



New South Wales

St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust Act 2014 No 40

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New South Wales

St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust Act 2014 No 40

Act No 40, 2014

An Act to constitute the St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust and to specify its functions, and to provide for the vesting of certain property in the Trust; and for other purposes. [Assented to 26 August 2014]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

appointed day means the day on which section 4 commences.

Bishop means the person who for the time being is the Bishop of St. Shenouda Coptic Orthodox Monastery.

Company means the company limited by guarantee under the name Coptic Orthodox St. Shenouda Monastery Limited (ACN 128 927 604).

conveyance includes transfer, assignment and assurance.

function includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

General Board means the Board of St. Shenouda Coptic Orthodox Monastery as appointed by the Bishop.

Monastery entity means a body, corporate or unincorporate, established by the St. Shenouda Coptic Orthodox Monastery after the appointed day, which is certified in writing by the Bishop to be a Monastery entity for the purposes of this Act.

St. Shenouda Coptic Orthodox Monastery means a Coptic Orthodox monastery, a part of the Coptic Orthodox Church of Egypt, a hierarchical Christian body whose leader, overseer and shepherd is the Pope of Alexandria and Patriarch of the See of St. Mark, and whose head is the Bishop, and includes any Monastery entity.

Trust means the St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust constituted by this Act.

trust property means property held by the Trust.

Part 2 Constitution and functions of Trust

4 Constitution of Trust

- (1) There is constituted by this Act a corporation under the corporate name of the St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust.
- (2) The Bishop is the sole trustee of the Trust.

5 Functions of Trust

- (1) The functions of the Trust are as follows:
 - (a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the St. Shenouda Coptic Orthodox Monastery,
 - (b) to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,
 - (c) to borrow money for the purposes of the St. Shenouda Coptic Orthodox Monastery,
 - (d) to mortgage, charge or otherwise encumber trust property,
 - (e) to make gifts or donations of property held by it for the purposes of the St. Shenouda Coptic Orthodox Monastery,
 - (f) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.
- (2) The Trust has such other functions as are conferred or imposed on it by this Act.
- (3) This section does not limit section 50 of the *Interpretation Act 1987*.

6 Delegation

The Bishop may, by instrument in writing, delegate any or all of the Bishop's functions under this Act (other than this power of delegation) to any 3 members of the General Board of the St. Shenouda Coptic Orthodox Monastery, at least one of whom is a clerical member.

7 Trust may make by-laws

- (1) The Trust may make by-laws, not inconsistent with this Act, for the control, management and administration of, and dealings with, trust property.
- (2) A certificate under the seal of the Trust to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is, until the contrary is proved, evidence that the by-law was in force on that day.
- (3) A by-law may be amended or repealed by a subsequent by-law made under this section.

Part 3 Vesting of property in Trust

8 Vesting of property in Trust on the appointed day

- (1) This section applies to any property that was, immediately before the appointed day:
 - (a) vested in the Company, or
 - (b) vested in any person in trust for the St. Shenouda Coptic Orthodox Monastery.
- (2) On the appointed day, property to which this section applies is divested from the Company in which it was vested, or from the person in whom it was vested on trust, and is, to the extent that it was so vested, vested (without conveyance) in the Trust.
- (3) The vesting of the property in the Trust does not affect:
 - (a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or
 - (b) any trust on which the property was held, immediately before the vesting of the property.
- (4) No attornment to the Trust by a lessee of land vested in the Trust by this section is necessary.
- (5) The vesting of property by this section is not a dutiable transaction for the purposes of the *Duties Act 1997*.
- (6) A dutiable transaction within the meaning of the *Duties Act 1997*, or an instrument that effects or evidences a dutiable transaction and that occurs or is executed or registered only for:
 - (a) a purpose ancillary to, or consequential on, the operation of this section, or
 - (b) the purpose of giving effect to this section,is not chargeable with duty under the *Duties Act 1997*.

9 Vesting of other property in Trust

To the extent to which an instrument (including a will) provides for any property (other than property to which section 8 applies):

- (a) to be given to the St. Shenouda Coptic Orthodox Monastery or to a person (other than the Trust) for the benefit of the St. Shenouda Coptic Orthodox Monastery, or
- (b) to be payable to, or receivable by, the St. Shenouda Coptic Orthodox Monastery or any person (other than the Trust) on behalf of the St. Shenouda Coptic Orthodox Monastery, or
- (c) to be recoverable by the St. Shenouda Coptic Orthodox Monastery or by any person (other than the Trust) for the St. Shenouda Coptic Orthodox Monastery,

a reference in the instrument to the St. Shenouda Coptic Orthodox Monastery, or to that person, is to be treated as a reference to the Trust.

Part 4 Particular powers of Trust

10 Trust may hold property jointly

The Trust may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common.

11 Trust may invest trust funds

- (1) The Trust:
 - (a) may invest or lend any funds that it holds on trust in accordance with the terms of any trust to which the funds are subject, and
 - (b) may also invest or lend any such funds in accordance with the *Trustee Act 1925*, unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.
- (2) The Trust may invest trust funds held by it for different purposes or activities, or any part of those funds, as one fund.
- (3) Income arising from an investment of funds in accordance with subsection (2) is to be apportioned rateably among the several purposes or activities for which the funds are held on trust.
- (4) Any loss arising from an investment of funds in accordance with subsection (2) is to be apportioned rateably among the several purposes or activities for which the funds are held on trust.

12 Trust may make advances

- (1) The Trust may make advances out of its trust funds for any purpose of or relating to the St. Shenouda Coptic Orthodox Monastery.
- (2) Any sum so advanced is taken to be an investment of the money and bears interest at a rate fixed by the Trust.
- (3) The sum advanced, and any interest on that sum, is taken to be a charge on those assets (if any) that the Trust holds for the purpose for which the advance was made.

13 Arrangements for other churches to use trust property

- (1) In this section, *scheme of co-operation* means a scheme entered into by the Trust:
 - (a) with or involving a church of another denomination or any congregation or activity of such a church, and
 - (b) concerning the use of trust property.
- (2) The Trust may permit trust property to be used and managed for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.
- (3) Any proceeds derived by the Trust from a scheme of co-operation are to be applied in the manner determined by the Trust.
- (4) Conditions that the Trust may determine under this section include:
 - (a) conditions with respect to the making of monetary contributions towards the acquisition, construction, alteration, maintenance or repair of property vested in or held on behalf of a co-operating church or congregation, and
 - (b) the giving or taking of a security or charge over any property.
- (5) Trust property may be used in accordance with a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.

- (6) Trust property is not to be regarded as property that is subject to an express trust expressly forbidding its use under a scheme of co-operation merely because it is directed to be held in trust for worship within, or for the purposes of, the St. Shenouda Coptic Orthodox Monastery.

14 Trusts may be varied

- (1) The Trust may declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purpose or any other of its terms.
- (2) The Trust may by the same or a later declaration declare that the property is subject to another trust and on the making of such a declaration:
- (a) the trust that is to be replaced ceases, and
 - (b) the property is to be held subject to the other trust.
- (3) In making such a declaration, the Trust must ensure that the property is dealt with as nearly as is possible for the purposes for which the property was held immediately before the declaration.
- (4) However, the Trust may declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the replaced trust.
- (5) On making a declaration under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of St. Shenouda Coptic Orthodox Monastery as the Trust declares.

15 Trust may act as executor, administrator or trustee

- (1) The Trust:
- (a) may apply for and obtain, or join in applying for and obtaining, probate of the will, or letters of administration for the estate, of a deceased person if the St. Shenouda Coptic Orthodox Monastery has a beneficial interest, vested or contingent, in the estate of that person, and
 - (b) may accept appointment and act as trustee or co-trustee under a trust if the trust property is not already vested in the Trust by or in accordance with this Act and the trust was created wholly or partly for the benefit of the St. Shenouda Coptic Orthodox Monastery, and
 - (c) may do all things necessary for the exercise of its functions as executor, administrator or trustee.
- (2) If authorised by the Trust to do so, a person employed by the Trust may, on behalf of the Trust:
- (a) swear an affidavit, or
 - (b) make a declaration or statement, or
 - (c) give security and do any other act or thing,
- that is, by any charter, enactment or rule of court, required to be done by a person who is applying for or granted probate or letters of administration, or who is administering a trust.
- (3) The Trust may:
- (a) renounce executorship, or
 - (b) decline to act as administrator of an estate, or
 - (c) retire, or decline to act, as trustee of property (other than property vested in it by or in accordance with Part 3).

- (4) Any commission or other remuneration earned by the Trust as an executor, administrator or trustee appointed under the authority of this section belongs to the Trust and the Trust may use or apply the commission or remuneration only for an object or purpose specified or approved by the Trust.

16 Trust may make claims for compensation on exchange, dedication or compulsory acquisition

In relation to the exchange, dedication or compulsory acquisition of any trust property, the Trust may:

- (a) act on behalf of the St. Shenouda Coptic Orthodox Monastery and make claims for compensation, and
- (b) agree to and settle any such claims for such amount, and on such terms and conditions, as it thinks fit.

Part 5 Miscellaneous

17 Custody and use of seal of Trust

- (1) The seal of the Trust is to be kept by the Bishop and may be affixed to a document only:
 - (a) with the authority of the Trust, and
 - (b) in the presence of the Bishop, and
 - (c) with an attestation by the signature of the Bishop of the fact of the affixing of the seal.
- (2) An instrument purporting to have been sealed with the seal of the Trust and to have been signed by the Bishop is taken to have been executed in accordance with this section.

18 How Trust may execute certain instruments

- (1) Any instrument relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Trust in writing under the seal of the Trust.
- (2) Any instrument relating to any property or matter that, if made by or between individuals, would by law be required to be in writing signed by the parties to be bound by it, may be made on behalf of the Trust in writing by any person acting under its authority, express or implied.
- (3) Any contract relating to any property or matter that, if made between individuals, would by law be valid although made orally only, may be made on behalf of the Trust by any person acting under its authority, express or implied.

19 Trust may appoint agents to execute under seal

- (1) The Trust may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed or other document on its behalf as its agent or attorney.
- (2) Any deed signed by such an agent or attorney on behalf of the Trust binds the Trust and has the same effect as if it were under the seal of the Trust.

20 Evidence of certain matters relating to Trust

- (1) A certificate under the seal of the Trust to the effect that property specified in the certificate is held by it in trust for the St. Shenouda Coptic Orthodox Monastery is, in any legal proceedings, evidence that the property is so held.
- (2) A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the *Real Property Act 1900* as the proprietor of that estate or interest, evidence of its contents.

21 Persons exonerated from liability on receiving receipt for certain money paid to Trust

A receipt for money paid to the Trust that:

- (a) is executed under the seal of the Trust, or
- (b) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust,

exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.

22 Inquiries relating to dealings with trust property unnecessary in certain cases

Whenever the Trust acquires, disposes of, mortgages, leases or otherwise deals with property it is not necessary for:

- (a) the other party or parties to the transaction or dealing, or
- (b) the Registrar-General or any other person registering or certifying title to the property,

to inquire whether the Trust has power to acquire, dispose of, mortgage, lease or otherwise deal with the property and none of those persons is affected by notice that the Trust has no such power.

23 Certain persons to be indemnified out of trust property

The Bishop, and any other person, exercising in good faith a function in relation to trust property in accordance with this Act or any by-law of the Trust, and the executor or administrator of the Bishop or the person, are entitled to be indemnified out of trust property against all expenses and liabilities that they incur in connection with the exercise of the function.

24 How documents may be served on Trust

Any document may be served on the Trust by delivering it to, or sending it by post to, the Bishop or any person appearing to be authorised by the Trust to accept service.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part, *former trustee* means any person in whom, immediately before the appointed day, property was vested in trust for the St. Shenouda Coptic Orthodox Monastery.

3 Claims and liabilities in relation to the Trust

On and from the appointed day, the following provisions have effect in relation to property vested in the Trust in accordance with section 8:

- (a) the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act,
- (b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act,
- (c) proceedings before a court or tribunal by or against a former trustee that, immediately before the appointed day, were pending or in the course of being heard are taken to be proceedings by or against the Trust,
- (d) to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the appointed day, it is taken to be an act, matter or thing done or omitted to be done by the Trust,
- (e) a reference in any instrument to a former trustee is to be read as a reference to the Trust,

- (f) time that had commenced to run in relation to a former trustee is taken to be time that had commenced to run in relation to the Trust.

[Second reading speech made in—
Legislative Council on 19 June 2014
Legislative Assembly on 14 August 2014]