

# Russian Orthodox Church (NSW) Property Trust Act 1991 No 91

[1991-91]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Previously named**  
Russian Orthodox Church Property Trust Act 1991

### 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 (NSW) Property Trust Act 1991 No 91



New South Wales

An Act to constitute as a corporation the Russian Orthodox Church (NSW) 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 is the *Russian Orthodox Church (NSW) 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:

**Board** means the Board referred to in section 4.

**Church** or **Russian Orthodox Church** means the Russian Orthodox Church Outside of Russia.

**conveyance** includes transfer, assignment and assurance.

**Diocesan Council** means the Diocesan Council of the Diocese established in accordance with the Statute.

**Diocese** means the Australian and New Zealand Diocese of the Church. The Diocese is an inseparable part of the Church governed in accordance with the Statute.

**Parish** means a Parish within the Diocese, established in accordance with the Statute.

**Parish By-laws** means the by-laws governing a Parish in accordance with the Statute.

**property** means property in New South Wales.

**Ruling Bishop** means the Ruling Bishop for the time being of the Diocese appointed

in accordance with the Statute.

**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”.

**the Statute** means the document entitled “Diocesan Statute of the Australian and New Zealand Diocese of the Russian Orthodox Church Abroad (in Exile) approved by the Bishops’ Synod of this Church at New York now known as the Russian Orthodox Church Outside of Russia by the decisions of 27th February 1957, 22nd August 1957 and 24th March 1959”, as that document may from time to time be amended, and includes any document that may replace that document in accordance with the laws of the Church.

**Trust** means the Russian Orthodox Church (NSW) 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.

(3) This Act applies, and is taken always to have applied, only to property in New South Wales.

## **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 (NSW) Property Trust.
- (2) The Trust is to have a Board comprising the members for the time being of the Diocesan Council. The Board is to conduct the affairs of the Trust, and anything done in the name of or on behalf of the Trust by or with the authority of the Board is taken to have been done by the Trust.
- (3) The secretary for the time being of the Diocesan Council is to be the secretary of the Trust.
- (4) The quorum for a meeting of the Board is 7 members including the Ruling Bishop.
- (5) A decision supported by a majority of the votes (one of that majority being the vote of the Ruling Bishop) cast at a meeting of the Board at which a quorum is present is the decision of the Board.

- (6) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. A member who participates in a meeting in that way is taken to be present at the meeting.

## **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 Diocese in the case of property that is vested in the Trust in trust for the Diocese,
  - (a1) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, a Parish in the case of property that is vested in the Trust in trust for the Parish,
  - (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 Diocese or for the purposes of a Parish,
  - (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.
- (1A) In exercising its functions under this Act, the Trust must at all times act in a manner consistent with the Statute and (to the extent that the exercise of a function relates to property held in trust for a Parish) in a manner consistent with the Parish By-laws of the Parish.
- (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 or with the Statute, with respect to trust property and with respect to the procedure of the Board for conducting the affairs 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 Diocese or of a Parish.
- (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 Diocese or of a Parish for which the advance was made.

## **11 (Repealed)**

## **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 Diocese or of a Parish 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 Diocese or a Parish 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 Diocese or of a Parish, 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 Diocese or of a Parish 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**

(1) Any property that was, immediately before the commencement of the 2001 amendment, vested in the association or in any other person in trust for the Diocese or for a Parish is, on that commencement, divested from the Association or that person and is, to the extent that it was so vested, vested (without conveyance) in the Trust:

- (a) in trust for the Diocese (in the case of property that was so vested in trust for the Diocese), or

(b) in trust for the Parish concerned (in the case of property that was so vested in trust for a Parish).

(1A) In subsection (1), **the 2001 amendment** means the substitution of that subsection by the *Russian Orthodox Church Property Trust Amendment Act 2001*.

(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**

(1) 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, to the Diocese or to a Parish, or to a person (other than the Trust) for the benefit of the Church, of the Diocese or of a Parish, or

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

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

a reference in the instrument to the Church, to the Diocese, to a Parish, or to that person, is taken to be a reference to the Trust.

(2) To the extent to which an instrument referred to in subsection (1) refers to the Church, the Trust may, for the purpose of determining whether the property concerned is held by the Trust in trust for the Diocese or for a Parish, determine whether that reference should be read as a reference to the Diocese or to a particular Parish or Parishes. Such a determination has effect accordingly.

## **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) (Repealed)

### **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 Diocese or for a Parish 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)

### Part 1 Provisions consequent on enactment of Act

#### 1 Definitions

In this Schedule:

**former trustee** means the association or any other person in whom, immediately before the vesting day, property was vested in trust for the Church, for the Diocese or for a Parish.

**the 2001 amending Act** means the [Russian Orthodox Church Property Trust Amendment Act 2001](#).

**vesting day** means the day on which property vests in the Trust in accordance with section 15, being:

- (a) in the case of property that vested in accordance with that section as originally enacted—the appointed day under this Act as originally enacted, or
- (b) in the case of property that vests in accordance with that section as amended by the 2001 amending Act—the day on which that amendment commences.

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

On and from the vesting 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 vesting 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 vesting 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.

## **Part 2 Provisions consequent on enactment of [Russian Orthodox Church Property Trust Amendment Act 2001](#)**

### **3 Change of name of Trust**

- (1) The Russian Orthodox Church (NSW) Property Trust is a continuation of and the same legal entity as the Russian Orthodox Church Outside of Russia in Australia and New Zealand Property Trust as constituted by this Act immediately before the commencement of this clause.
- (2) Subclause (1) does not affect the operation of section 53 (Alterations of names and constitutions) of the [Interpretation Act 1987](#).

### **4 Previous operation of section 15**

The amendment of section 15 by the 2001 amending Act does not affect the previous operation of that section.