

Russian Orthodox Church Property Trust Act 1991 No 91

[1991-91]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Russian Orthodox Church Property Trust Amendment Act 2001 No 12](#) (not commenced — to commence on 26.10.2001)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Russian Orthodox Church Property Trust Act 1991 No 91



New South Wales

An Act to constitute as a corporation the Russian Orthodox Church Outside of Russia in Australia and New Zealand Property Trust, to specify the Trust's functions, and to provide for the vesting of certain property in the Trust.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Russian Orthodox Church Property Trust Act 1991*.

2 Commencement

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

3 Definitions

(1) In this Act:

appointed day means the day on which section 4 commences.

Archbishop means the Archbishop of the Diocese.

Board means the Board of Trustees referred to in section 4.

Church means the Russian Orthodox Church Outside of Russia in Australia and New Zealand.

conveyance includes transfer, assignment and assurance.

Diocesan Council means the Diocesan Council of the Diocese.

Diocese means the Diocese of the Russian Orthodox Church Outside of Russia in Australia and New Zealand.

property includes property located outside New South Wales.

the Association means the association incorporated in New South Wales under the

name “The Trustees of the Russian Orthodox Church Outside of Russia in Australia”.

Trust means the Russian Orthodox Church Outside of Russia in Australia and New Zealand Property Trust constituted by this Act.

trust property means property held by the Trust.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2 Constitution and functions of the Trust

4 Constitution of the Trust as a corporation

- (1) There is constituted by this Act a corporation under the corporate name of the Russian Orthodox Church Outside of Russia in Australia and New Zealand Property Trust.
- (2) The Trust is to consist of a Board of Trustees comprising the following members:
 - (a) the Archbishop,
 - (b) the secretary of the Diocesan Council,
 - (c) the treasurer of the Diocesan Council,
 - (d) 2 members of the Church elected by the Diocesan Council in accordance with the rules of the Association.
- (3) Subject to this section, the Board is to conduct the business of the Trust in accordance with the by-laws of the Trust.
- (4) The quorum for a meeting of the Board is 3 members (including the Archbishop) or, if the by-laws specify a greater number, that greater number.
- (5) A decision supported by a majority of the votes (one of that majority being the vote of the Archbishop) cast at a meeting of the Board at which a quorum is present is the decision of the Board.

5 Functions of the 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 Church,
 - (b) to acquire property by gift or by devise or bequest and to agree to and carry out

the conditions of the gift, devise or bequest,

(c) to borrow or lend money for the purposes of the Church,

(d) to mortgage, charge or otherwise encumber trust property,

(e) 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 Trust may make by-laws

(1) The Trust may make by-laws, not inconsistent with this Act, for the control and management of, and dealings with, trust property and with respect to the procedure of the Board for conducting the business of the Trust.

(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.

(4) A by-law is not binding on any person who is not a member of the Church.

7 Trust may delegate its functions

The Trust may, by resolution, delegate any of its functions (other than this power of delegation and the power to make by-laws) to:

(a) any member of the Board, or

(b) any other person or body prescribed by the by-laws.

8 Trust may hold property jointly

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

9 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 any such funds 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 ratably 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 ratably among the several purposes or activities for which the funds are held on trust.

10 Trust may make advances

- (1) The Trust may make advances out of its trust funds for any activity, service, institution or interest of the Church.
- (2) Any such advance is taken to be an investment of the funds concerned and is to bear interest at a rate fixed by the Trust.
- (3) If the terms of any such advance so provide, the advance and any interest on the advance are a charge on those assets (if any) that the Trust holds for the activity, service, institution or interest of the Church for which the advance was made.

11 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 decided 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 on trust for worship within, or the purposes of, the Church.

12 Trusts may be varied

- (1) The Trust may by resolution 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 resolution, 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 resolution.
- (4) However, the Trust may by resolution 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 trust that is to be replaced.
- (5) On making a resolution 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 the Church as the Trust declares by resolution.

13 Trust may act as executor etc

- (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 Church 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 Church, 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 member of the Board or 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.

14 Trust may make claims for compensation on compulsory acquisition etc

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

- (a) act on behalf of the Church 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 3 Vesting of property in the Trust

15 Vesting of property in the Trust on the appointed day

- (1) Any property that was, immediately before the appointed day, vested in the Association or in any other person in trust for the Church is, on that day, divested from the Association or that person and is, to the extent that it was so vested, vested (without conveyance) in the Trust.
- (2) 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.

(3) No attornment to the Trust by a lessee of land vested in the Trust by this section is necessary.

(4) An instrument executed only for:

(a) the purpose of giving effect to this section, or

(b) a purpose ancillary to, or consequential on, the operation of this section,
is exempt from New South Wales stamp duty.

16 Vesting of other property in the Trust

To the extent to which an instrument (including a will) provides for any property (other than property to which section 15 applies):

(a) to be given to the Church or to a person (other than the Trust) for the benefit of the Church, or

(b) to be payable to, or receivable by, the Church or any person (other than the Trust) on behalf of the Church, or

(c) to be recoverable by the Church or by any person (other than the Trust) for the Church,

a reference in the instrument to the Church, or to that person, is to be treated as a reference to the Trust.

Part 4 Miscellaneous matters

17 Custody and use of the seal of the Trust

(1) The secretary of the Trust is required to keep the Trust's seal in safe custody.

(2) The seal of the Trust may be affixed to a document only:

(a) in accordance with a resolution of the Trust, and

(b) in the presence of not fewer than 2 members of the Board, and

(c) with an attestation by the signatures of those members of the fact of the affixing of the seal.

(3) An instrument purporting to have been sealed with the seal of the Trust and to have been signed by not fewer than 2 members of the Board is taken to have been executed in accordance with this section.

18 How the Trust may execute certain documents

- (1) Any instrument relating to any property or matter which, 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 which, 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 which, if made between individuals, would by law be valid although made orally only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority, express or implied.

19 Trust may appoint agents

- (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 under his or her seal 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 the Trust

- (1) A certificate under the seal of the Trust to the effect that property specified in the certificate is held by it on trust for the Church 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, conclusive evidence of its contents.

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

A receipt for money paid to the Trust which:

- (a) is executed under the seal of the Trust, or
- (b) is in writing signed by not fewer than 2 members of the Board, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust or by not fewer than 2 members of the Board,

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 or otherwise deals with property, it is not necessary for:

- (a) the other party or parties to the transaction, 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 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

A member of the Board, 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 any such member or person, are entitled to be indemnified out of trust property against all expenses and liabilities that they have incurred in connection with the exercise of the function.

24 How documents may be served on the Trust

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

25 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 25)

1 Definition

In this Schedule, **former trustee** means the Association or any other person in whom, immediately before the appointed day, property was vested in trust for the Church.

2 Provisions relating to property vested in the Trust under section 15

On and from the appointed day, the following provisions have effect in relation to property vested in the Trust in accordance with section 15:

- (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 become 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 becomes an act, matter or thing done or omitted to be done by the Trust,
- (e) a reference in any document to a former trustee becomes a reference to the Trust,
- (f) time that had commenced to run in relation to a former trustee becomes time that had commenced to run in relation to the Trust.