

[Act 1995 No 67]



New South Wales

# Presbyterian Church (Corporations) Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The Presbyterian Church (New South Wales) Property Trust currently holds property in trust for the Presbyterian Church in New South Wales. Some of that property is vested in the Property Trust on account of the Beneficiary Fund which was established to provide retirement benefits to ministers of the Church.

The *Superannuation Industry (Supervision) Act 1993* of the Commonwealth (“the Superannuation Act”) has been enacted to regulate the superannuation industry. In order for the Beneficiary Fund to be regulated for the purposes of the Superannuation Act (and obtain consequent tax concessions), the trustee of the fund must be a constitutional corporation within the meaning of that Act. As the Property Trust is not a constitutional corporation, new arrangements must be made to enable the Church’s superannuation fund to come within the Commonwealth scheme.

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The objects of this Bill are:

- to constitute a statutory corporation whose function is to maintain and manage a superannuation fund for ministers of the Church, and
- to provide for other unincorporated institutions and organisations of the Church to be incorporated.

## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** defines certain words and expressions used in the proposed Act.

### **Part 2 Corporations**

**Clause 4** constitutes a statutory corporation called the Presbyterian Church (NSW) Superannuation Corporation. The members of the Superannuation Corporation are to be elected in accordance with the by-laws made by the General Assembly of the Church.

**Clause 5** requires the Superannuation Corporation to maintain a Superannuation Fund. The Superannuation Fund is to include the property previously held by the Property Trust on account of the Beneficiary Fund. The Superannuation Fund is a continuation of the Beneficiary Fund.

**Clause 6** specifies the functions of the Superannuation Corporation. These include:

- (a) maintaining and managing the Superannuation Fund, and
- (b) doing all things necessary or incidental to maintaining and managing the Superannuation Fund. This includes complying with the requirements of all laws, including the Superannuation Act.

**Clause 7** provides for unincorporated Church bodies to be incorporated as statutory corporations. The General Assembly of the Church may resolve that an unincorporated body of the Church, such as a committee or a body established for the purpose of an activity of the Church, is to be constituted as a corporation. Once the General Assembly has passed such a resolution, the Governor may declare by proclamation that the unincorporated body is constituted as a corporation.

**Clause 8** provides for the dissolution of such a corporation.

**Clause 9** provides that a corporation may exercise functions conferred by the General Assembly on the corporation, or on the unincorporated body that was constituted as the corporation.

**Clause 10** provides that certain provisions of *The Presbyterian Church (New South Wales) Property Trust Act 1936* also apply to corporations constituted under the proposed Act. The applicable provisions concern the powers and obligations of corporations, and the authority of the General Assembly in relation to corporations.

**Clause 11** empowers a corporation to delegate its functions to any member of the corporation or any other person or body prescribed by the by-laws.

**Clause 12** gives effect to Schedule 1 which contains provisions relating to the membership and procedure of corporations.

**Clause 13** gives effect to Schedule 2 which contains provisions relating to the transfer of assets, rights and liabilities in respect of the Beneficiary Fund and unincorporated bodies of the Church.

### **Part 3 Administrative provisions**

**Clause 14** describes the procedure for affixing the seal of a corporation to documents, and provides for the custody of the seal.

**Clause 15** enables a corporation to appoint a person to execute documents on its behalf.

**Clause 16** enables a corporation to certify that it holds property in trust for the Church, a particular congregation of the Church or a charitable purpose of the Church.

**Clause 17** provides that if a person obtains a receipt for money paid on behalf of a corporation, the person will not be liable if the money is lost or misapplied.

**Clause 18** provides that a person involved in a property dealing with a corporation need not question whether the corporation has power to deal with the property.

**Clause 19** entitles members of a corporation and others to be indemnified against liability for things done by them in good faith concerning the property.

**Clause 20** describes how documents are to be served on a corporation.

**Clause 21** confers a power on the General Assembly of the Church to make by-laws regulating a corporation and the property vested in the corporation.

#### **Part 4 Miscellaneous**

**Clause 22** amends *The Presbyterian Church (New South Wales) Property Trust Act 1936* so as to confer a power of delegation on the trustees of the Property Trust similar to the delegation power conferred on a corporation by proposed section 11.

**Clause 23** repeals certain provisions of the *Presbyterian Church of Australia Act 1971* that have either not been commenced or have no further operation.

**Clause 24** repeals an Act that validated the amalgamation of certain Church funds into a single Beneficiary Fund for the purpose of providing for ministers of the Church in their old age.

#### **Schedules**

**Schedule 1** contains provisions relating to the membership and procedure of the Superannuation Corporation and other corporations constituted under the proposed Act.

**Schedule 2** provides for the transferring of assets, rights and liabilities to a corporation. In particular, the property vested in the Property Trust on account of the Beneficiary Fund is vested in the Superannuation Corporation. If an unincorporated body of the Church is constituted under the proposed Act as a corporation, any property held by the Property Trust in trust for the unincorporated body is vested in the corporation so constituted.