporate that no such notice has been received within such period shall be conclusive evidence of the fact so stated in favour of any person dealing for value with the body corporate in respect of the divested property.

Powers of
bodies
corporate.

9. Every body corporate created by this Act shall have power, from time to time—

- (a) to purchase, take on lease, or acquire by gift, devise, bequest, exchange or otherwise any real or personal property; and
- (b) in relation to any Church trust property at any time vested in it—
 - (i) to sell it, and to exchange it for other land, and to transfer or convey Church trust property so sold or exchanged to the purchaser or person taking in exchange, freed and discharged from all trusts affecting the same in the hands of the body corporate; and
 - (ii) to demise or let it for such term at such rent and with or without taking a premium, fine or foregift and subject to such provisions as to the body corporate shall appear desirable; and

(iii)

- (iii) to accept surrender of leases, upon such terms and subject to such conditions as to the body corporate shall appear desirable; and
- (iv) to raise money on the security of it on such terms and conditions as to the body corporate shall appear desirable; and
- (v) to declare trusts of it or of any estate or interest in it created by the body corporate for any Order or Community of the Church or for any association of members of the Church or for the use or benefit of or for any purpose of any such Order, Community or association, and either to retain the property in relation to which trusts are so declared, or to vest it, or any estate or interest so created, in other trustees upon the trusts so declared; and
- (c) for any purpose mentioned in this section to execute all such instruments as to the body corporate shall appear proper.

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10. (1) Every instrument bearing what purports to be the common seal of a body corporate created by this Act for any diocese created before or after the commencement of this Act, and purporting to be signed by the Bishop of that diocese and two other members of that body corporate shall, in favour of every person claiming, for value and in good faith, under or through that instrument, be conclusively presumed to have been duly executed by the body corporate the common seal of which it purports to bear.

Execution
of instru-
ments.

(2) Section 51A of the Conveyancing Act, 1919-1932, shall not apply to or in respect of any instrument executed by a body corporate created by this Act.

11. (1) No purchasēr, mortgagee, lessee or other person dealing with a body corporate created by this Act, and neither the Registrar-General nor the Crown Solicitor nor any other person registering or certifying title shall, upon any salē, exchange, mortgage, lease or other dealing

Protection
of pur-
chasers, etc.
cf. Act No.
21, 1917,
s. 29.

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dealing purporting to be made under a power conferred by this Act be concerned to see or inquire into the necessity for or propriety thereof, or the mode of exercising the same, or be affected by notice that the exercise of the power is unauthorised, irregular or improper, and a receipt for any money payable to the body corporate, signed by the Bishop who is a member thereof, shall be a sufficient discharge in favour of, and shall exonerate the person paying such money from all responsibility for the application of such money.

(2) Where—

- (a) an instrument purports to exercise a power conferred by this Act, and to pass or create an estate or interest in land described in the instrument as being Church trust property situated within a diocese therein named; and
- (b) the land which the instrument purports to pass or affect is not, in fact, under the provisions of the Real Property Act, 1900; and
- (c) the instrument is executed in accordance with the requirements of this Act by the body corporate created by this Act for the diocese so named in the instrument; and
- (d) the instrument is registered under the provisions of the Registration of Deeds Act, 1897;

such instrument shall—

- (i) in favour of every person claiming any estate or interest under or through the instrument, be conclusive evidence against every body corporate created by this Act claiming any estate or interest against that person, that the land described in the instrument as being Church trust property situated within the diocese named therein was Church trust property so situated at the time of the execution of the instrument, and that the body corporate by which the instrument was executed had at the time of the execution thereof an estate or interest in the land so described sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create; and

(ii)

- (ii) in favour of every person claiming any estate or interest under or through the instrument and having taken for value, without notice that the land in which the instrument purports to create an estate or interest was not Church trust property situated within the diocese so named in the instrument or that the body corporate by which the instrument was executed had not an estate or interest sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, and in favour of every person claiming under or through any person having so taken, as against every person claiming under or through an instrument executed before the commencement of this Act or under or through an instrument executed by a body corporate created by this Act, and not in either such case registered under the Registration of Deeds Act, 1897, before the registration under that Act of the instrument by this subsection made evidence, be conclusive evidence that the land described in the instrument so made evidence as being Church trust property situated within the diocese named therein was at the time of the execution of that instrument, so situated, and that at the time of the execution of that instrument the body corporate by which it was executed had an estate or interest in the land so described sufficient to make that instrument effective to pass or create the estate or interest which that instrument purported to pass or create.

(3) Any person, not being a body corporate created by this Act, deprived of any estate or interest in land by any such instrument as is mentioned in subsection two of this section may bring and prosecute an action for damages against the body corporate by which the instrument was executed and any judgment recovered by the plaintiff in any such action shall be enforceable by execution against any real or personal property for the time being vested in the defendant body corporate, whether Church trust property or not, and any real or personal property taken by a purchaser on a sale in any such execution

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execution shall be free of all trusts affecting the same while vested in the execution debtor, except a trust created by the Crown, and the proceeds of every such sale shall in the hands of the sheriff and of the execution creditor be free of all trusts to which it would be subject in the hands of the execution debtor.

Evidence.

12. A certificate under the common seal of a body corporate created by this Act that the land described in the certificate is situated within the diocese for which that body corporate was created and is Church trust property shall—

- (a) for the purpose of any application by that body corporate to be registered as the proprietor pursuant to a vesting by this Act, of any land under the provisions of the Real Property Act, 1900, of which a body corporate created by this Act is not the registered proprietor, be conclusive evidence, and
- (b) in any action, suit or other proceeding, whether civil or criminal,

be prima facie evidence of the facts so certified.

Trusts preserved.

13. All Church trust property for the time being vested in a body corporate created by this Act shall be held by it on the trusts, if any, expressly declared in respect thereof, and if no such trusts have been expressly declared, on trust for the Church in the diocese for which the body corporate exists: Provided however that the powers conferred by section nine of this Act shall be exercisable in relation to all Church trust property notwithstanding any trust or provision affecting it in the hands of the body corporate.

Validation of grants. cf. Act No. 28, 1923, s. 2.

14. No title to any land granted by the Crown before the commencement of this Act, for or for the use, benefit or purposes of the Church shall be held bad, either at law or in equity, by reason of any breach or non-performance, before or after the commencement of this Act, of any condition, trust or proviso contained in the grant by the Crown of the land, and every provision for forfeiture or reverter in respect of any such breach or non-performance shall be deemed to have been released by the Crown as from the date of the Crown grant.

15.

15. (1) The Roman Catholic Diocese of Lismore Church Lands Act, 1908, and Saint Patrick's College (Manly) Act, 1914, are hereby repealed, but neither of those repeals shall affect—

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Repeal.

- (a) any right accrued or obligation incurred before the commencement of this Act, or
- (b) the validity or invalidity or any operation, effect or consequence of any instrument executed or made or anything done or suffered before the commencement of this Act; or
- (c) any action, proceeding or thing, at the commencement of this Act, pending or uncompleted.

(2) Every such action, proceeding and thing may be carried on and completed as if the Acts hereby repealed remained in force.

(3) Nothing in this section shall limit any saving in the Interpretation Act of 1897.

