

ROMAN CATHOLIC CHURCH COMMUNITIES' LANDS ACT.

Act No. 23, 1942.

An Act to make certain provisions relating to property real and personal held upon any trust for or for the use, benefit or purposes of certain orders, congregations, communities and associations of the Roman Catholic Church in New South Wales; and for purposes connected therewith. [Assented to, 18th November, 1942.]

George VI.
No. 23, 1942.

WHEREAS property real and personal held on trust for or for the use or benefit or for the purposes of certain orders, congregations, communities and associations of the Roman Catholic Church in New South Wales is 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 property so held, that provision be made for the vesting in bodies corporate to be created by this Act of real property so held, and that conveyancing transactions in respect of property 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:—

Preamble.

1. (1) This Act may be cited as the "Roman Catholic Church Communities' Lands Act, 1942."

Short title
and com-
mencement.

(2) This Act shall commence upon the first day of December one thousand nine hundred and forty-two.

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

Definitions.

No. 23, 1942. Vicar Capitular or Administrator, Vicar-General or Priest with Extraordinary Faculties.

“Church” means the Roman Catholic Church.

“Community” means any of the following orders, congregations, communities and associations of the Church:—

- (i) The Sisters of the Brigidine Congregation.
- (ii) The Brothers of the Christian Schools of Ireland.
- (iii) Brothers of the Christian Schools.
- (iv) The Sisters of Saint Dominic of New South Wales.
- (v) Sisters of the Good Samaritan of the Order of Saint Benedict.
- (vi) The Sisters of Mercy (Parramatta).
- (vii) The Society of Mary for the Province of Australia.
- (viii) The Society of Mary for the Province of Oceania.
- (ix) The Marist Brothers of the Schools.
- (x) The Sisters of Mercy (North Sydney).
- (xi) The Fathers of the Passion.
- (xii) The Sisters of Saint Joseph of the Sacred Heart.
- (xiii) The Congregation of the Mission.
- (xiv) Our Lady's Nurses of the Poor.
- (xv) Daughters of Our Lady of the Sacred Heart.
- (xvi) The Order of Preachers.
- (xvii) The Sisters of Mercy, Diocese of Bathurst.
- (xviii) The Sisters of St. Joseph, Diocese of Bathurst.

“Community consultors” means the consultors for the time being of a community, and, in the case of there being no consultors of a community, includes the members for the time being of the council of a community constituted according to rules, practices and usages.

“Community land” 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 a community, or for the use or benefit or for any purpose of a community, but does not include any land which is church trust property within the meaning of the Roman Catholic Church Trust Property Act, 1936.

“Land”

“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. No. 23, 1942.

“Provincial” means the person for the time being acting as Provincial-General for New South Wales of a community, and includes the person for the time being acting as Provincial or Superior, as the case may be, of a community of which there is no Provincial-General for New South Wales.

3. There shall be, for each community, trustees of community land, who shall be the provincial and the community consultants of that community. Trustees for community land.

4. (1) The trustees of community land for each community 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. Trustees to be bodies corporate.

(2) The corporate names of the trustees of community land for the several communities shall be— Corporate names.

- (a) for the Sisters of the Brigidine Congregation, the “Trustees of the Sisters of the Brigidine Congregation”; and
- (b) for the Brothers of the Christian Schools of Ireland, the “Trustees of the Christian Brothers”; and
- (c) for the Brothers of the Christian Schools, the “Trustees of the De la Salle Brothers”; and
- (d) for the Sisters of Saint Dominic of New South Wales, the “Trustees of the Sisters of Saint Dominic”; and
- (e) for the Sisters of the Good Samaritan of the Order of Saint Benedict, the “Trustees of the Sisters of the Good Samaritan”; and
- (f) for the Sisters of Mercy (Parramatta), the “Trustees of the Sisters of Mercy (Parramatta)”; and

(g)

No. 23, 1942.

- (g) for the Society of Mary for the Province of Australia, the "Trustees of the Marist Fathers for the Province of Australia"; and
- (h) for the Society of Mary for the Province of Oceania, the "Trustees of the Marist Missions of the Pacific"; and
- (i) for the Marist Brothers of the Schools, the "Trustees of the Marist Brothers"; and
- (j) for the Sisters of Mercy (North Sydney), the "Trustees of the Sisters of Mercy (North Sydney)"; and
- (k) for the Fathers of the Passion, the "Trustees of the Passionist Fathers"; and
- (l) for the Sisters of Saint Joseph of the Sacred Heart, the "Trustees of the Sisters of Saint Joseph"; and
- (m) for the Congregation of the Mission, the "Trustees of the Vincentian Fathers"; and
- (n) for Our Lady's Nurses of the Poor, the "Trustees of Our Lady's Nurses of the Poor"; and
- (o) for the Daughters of Our Lady of the Sacred Heart, the "Trustees of the Daughters of Our Lady of the Sacred Heart"; and
- (p) for the Order of Preachers, the "Trustees of the Dominican Fathers"; and
- (q) for the Sisters of Mercy, Diocese of Bathurst, the "Trustees of the Sisters of Mercy, Diocese of Bathurst"; and
- (r) for the Sisters of St. Joseph, Diocese of Bathurst, the "Trustees of the Sisters of St. Joseph, Diocese of Bathurst."

Common
seal and
quorum.
cf. Act No.
24, 1936,
s. 6.

5. (1) 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.

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

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

(4)

(4) 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. No. 23, 1942.

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

6. (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 in membership.
cf. Act No. 24, 1936,
s. 7.

(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.

7. (1) Every instrument bearing what purports to be the common seal of a body corporate created by this Act and purporting to be signed by the provincial thereof 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 instruments.
cf. *Ibid.*
s. 10.

(2) Section 51A of the Conveyancing Act, 1919-1939, shall not apply to or in respect of any instrument executed by a body corporate created by this Act.

8. (1) All community land of a community shall by virtue of this Act— Vesting of communities' land.
cf. *Ibid.*
s. 8.

(a) vest in the body corporate constituted under this Act for that community; and

(b) be thereupon divested from the person in whom it was thereinbefore vested.

(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,

No. 23, 1942. 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 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 not to exist unless and until the person entitled thereto has after the commencement of this Act and before such dealing 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 before such dealing 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.

Certain
lands not
to vest
until consent
given.

9. (1) Notwithstanding section eight hereof, where it appears from any instrument registered before the commencement of this Act in any register kept under the provisions of the Registration of Deeds Act, 1897, or the Real Property Act, 1900, that any of the persons whose names are set out in the Schedule to this Act is at such commencement a trustee either alone or with others of any community land or was at any time before such commencement a trustee either original or substituted and either alone or with others of any community land but had ceased to be a trustee by death, retirement or otherwise and no new trustee has or had been appointed in his place, such community land shall not vest in the body corporate constituted by this Act for the community concerned or be divested from the person in whom it

was

was thereinbefore vested until the body corporate constituted by the Roman Catholic Church Trust Property Act, 1936, for the diocese in which the land is situated has consented in writing to such vesting. No. 23, 1942.

(2) Upon the giving of such consent in writing and as from the date thereof section eight of this Act shall apply to such land.

(3) Any such consent shall be conclusive evidence that the land in respect of which it is given is situated within the diocese for which the body corporate giving such consent was constituted.

10. (1) Every body corporate created by this Act shall have power from time to time—

- (a) (i) to purchase, take on lease or acquire by gift, devise, bequest, exchange or otherwise any real or personal property; and
- (ii) by itself or by any servant or agent authorised in writing in that behalf under its common seal to deal with and dispose of moneys, choses in action and choses in possession at any time vested in it or in any person on its behalf; and
- (iii) to draw, make, accept, endorse and discount promissory notes, bills of exchange and other negotiable or transferable securities or instruments; and
- (iv) to do and perform all such acts, matters and things and make and execute all such contracts, documents, writings and assurances as in its opinion are or may be for its benefit or the benefit of the Church;

(b) in relation to any community land at any time vested in it—

- (i) to sell it and to exchange it for other land and to transfer or convey community land so sold or exchanged to the purchaser or person taking in exchange, whether alone or jointly with another person, freed and discharged from all trusts affecting the same in the hands of the body corporate; and

(ii)

Powers of
bodies
corporate.
cf. Act No.
24, 1936,
s. 9.

No. 23, 1942.

- (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) to accept surrenders of leases upon such terms and subject to such conditions as to the body corporate shall appear desirable; and
 - (iv) to borrow 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 community of the Church or for the use or benefit of or for any purpose of any such community 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
 - (vi) to transfer or convey it without consideration to any corporate body created by this Act or by the Roman Catholic Church Trust Property Act, 1936;
 - (vii) notwithstanding anything contained in any Act to sell and convey community land resumed either before or after the commencement of this Act under the provisions of the Public Works Act, 1912, or any other Act authorising the compulsory acquisition of land and to agree upon and receive all compensation money whatsoever payable in respect of the resumption;
- (c) to borrow money on the security of personal property or without security on such terms and conditions as to the body corporate shall seem desirable;
- (d)

(d) in relation to real and personal property outside the State of New South Wales at any time vested in or owned by it to delegate by writing under its common seal to an attorney or attorneys all or any of the powers in this section set out. No. 23, 1942.

(2) Nothing herein contained shall limit or be deemed to limit the generality of subsection one of section four of this Act or affect the construction of section nine of the Roman Catholic Church Trust Property Act, 1936.

11. (1) Every body corporate created by this Act shall have power from time to time to apply for and obtain representation of the estate of any deceased person being a member of the community for which such body corporate was constituted by this Act or being a person under whose will such community or such body corporate is a beneficiary and to do all things necessary to administer such estate. Additional powers of bodies corporate.

(2) Any officer authorised for the purpose by the body corporate may on behalf of the body corporate swear affidavits, make declarations, statements of defence or other statements, give security and do any other act or thing required by any Charter, Act of Parliament or rule of court to be made by persons making application for probate or letters of administration.

(3) Whenever the body corporate shall have been appointed executor or administrator it shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the courts in the same manner as any other executor or administrator and all the property real and personal of the body corporate and the members thereof and their respective estates shall be liable for the proper discharge of the duties of such office.

12. (1) No purchaser, 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 sale, exchange, mortgage, lease or other dealing purporting to be made under a power conferred by this Act, be concerned to see or inquire into Protection of purchasers, etc. cf. Act No. 24, 1936, s. 11(1).

No. 23, 1942. into the necessity for, or the propriety of, or the mode of exercising the same, or be affected by notice that the exercise of the power is unauthorised, irregular or improper.

(2) A receipt for any money payable to the body corporate, signed by the provincial who is a member thereof, shall be sufficient discharge in favour of, and shall exonerate, the person paying such money from all responsibility for the application of such money.

Effect of
instruments
executed by
bodies
corporate.
cf. Act No.
24, 1936,
s. 11 (2)(3).

13. (1) Notwithstanding section nine hereof:—

- (a) The execution by a body corporate created by this Act of an instrument purporting to deal with land not under the provisions of the Real Property Act, 1900, shall, in favour of every person claiming any estate or interest under or through that instrument, and against every body corporate created by this Act, be conclusive evidence that the land thereby dealt with was at the time of such execution community land, and that, at the time of such execution, the body corporate had the estate or interest therein sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create.
- (b) The execution in accordance with this Act by a body corporate of an instrument purporting to deal with land not under the provisions of the Real Property Act, 1900, shall, if such instrument is registered under the provisions of the Registration of Deeds Act, 1897, be conclusive evidence that the land thereby dealt with was at the time of such execution community land, and that the body corporate had the estate or interest therein sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, in favour of every person claiming any estate or interest thereunder and having taken for value without notice that the land so purported to be dealt with was not community land or that the body corporate had not the estate or interest which it thereby purported to

to have, and in favour of every person claiming through or under him, as against any person having or claiming to have an estate or interest in such land other than an estate or interest under an instrument registered under the provisions of the Registration of Deeds Act, 1897, prior to the registration of the first-mentioned instrument. No. 23, 1942.

(2) Any person other than a body corporate created by this Act, deprived of any estate or interest in land by any such instrument, may bring and prosecute an action for damages against the body corporate by which the instrument was executed, and may recover the amount of a judgment therefor out of any real or personal property for the time being vested in such body corporate, and any real or personal property taken by a purchaser on a sale pursuant to any execution shall be freed from all trusts affecting the same, except in the case of 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 freed from all trusts to which it would be subject in the hands of the execution debtor.

14. (1) A certificate, given under the common seal of a body corporate constituted under this Act, that the land described in the certificate is community land of the community in respect of which the body corporate is constituted, which has endorsed thereon or annexed thereto the consent of the body corporate constituted by or under the Roman Catholic Church Trust Property Act, 1936, for the diocese in which the land described in the certificate is situated, shall, whether or not any of the persons whose names are set out in the Schedule to this Act is at the commencement of this Act a trustee either alone or with others of such land, or was at any time before such commencement a trustee either original or substituted and either alone or with others of such land—

Evidence.
cf. Act No.
24, 1936,
s. 12.

- (a) be conclusive evidence of the fact so certified, for the purpose of any application by that body corporate to be registered as the proprietor pursuant to a vesting by this Act of land under the provisions of the Real Property Act, 1900,
of

No. 23, 1942.

of which a body corporate constituted by this Act is not registered proprietor; and

(b) be prima facie evidence of the fact so certified, for all purposes whether in civil or criminal proceedings or otherwise.

(2) Any such consent shall be conclusive evidence that the land in respect of which the consent is given is situated within the diocese for which the body corporate giving the consent was constituted.

Trusts preserved.
cf. Act No. 24, 1936, s. 13.

15. All property real or personal 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 community for which the body corporate exists for the use, purposes and benefit of such community: Provided however that the powers conferred by section ten of this Act shall be exercisable by the body corporate in relation to all property vested in it notwithstanding any such trust or provision.

Validation of grants.
cf. *Ibid.* s. 14.

16. No title to any land granted by the Crown before the commencement of this Act for or for the use, benefit or purposes of any community to which this Act applies 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.

Roman Catholic Church Communities' Lands Act.

219

No. 23, 1942.

SCHEDULE.

Secs. 9 & 14.

Name.	Tenure of Office.
Reverend Edward Slater ...	28th June, 1818, to 5th February, 1822.
Reverend William Morris...	5th February, 1822, to 20th June, 1834.
Reverend Philip Connolly ...	3rd May, 1820, to 18th February, 1833.
Reverend Daniel Power ...	3rd January, 1827, to 14th March, 1830.
Reverend John Joseph Therry ...	3rd May, 1820, to 25th May, 1864.
Reverend John McEncroe ...	17th August, 1832, to 18th February, 1833.
Reverend William Ullathorne ...	18th February, 1833, to 16th November, 1840.
Abbot Henry Gregory ...	1st January, 1844, to 31st December, 1861.
The Most Rev. Henry Davis ...	8th December, 1848, to 17th May, 1854.
Most Rev. John Bede Polding ...	13th September, 1835, to 16th March, 1877.
Most Rev. Roger Bede Vaughan...	16th March, 1877, to 18th August, 1883.
Most Eminent and Most Rev. Patrick Francis Moran.	21st March, 1884, to 16th August, 1911.
Most Rev. Michael Kelly ...	16th August, 1911, to 8th March, 1940.
Most Rev. Norman Thomas Gilroy	8th March, 1940—
Most Rev. Timothy O'Mahony ...	25th March, 1871, to 31st October, 1877.
Most Rev. Eleazar Torreggiani ...	25th November, 1879, to 28th January, 1904.
Most Rev. Patrick Joseph O'Connor.	28th January, 1904, to 15th July, 1932.
Most Rev. John A. Coleman ...	15th July, 1932—
Most Rev. Matthew Quinn ...	14th November, 1865, to 16th January, 1885.
Most Rev. Joseph Patrick Byrne...	9th August, 1885, to 12th January, 1901.
Most Rev. John Dunne ...	14th August, 1887, to 22nd August, 1919.
Most Rev. Michael O'Farrell ...	30th November, 1920, to 3rd April, 1928.
Most Rev. John Francis Norton...	3rd April, 1928—
Most Rev. William Lanigan ...	9th June, 1867, to 13th June, 1900.

SCHEDULE

Name.	Tenure of Office.
Most Rev. John Gallagher ...	13th June, 1900, to 26th November, 1923.
Most Rev. John Barry ...	29th June, 1924, to 22nd March, 1938.
Most Rev. Terence Bernard McGuire.	14th June, 1938—
Most Rev. Jeremiah Joseph Doyle	28th August, 1887, to 4th June, 1909.
Most Rev. John Carroll ...	6th March, 1910—
Most Rev. James Murray ...	14th November, 1865, to 9th July, 1909.
Most Rev. Patrick Vincent Dwyer	6th June, 1897, to 28th March, 1931.
Most Rev. Edmund Gleeson ...	15th September, 1929—
Most Rev. Joseph Dwyer ...	13th October, 1918, to 11th October, 1939.
Most Rev. Francis Augustine Henschke.	11th October, 1939—
Most Rev. John Dunne ...	14th August, 1887, to 25th December, 1916.
Most Rev. William Hayden ...	8th September, 1918, to 18th May, 1930.
Most Rev. Thomas Martin Fox ...	1st June, 1931—