

# Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 No 65

[1994-65]



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.

### Authorisation

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# Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994 No 65



New South Wales

An Act to constitute the Greek Orthodox Archdiocese of Australia Consolidated Trust, to specify the Trust's functions, and to provide for the vesting of certain property in the Trust; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994*.

### 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.

***Archbishop*** means the Archbishop of the Archdiocese.

***Archdiocesan Council*** means the Archdiocesan Council of the Archdiocese elected from time to time by the Clergy-Laity Congress of the Archdiocese.

***Archdiocese*** means the Archdiocese of the Church known as The Greek Orthodox Archdiocese of Australia constituted by His All Holiness Athenagoras Archbishop of Constantinople and Ecumenical Patriarch with the concurrent approval of members of the Holy and Sacred Synod on 3 April 1959, as redefined from time to time under the same authority.

***Assistant Bishop*** means a Bishop who is nominated by the Archbishop and appointed by His All Holiness the Ecumenical Patriarch in Constantinople (Istanbul) with the concurrent approval of members of the Holy and Sacred Synod as an Assistant Bishop to the Archbishop.

**Bishop** means a person ordained as a Bishop of the Church.

**Church** means The Greek Orthodox Church in Australia under the jurisdiction of His All Holiness the Ecumenical Patriarch in Constantinople (Istanbul).

**company** means the company limited by guarantee, incorporated in New South Wales under the name The Greek Orthodox Archdiocese of Australia Property Trust.

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

**exercise** of a function includes, where the function is a duty, the performance of the duty.

**function** includes a power, authority or duty.

**property** includes property located outside New South Wales.

**Trust** means the Greek Orthodox Archdiocese of Australia Consolidated Trust constituted by this Act.

**trust property** means property held by the Trust.

**trustee** means a member of the Trust.

## **Part 2 Constitution and functions of the Trust**

### **4 Constitution of the Trust**

- (1) There is constituted by this Act a corporation under the corporate name of the Greek Orthodox Archdiocese of Australia Consolidated Trust.
- (2) The Trust is to consist of the following members:
  - (a) the Archbishop,
  - (b) the Assistant Bishops,
  - (c) the persons for the time being holding the offices of:
    - (i) the 2 Vice-Presidents, and
    - (ii) the Secretary, and
    - (iii) the Treasurer,of the Archdiocesan Council.
- (3) The Archbishop may appoint any lay member of the Church to be a member of the Trust instead of a member referred to in subsection (2) (c).

## **5 Advisory Council**

- (1) There is constituted by this Act an Advisory Council. The function of the Advisory Council is to provide advisory services to the Trust as requested by the Trust.
- (2) The Advisory Council is to consist of:
  - (a) the Archdiocesan Council, or
  - (b) if there is no Archdiocesan Council—the persons appointed by the Archbishop for the purposes of this section.
- (3) Meetings of the Advisory Council can be convened:
  - (a) by the Trust, or
  - (b) by the Archbishop, or
  - (c) as provided by the by-laws.

## **6 Procedure of the Trust**

- (1) The Archbishop is to preside at a meeting of the Trust.
- (2) The Archbishop has a deliberative vote.
- (3) A decision supported by a majority of the votes (one of that majority being the Archbishop) cast at a meeting of the Trust at which a quorum is present is a decision of the Trust.
- (4) The procedures of the Trust are those specified in the by-laws.
- (5) The trustees are to conduct the business of the Trust in accordance with the by-laws.

## **7 Quorum**

The quorum for a meeting of the Trust is:

- (a) if the Archbishop is present, three trustees, one of whom must be the Archbishop, or
- (b) if the Archbishop is not present and an alternate has been appointed, three trustees and the alternate, or
- (c) if the office of Archbishop is vacant and a person has been nominated for the purposes of section 9, three trustees and the nominated person, or
- (d) if the office of Archbishop is vacant and no person has been nominated under section 9, three trustees and the most senior Assistant Bishop within the meaning of that section.

## **8 Alternate to Archbishop may attend meetings**

- (1) The Archbishop may appoint any person as the Archbishop's alternate for the purpose of attending and voting at meetings of the Trust.
- (2) The person may, but need not, be a trustee.
- (3) If such an alternate has been appointed and the Archbishop does not attend a meeting of the Trust, a reference to the Archbishop in section 6 is a reference to the alternate.

## **9 Conduct of meeting when office of Archbishop is vacant**

- (1) If the office of Archbishop is vacant His All Holiness the Ecumenical Patriarch in Constantinople (Istanbul) may nominate a person for the purpose of attending and voting at meetings of the Trust.
- (2) The person may, but need not, be a trustee.
- (3) If a person is so nominated, a reference to the Archbishop in section 6 is a reference to the nominee, until such time as the office of Archbishop is no longer vacant.
- (4) If no person is nominated under this section, a reference to the Archbishop in section 6 is a reference to the most senior Assistant Bishop, until such time as the office of Archbishop is no longer vacant. Seniority is determined by the date of ordination of the person as Bishop.

## **10 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, the Archdiocese or the Holy Patriarchate in Constantinople (Istanbul),
  - (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, the Archdiocese or the Holy Patriarchate in Constantinople (Istanbul),
  - (d) to mortgage, charge or otherwise encumber trust property,
  - (e) to make gifts and donations for religious and charitable purposes,
  - (f) to enter into any guarantee or indemnity which may assist the Trust, the Church or the Archdiocese in the performance of its functions,
  - (g) to print, publish and distribute (gratuitously or otherwise) any newspapers,

periodicals, books or leaflets,

- (h) 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,
- (i) to do and suffer all other things (whether or not of the same kind or nature as any other thing referred to in this section) that the Archbishop considers to be necessary, appropriate or desirable.

(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*.

## **11 By-laws**

(1) The Trust may make by-laws, not inconsistent with this Act:

- (a) for the control, management and administration of, and dealings with, trust property, and
- (b) for the conduct of proceedings of the Trust and the Advisory Council.

(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.

## **12 Delegation of 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 any trustee or any other person or body prescribed by the by-laws.

## **13 Trust may hold property jointly**

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

## **14 Investment**

- (1) The Trust may invest or lend any funds held by it in accordance with the terms of any trust to which the funds are subject.
- (2) The Trust 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.

### **15 Blending of trust funds**

- (1) The Trust may invest trust funds held by it for different purposes or activities, or any part of those funds, as one fund (***the fund***).
- (2) Any income arising from the investment of the fund may be distributed ratably for the benefit of carrying out the several purposes or activities for which the money invested is held in trust.
- (3) Any loss arising from the investment of the fund is to be distributed ratably among the several purposes or activities for which the money invested is held in trust.
- (4) The Trust may make advances out of funds referred to in this section for any purpose of or relating to the Church.
- (5) Any sum so advanced is taken to be an investment of the money and bears interest at a rate fixed by the Trust.
- (6) 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.

### **16 Co-operative use of 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 Church.

### **17 Variation of trusts**

- (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 replaced trust.
- (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.

### **18 Trust may act as executor, administrator or trustee**

- (1) The Trust may:
- (a) 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) 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) 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 trustee 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.

### **19 Claims for compensation**

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**

### **20 Vesting of property in the Trust on the appointed day**

(1) Any property that was, immediately before the appointed day, vested in the company or any other person in trust for the Church is, on that day, divested from the company 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.

## **21 Vesting of property in the Trust after the appointed day**

- (1) This section applies to:
  - (a) an instrument (including a will) that takes effect on or after the appointed day, or
  - (b) articles of association of a corporation under which the winding up of the corporation commences on or after the appointed day,if the Trust by resolution declares that the section applies to that instrument or to those articles of association.
- (2) To the extent to which any property:
  - (a) is given to the Church or to a person (other than the Trust) for the benefit of the Church, or
  - (b) is payable to, or receivable by, the Church or any person (other than the Trust) on behalf of the Church, or
  - (c) is recoverable by the Church or by any person (other than the Trust) for the Church, or
  - (d) would, on the winding up of any corporation operating within the Church or under the auspices of the Church, have been given to the company if the company had not been dissolved,by or under an instrument, or any articles of association, to which this section applies, a reference in the instrument or articles to the Church, the company or that person, is to be treated as a reference to the Trust.
- (3) In this section, **Church** includes the Archdiocese and His All Holiness the Ecumenical Patriarch in Constantinople (Istanbul).

### **21A Payment of duty not required in certain cases**

Duty under the [Duties Act 1997](#) is not chargeable in respect of, or in connection with, a conveyance to the Trust of property from a person or body who holds that property on behalf of any parish or congregation of the Church.

## **Part 4 Miscellaneous matters**

### **22 Seal**

- (1) The seal of the Trust is to be kept by the Secretary of the Trust and is to be affixed to a document only:
  - (a) in the presence of 2 trustees, and
  - (b) with an attestation by the signatures of those persons of the fact of the affixing of the seal, and
  - (c) with the signature of the Archbishop or of a person appointed by the Trust for the purpose of signing the document.
- (2) An instrument purporting to have been sealed with the seal of the Trust and to have been signed by 2 trustees and by the Archbishop or by an appointed person, is taken to have been executed in accordance with this section.

### **23 Form and execution of certain instruments**

- (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 may be made on behalf of the Trust by any person acting under its authority, express or implied.

### **24 Execution under seal by agent**

- (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.

### **25 Evidence**

- (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 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 the matters so certified.

## **26 Receipt for certain money**

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 trustees, 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 trustees,

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.

## **27 Exoneration from inquiry**

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.

## **28 Indemnification of certain persons**

A trustee, 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 trustee or 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.

## **29 Service of documents**

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.

## **30 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **31 Savings and transitional provisions**

Schedule 1 has effect.

## **Schedule 1 Savings and transitional provisions**

(Section 31)

### **1 Definition**

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

### **2 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provisions may, if the regulations so provide, take effect as from the date of assent to this Act 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 in the Gazette, 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.

### **3 Claims and liabilities in relation to the Trust**

On and from the appointed day, the following provisions have effect in relation to the Trust:

- (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.