

# Roman Catholic Church Communities' Lands Act 1942 No 23

[1942-23]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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# Roman Catholic Church Communities' Lands Act 1942 No 23



New South Wales

An Act to make certain provisions relating to property real and personal held upon any trust for or for the use, benefit or purposes of certain orders, congregations, communities and associations of the Roman Catholic Church in New South Wales; and for purposes connected therewith.

## Preamble

**WHEREAS** property real and personal held on trust for or for the use or benefit or for the purposes of certain orders, congregations, communities and associations of the Roman Catholic Church in New South Wales is vested in many different bodies of trustees, and, owing to deaths and other causes, the necessity for the appointment of new Trustees frequently arises: And whereas it is expedient that bodies corporate be created for the purpose of holding, managing and dealing with property so held, that provision be made for the vesting in bodies corporate to be created by this Act of real property so held, that conveyancing transactions in respect of property so held be facilitated and rendered less expensive and also that other activities which are or may be for the benefit of the Roman Catholic Church or of those orders, congregations, communities and associations of the Roman Catholic Church may be conducted by those bodies corporate:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Roman Catholic Church Communities' Lands Act 1942*.
- (2) This Act shall commence upon the first day of December one thousand nine hundred and forty-two.

## 2 Definitions

- (1)

**Assets** means any legal or equitable estate or interest (whether present or future and

whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Bishop** means the person for the time being administering a diocese, whether as Archbishop or Bishop, Coadjutor Archbishop or Coadjutor Bishop, Vicar Capitular or Administrator, Vicar-General or Priest with Extraordinary Faculties.

**Church** means the Roman Catholic Church.

**Community** means any of the following orders, congregations, communities and associations of the Church:

- (i) The Sisters of the Brigidine Congregation,
- (ii) The Brothers of the Christian Schools of Ireland,
- (iii) Brothers of the Christian Schools,
- (iv) The Sisters of Saint Dominic of New South Wales,
- (v) Sisters of the Good Samaritan of the Order of Saint Benedict,
- (vi) The Sisters of Mercy (Parramatta),
- (vii) The Society of Mary for the Province of Australia,
- (viii) The Society of Mary for the Province of Oceania,
- (ix) The Marist Brothers of the Schools,
- (x) The Sisters of Mercy (North Sydney),
- (xi) The Fathers of the Passion,
- (xii) The Sisters of Saint Joseph of the Sacred Heart,
- (xiii) The Congregation of the Mission,
- (xiv) Our Lady's Nurses of the Poor,
- (xv) Daughters of Our Lady of the Sacred Heart,
- (xvi) The Order of Preachers,
- (xvii) The Sisters of Mercy, Diocese of Bathurst,
- (xviii) The Sisters of St. Joseph, Diocese of Bathurst,
- (xix) The Sisters of Charity of Australia,
- (xx) The Sisters of Mercy, Diocese of Lismore,

and any order, congregation, community, association or society named in the first column of Schedule 2.

**Community consultors** means the consultors for the time being of a community, and, in the case of there being no consultors of a community, includes the members for the time being of the governing council of a community constituted according to rules, practices and usages.

**Community land** means land situated in New South Wales for the time being subject to any trust created before or after the commencement of this Act for a community, or for the use or benefit or for any purpose of a community, but does not include any land which is church trust property within the meaning of the [Roman Catholic Church Trust Property Act 1936](#).

**Court** means the Supreme Court.

**Land** includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity.

**Liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**Member** of a body corporate that is the trustee of community land for a community means:

- (a) the Provincial for the community, and
- (b) the community consultors for the community.

**Provincial** means the person for the time being acting as Provincial-General for New South Wales of a community, and includes the person for the time being acting as Provincial, Superior, Leader or President, as the case may be, of a community of which there is no Provincial-General for New South Wales.

**Relevant diocese** in relation to a body corporate means the Diocese within which the principal site or house in New South Wales of the community of whose land the body corporate is or was the trustee is or was last situated.

**Rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

(2)

(a) The Governor may:

- (i) upon the written request of the Provincial-General, Provincial, Superior, Leader or President of any order, congregation, community, association or society of

the Church which is not a community within the meaning of this Act, and

- (ii) upon the presentation of a certificate, under the hand and seal of the Bishop of the Diocese within which the principal site or house in New South Wales of such order, congregation, community, association or society is situated, and to the effect that the Bishop of such Diocese approves of such order, congregation, community, association or society being a community for the purposes of this Act,

by proclamation published in the Gazette, add the name of such order, congregation, community, association or society to the first column of Schedule 2, and add to the second column of Schedule 2, the corporate name of the trustees of such order, congregation, community, association or society.

- (a1) The Governor may, by proclamation published in the Gazette, alter a name in Schedule 2 or substitute some other name for such a name.
- (a2) Where the corporate name of a body corporate referred to in Schedule 2 is altered or some other name is substituted for that name in accordance with paragraph (a1), the alteration or substitution shall not:
  - (i) prejudice or affect in any way the continuity of the body corporate in respect of which that alteration or substitution is made,
  - (ii) affect any property, powers, rights, authorities, duties, functions, liabilities or obligations of that body corporate, or
  - (iii) render defective any legal or other proceedings instituted or to be instituted by or against that body corporate,

and any legal or other proceedings may be continued or commenced by or against that body corporate by the name to which the name of that body corporate has been altered or which has been substituted for the name of that body corporate that might have been continued or commenced by or against that body corporate by the name by which that body corporate was known before that alteration or substitution.

- (b) Schedule 2 with the additions, alterations and substitutions made thereto pursuant to this subsection shall be deemed to be Schedule 2 to this Act.

### **3 Trustees for community land**

There shall be, for each community, trustees of community land, who shall be the provincial and the community consultors of that community.

### **4 Trustees to be bodies corporate**

- (1) The trustees of community land for each community shall, by virtue of this Act, be a

body corporate, having perpetual succession and a common seal, and being capable of acquiring, holding and disposing of any property, real or personal, and of suing and being sued in its corporate name and of doing and suffering all such acts and things as bodies corporate may by law do or suffer.

- (2) The corporate names of the trustees of community land for the several communities shall be:
- (a) for the Sisters of the Brigidine Congregation, the "Trustees of the Sisters of the Brigidine Congregation", and
  - (b) for the Brothers of the Christian Schools of Ireland, the "Trustees of the Christian Brothers", and
  - (c) for the Brothers of the Christian Schools, the "Trustees of the De La Salle Brothers", and
  - (d) for the Sisters of Saint Dominic of New South Wales, the "Trustees of the Sisters of Saint Dominic", and
  - (e) for the Sisters of the Good Samaritan of the Order of Saint Benedict, the "Trustees of the Sisters of the Good Samaritan", and
  - (f) for the Sisters of Mercy (Parramatta), the "Trustees of the Sisters of Mercy (Parramatta)", and
  - (g) for the Society of Mary for the Province of Australia, the "Trustees of the Marist Fathers for the Province of Australia", and
  - (h) for the Society of Mary for the Province of Oceania, the "Trustees of the Marist Missions of the Pacific", and
  - (i) for the Marist Brothers of the Schools, the "Trustees of the Marist Brothers", and
  - (j) for the Sisters of Mercy (North Sydney), the "Trustees of the Sisters of Mercy (North Sydney)", and
  - (k) for the Fathers of the Passion, the "Trustees of the Passionist Fathers", and
  - (l) for the Sisters of Saint Joseph of the Sacred Heart, the "Trustees of the Sisters of Saint Joseph", and
  - (m) for the Congregation of the Mission, the "Trustees of the Vincentian Fathers", and
  - (n) for Our Lady's Nurses of the Poor, the "Trustees of Our Lady's Nurses of the Poor", and
  - (o) for the Daughters of Our Lady of the Sacred Heart, the "Trustees of the Daughters of Our Lady of the Sacred Heart", and



- (p) for the Order of Preachers, the "Trustees of the Dominican Fathers", and
- (q) for the Sisters of Mercy, Diocese of Bathurst, the "Trustees of the Sisters of Mercy, Diocese of Bathurst", and
- (r) for the Sisters of St. Joseph, Diocese of Bathurst, the "Trustees of the Sisters of St. Joseph, Diocese of Bathurst", and
- (s) for the Sisters of Charity of Australia, the "Trustees of the Sisters of Charity of Australia", and
- (t) for the Sisters of Mercy, Diocese of Lismore, the "Trustees of the Sisters of Mercy, Diocese of Lismore",

and for each community named in the first column of Schedule 2 shall be the corporate name set out opposite thereto in the second column of such Schedule.

- (3) The objects of a body corporate created by this Act include:
  - (a) the operation and conduct of educational, welfare and health institutions, organisations or other bodies, and
  - (b) the performance of all such acts, matters and things of any nature (which may include, without limiting the scope of this paragraph, borrowing money) as, in its opinion, are or may be for its benefit or for the benefit of the community to which it relates.

## **5 Common seal and quorum**

- (1) The members for the time being of each body corporate created by this Act shall have the custody of its common seal, and the form of such seal and all other matters relating thereto shall, subject as in this section mentioned, be, from time to time, determined at a meeting of the body corporate.
- (2) The provincial and two other members of each such body corporate shall constitute a quorum for the purpose of any meeting of the body corporate.
- (3) Every meeting of any such body corporate at which a quorum is present shall be competent to transact any business of the body corporate.
- (4) The common seal of any such body corporate shall not be affixed to any instrument except in pursuance of a resolution passed at a meeting of the body corporate.
- (5) Every instrument to which the common seal is so affixed shall be signed by the provincial who is a member of the body corporate and by two other members of the body corporate.

## **6 Vacancies in membership**

- (1) Except as in this section mentioned, no capacity or power of a body corporate created by this Act shall be affected by the existence of vacancies in its membership.
- (2) Where for any reason a quorum of a body corporate created by this Act cannot be constituted all powers exercisable by the body corporate and its capacity for doing any act or thing shall be suspended, but shall, by virtue of this Act, revive as soon as a quorum of such body corporate is capable of being constituted.

## **7 Execution of instruments**

- (1) Every instrument bearing what purports to be the common seal of a body corporate created by this Act and purporting to be signed by the provincial thereof and two other members of that body corporate shall, in favour of every person claiming for value and in good faith, under or through that instrument, be conclusively presumed to have been duly executed by the body corporate the common seal of which it purports to bear.
- (2) Section 51A of the *Conveyancing Act 1919-1939* shall not apply to or in respect of any instrument executed by a body corporate created by this Act.

## **8 Vesting of Communities' land**

- (1) All community land of a community shall by virtue of this Act:
  - (a) vest in the body corporate constituted under this Act for that community, and
  - (b) be thereupon divested from the person in whom it was thereinbefore vested.
- (2) No vesting by virtue of this Act shall affect any encumbrance, lien, estate or interest to which, at the time of the vesting, the property so vested was subject in the hands of the person from whom it was divested.

The body corporate in which the property vests shall become, jointly with the person liable at the time of the vesting, and severally, liable under every contract, engagement and cause of action, in relation to the property vested, under which the person from whom the property was divested was liable at the time of the vesting.

The body corporate shall be liable to indemnify the person from whom the property was divested his executors and administrators against every claim, action, suit and other proceeding which shall be made or taken in respect of any such contract engagement or cause of action.

The person from whom the property was divested shall have a charge or lien on the property divested to the extent to which and in the circumstances in which the charge or lien would have attached if the property had not been divested; but the charge or lien, or possibility thereof, shall, in favour of a person dealing for value with the body

corporate in which the property is vested be deemed not to exist unless and until the person entitled thereto has after the commencement of this Act and before such dealing given written notice to the body corporate of its existence or of the possibility of its arising.

A statement under the common seal of the body corporate that no such notice has been received before such dealing shall be conclusive evidence of the fact so stated in favour of any person dealing for value with the body corporate in respect of the divested property.

- (3) Subsections (1) and (2) shall, in their application to and in respect of the communities referred to in paragraphs (xix) and (xx) of the definition of **Community** and the community lands of those communities, have and take effect as on and from the commencement of the *Roman Catholic Church Communities' Lands (Amendment) Act 1943*; and for the purposes of such application the reference in subsection (2) to the "commencement of this Act" shall be read and construed as a reference to the "commencement of the *Roman Catholic Church Communities' Lands (Amendment) Act 1943*".
- (4) Subsections (1) and (2) shall, in their application to and in respect of the communities named in the first column of Schedule 2 as inserted by the *Roman Catholic Church Communities' Lands (Amendment) Act 1948*, and the community lands of those communities, have and take effect as on and from the commencement of the *Roman Catholic Church Communities' Lands (Amendment) Act 1948*; and for the purposes of such application the reference in subsection (2) to the "commencement of this Act" shall be read and construed as a reference to the "commencement of the *Roman Catholic Church Communities' Lands (Amendment) Act 1948*".
- (5) Subsections (1) and (2) shall, in their application to and in respect of any community the name of which is added to the first column of Schedule 2 pursuant to the provisions of subsection (2) of section 2, and the community lands of any such community, have and take effect as on and from the date of gazettal of the proclamation adding the name of such community to the said Schedule; and for the purposes of such application the reference in subsection (2) to the "commencement of this Act" shall be read and construed as a reference to the date of "gazettal of the proclamation adding to Schedule 2 the name of the community for which the body corporate is constituted".

## **9 Certain lands not to vest until consent given**

- (1) Notwithstanding section 8, where it appears from any instrument registered before the commencement of this Act in any register kept under the provisions of the *Registration of Deeds Act 1897* or the *Real Property Act 1900* that any of the persons whose names are set out in Schedule 1 is at such commencement a trustee either alone or with others of any community land or was at any time before such

commencement a trustee either original or substituted and either alone or with others of any community land but had ceased to be a trustee by death, retirement or otherwise and no new trustee has or had been appointed in his place, such community land shall not vest in the body corporate constituted by this Act for the community concerned or be divested from the person in whom it was thereinbefore vested until the body corporate constituted by the [Roman Catholic Church Trust Property Act 1936](#), for the diocese in which the land is situated has consented in writing to such vesting.

- (2) Upon the giving of such consent in writing and as from the date thereof section 8 shall apply to such land.
- (3) Any such consent shall be conclusive evidence that the land in respect of which it is given is situated within the diocese for which the body corporate giving such consent was constituted.

#### **10 Powers of bodies corporate**

- (1) A body corporate created by this Act has all of the powers of a natural person, including (without limiting the scope of those powers) the power:
  - (a)
    - (i) to purchase, take on lease or acquire by gift, devise, bequest, exchange or otherwise any real or personal property, and
    - (ii) by itself or by any servant or agent authorised in writing in that behalf under its common seal to deal with and dispose of moneys, choses in action and choses in possession at any time vested in it or in any person on its behalf, and
    - (iii) by itself or by any servant or agent authorised in writing in that behalf under its common seal to draw, make, accept, endorse and discount promissory notes, bills of exchange and other negotiable or transferable securities or instruments, and
    - (iv) to do and perform all such acts, matters and things and make and execute all such contracts, documents, writings and assurances as in its opinion are or may be for its benefit or the benefit of the Church,
  - (b) in relation to any community land at any time vested in it or in relation to any other land (being land, situated outside New South Wales, for the time being subject to any trust created before or after the commencement of this Act, or after the commencement of the [Roman Catholic Church Communities' Lands \(Amendment\) Act 1943](#), for a community or for the use or benefit or for any purpose of a community) at any time vested in it:

- (i) to sell it and to exchange it for other land and to transfer or convey community land or other land so sold or exchanged to the purchaser or person taking in exchange, whether alone or jointly with another person, freed and discharged from all trusts affecting the same in the hands of the body corporate, and
  - (ii) to demise or let it for such term at such rent and with or without taking a premium, fine or foregift and subject to such provisions as to the body corporate shall appear desirable, and
  - (iii) to accept surrenders of leases upon such terms and subject to such conditions as to the body corporate shall appear desirable, and
  - (iv) to borrow money on the security of it on such terms and conditions as to the body corporate shall appear desirable, and
  - (v) to declare trusts of it or of any estate or interest in it created by the body corporate for any community of the Church or for the use or benefit of or for any purpose of any such community and either to retain the property in relation to which trusts are so declared or to vest it or any estate or interest so created in other trustees upon the trusts so declared, and
  - (vi) to transfer or convey it without consideration to any corporate body created by this Act or by the [Roman Catholic Church Trust Property Act 1936](#),
  - (vii) notwithstanding anything contained in any Act to sell and convey community land resumed either before or after the commencement of this Act under the provisions of the [Public Works Act 1912](#) or any other Act authorising the compulsory acquisition of land and to agree upon and receive all compensation money whatsoever payable in respect of the resumption,
- (c) to borrow money on the security of personal property or without security on such terms and conditions as to the body corporate shall seem desirable,
  - (d) in relation to real and personal property outside the State of New South Wales at any time vested in or owned by it to delegate by writing under its common seal to an attorney or attorneys all or any of the powers in this section set out, and
  - (e) to execute any document and to do any other thing the execution or doing of which, in its opinion, is necessary or convenient to achieve its objects.
- (2) Nothing herein contained shall limit or be deemed to limit the generality of subsection (1) of section 4 of this Act or affect the construction of section 9 of the [Roman Catholic Church Trust Property Act 1936](#).

## **11 Additional powers of bodies corporate**

- (1) Every body corporate created by this Act shall have power from time to time to apply

for and obtain representation of the estate of any deceased person being a member of the community for which such body corporate was constituted by this Act or being a person under whose will such community or such body corporate is a beneficiary and to do all things necessary to administer such estate.

- (2) Any officer authorised for the purpose by the body corporate may on behalf of the body corporate swear affidavits, make declarations, statements of defence or other statements, give security and do any other act or thing required by any Charter, Act of Parliament or rule of court to be made by persons making application for probate or letters of administration.
- (3) Whenever the body corporate shall have been appointed executor or administrator it shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the courts in the same manner as any other executor or administrator and all the property real and personal of the body corporate and the members thereof and their respective estates shall be liable for the proper discharge of the duties of such office.

## **12 Protection of purchasers etc**

- (1) No purchaser, mortgagee, lessee or other person dealing with a body corporate created by this Act, and neither the Registrar-General, nor the Crown Solicitor nor any other person registering or certifying title, shall, upon any sale, exchange, mortgage, lease or other dealing purporting to be made under a power conferred by this Act, be concerned to see or inquire into the necessity for, or the propriety of, or the mode of exercising the same, or be affected by notice that the exercise of the power is unauthorised, irregular or improper.
- (2) A receipt for any money payable to the body corporate, signed by the provincial who is a member thereof, shall be sufficient discharge in favour of, and shall exonerate, the person paying such money from all responsibility for the application of such money.

## **13 Effect of instruments executed by bodies corporate**

- (1) Notwithstanding section 9:
  - (a) The execution by a body corporate created by this Act of an instrument purporting to deal with land not under the provisions of the *Real Property Act 1900* shall, in favour of every person claiming any estate or interest under or through that instrument, and against every body corporate created by this Act, be conclusive evidence that the land thereby dealt with was at the time of such execution community land, and that, at the time of such execution, the body corporate had the estate or interest therein sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create.
  - (b) The execution in accordance with this Act by a body corporate of an instrument purporting to deal with land not under the provisions of the *Real Property Act 1900*

shall, if such instrument is registered under the provisions of the *Registration of Deeds Act 1897*, be conclusive evidence that the land thereby dealt with was at the time of such execution community land, and that the body corporate had the estate or interest therein sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, in favour of every person claiming any estate or interest thereunder and having taken for value without notice that the land so purported to be dealt with was not community land or that the body corporate had not the estate or interest which it thereby purported to have, and in favour of every person claiming through or under him, as against any person having or claiming to have an estate or interest in such land other than an estate or interest under an instrument registered under the provisions of the *Registration of Deeds Act 1897*, prior to the registration of the firstmentioned instrument.

- (2) Any person other than a body corporate created by this Act, deprived of any estate or interest in land by any such instrument, may bring and prosecute an action for damages against the body corporate by which the instrument was executed, and may recover the amount of a judgment therefor out of any real or personal property for the time being vested in such body corporate, and any real or personal property taken by a purchaser on a sale pursuant to any execution shall be freed from all trusts affecting the same, except in the case of a trust created by the Crown, and the proceeds of every such sale shall, in the hands of the Sheriff, and of the execution creditor, be freed from all trusts to which it would be subject in the hands of the execution debtor.

#### **14 Evidence**

- (1) A certificate, given under the common seal of a body corporate constituted under this Act, that the land described in the certificate is community land of the community in respect of which the body corporate is constituted, which has endorsed thereon or annexed thereto the consent of the body corporate constituted by or under the *Roman Catholic Church Trust Property Act 1936*, for the diocese in which the land described in the certificate is situated, shall, whether or not any of the persons whose names are set out in Schedule 1 is at the commencement of this Act a trustee either alone or with others of such land, or was at any time before such commencement a trustee either original or substituted and either alone or with others of such land:
  - (a) be conclusive evidence of the fact so certified, for the purpose of any application by that body corporate to be registered as the proprietor pursuant to a vesting by this Act of land under the provisions of the *Real Property Act 1900*, of which a body corporate constituted by this Act is not registered proprietor, and
  - (b) be prima facie evidence of the fact so certified, for all purposes whether in civil or criminal proceedings or otherwise.
- (2) Any such consent shall be conclusive evidence that the land in respect of which the

consent is given is situated within the diocese for which the body corporate giving the consent was constituted.

### **15 Trusts preserved**

All property real or personal for the time being vested in a body corporate created by this Act shall be held by it on the trusts, if any, expressly declared in respect thereof and if no such trusts have been expressly declared on trust for the community for which the body corporate exists for the use, purposes and benefit of such community: Provided however that the powers conferred by section 10 shall be exercisable by the body corporate in relation to all property vested in it notwithstanding any such trust or provision.

### **16 Validation of grants**

No title to any land granted by the Crown before the commencement of this Act for or for the use, benefit or purposes of any community to which this Act applies shall be held bad either at law or in equity by reason of any breach or non-performance before or after the commencement of this Act of any condition, trust or proviso contained in the grant by the Crown of the land and every provision for forfeiture or reverter in respect of any such breach or non-performance shall be deemed to have been released by the Crown as from the date of the Crown Grant.

### **17 Variation of trusts**

- (1) If, after the creation of the trusts to which any real or personal property vested in or held by a body corporate constituted by this Act is for the time being subject, it has, in the opinion of the body corporate, become impossible or inexpedient to carry out or observe those trusts, the body corporate may by resolution declare opinion, and by the same or a later resolution declare other trusts subject to which such property may be held, being trusts for the use, benefit or purposes of the community to which the body corporate relates.
- (2) A resolution declaring other trusts causes the replaced trusts to cease and determine and the property which was subject to those trusts shall be held subject to the other trusts.
- (3) The property shall be dealt with as nearly as may be possible for the purposes for which the property was, immediately before the resolution, held unless the body corporate by resolution declares that by reason of circumstances arising after the creation of the replaced trusts it is, in the opinion of the body corporate, impossible or inexpedient to deal with or apply the property or some part of the property for the same or like purposes.
- (4) If a resolution is passed under subsection (3) in relation to property or some part of property, the property or part of the property may be dealt with and applied for the use, benefit or purposes of the community subject to the trusts declared by resolution



of the body corporate.

- (5) This section applies to trusts created before or after the commencement of the *Roman Catholic Church Communities' Lands (Amendment) Act 1986*.
- (6) In subsection (1), the reference to trusts which have been created includes a reference to trusts declared by a resolution passed under this section.

## **18 Blending of trust funds**

- (1) Where a body corporate holds money on trust for different purposes or activities it shall be lawful for the body corporate from time to time:
  - (a) to invest the money or any part or parts of the money as one fund, and
  - (b) to distribute income arising from the investment of the fund rateably for the benefit of carrying out the several purposes or activities for which the money invested is held on trust.
- (2) Any loss arising from an investment in accordance with this section shall be distributed rateably to the detriment of carrying out the several purposes or activities for which the money invested is held on trust.

## **19 Exemption from duty**

- (1) An instrument executed only for:
  - (a) a purpose ancillary to, or consequential on, the operation of section 8, 22 or 23, or
  - (b) the purpose of giving effect to those sections,shall be exempt from duty under the *Duties Act 1997*.
- (2) An instrument, being an agreement for the sale, conveyance or demise of any property:
  - (a) from a body corporate created by this Act to another body corporate so created or to a body corporate created under the *Roman Catholic Church Trust Property Act 1936*, or
  - (b) from a body corporate created under the *Roman Catholic Church Trust Property Act 1936* to a body corporate created by this Act,shall be exempt from duty under the *Duties Act 1997*.
- (3) Any other instrument to which the only parties are:
  - (a) one or more bodies corporate created by this Act, or
  - (b) one or more bodies corporate created by this Act and one or more bodies

corporate created by the [Roman Catholic Church Trust Property Act 1936](#),  
is exempt from duty under the [Duties Act 1997](#).

## **20 Voluntary winding up**

- (1) A body corporate created by this Act may be voluntarily wound up under this section if:
  - (a) a notice of the proposed voluntary winding up of the body corporate is published in a newspaper circulating in the relevant diocese, and
  - (b) at least one month after that notice is published at least 75 per cent of the members of the body corporate have passed a resolution in favour of voluntary winding up, and
  - (c) the Bishop of the relevant diocese has issued a certificate under the Bishop's hand and seal:
    - (i) approving the voluntary winding up of the body corporate, and
    - (ii) certifying that the requirements of this subsection have been satisfied in relation to the body corporate.
- (2) Except with the leave of the Court, the members of a body corporate cannot resolve that it be wound up voluntarily if proceedings for the body corporate to be wound up by the Court under section 21 have been commenced and have not been finally determined.
- (3) A body corporate is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the body corporate continue until it is wound up under this section.
- (4) If the Bishop has certified that all of the requirements of subsection (1) have been satisfied in relation to a body corporate, the body corporate must be wound up.
- (5) The Bishop who approves a voluntary winding up of a body corporate must ensure that notice of the winding up of a body corporate under the [Corporations Act 2001](#) of the Commonwealth is published in a newspaper circulating in the relevant diocese.
- (6) Subsection (3) ceases to apply if the Bishop decides not to approve a voluntary winding up.

## **21 Winding up by the Court**

- (1) The Court may order the winding up of a body corporate created by this Act if:
  - (a) at least 75 per cent of the members of the body corporate have passed a

resolution in favour of winding up by the Court, or

- (b) the community of whose land the body corporate is the trustee has suspended its operations or religious duties, or both, for a continuous period of not less than 12 months (whether before or after the commencement of this section) immediately before the order is made, or
- (c) the body corporate is unable to meet its liabilities, or
- (d) the Court is otherwise of the opinion that it is just and equitable that the body corporate be wound up.

(2) An application to the Court for the winding up of a body corporate may be made by:

- (a) the body corporate (but only if a resolution is passed by at least 75 per cent of the members of the body corporate in favour of making the application), or
- (b) the Bishop of the relevant Diocese.

## 22 Procedure for winding up

- (1) The winding up of a body corporate in New South Wales is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (the **applied provisions**), subject to the following modifications:
  - (a) the applied provisions have effect subject to the provisions of sections 20 and 21 of this Act,
  - (b) a reference in the applied provisions to a company, Part 5.1 body or Part 5.7 body is taken to include a reference to a body corporate,
  - (c) a past or present member of a body corporate is not liable to pay the body corporate's liabilities on the winding up or the costs, charges or expenses of the winding up despite anything to the contrary in the applied provisions,
  - (d) the distribution of surplus property after a body corporate is wound up is to be dealt with in accordance with section 23 despite anything to the contrary in the applied provisions,
  - (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:

- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

### **23 Distribution of surplus property**

- (1) Despite the provisions of any other Act or law, if there is property of a former body corporate after the body corporate is wound up, the liquidator must transfer the property to another body corporate created by this Act, or under the *Roman Catholic Church Trust Property Act 1936*, specified in writing by the Bishop of the relevant Diocese of the wound up body corporate.
- (2) The Bishop of the relevant Diocese must inform the Attorney General of that transfer.
- (3) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.
- (4) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.

#### **Editorial note—**

For information regarding property transfers under this section following winding up of a body corporate, see Gazette No 103 of 24.8.2007, p 5962 (surplus property of Society of St Gerard Majella transferred to Trustees of the Roman Catholic Church for the Diocese of Parramatta).

### **24 Vesting of assets after winding up of body corporate**

- (1) To the extent to which any assets:
  - (a) are given to a body corporate that has been wound up under this Act, or to a person for the benefit of that body corporate, or
  - (b) are payable to, or recoverable by, the body corporate or any person on behalf of the body corporate,by or under an instrument that takes effect on or after the date on which the body

corporate is wound up, a reference in the instrument to the body corporate is to be treated as a reference to the Bishop of the relevant Diocese.

(2) In this section:

***instrument*** means an instrument (other than this Act) that creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any will or any judgment, order or process of a court or tribunal.

## 25 Application to Court

The Bishop of the relevant Diocese, or any other interested person who has leave of the Court, may apply to the Court:

- (a) to determine any question arising in the winding up of a body corporate under this Act, or in the application by section 22 of provisions of the [Corporations Act 2001](#) of the Commonwealth to the winding up, or
- (b) to exercise all or any of the powers that the Court might exercise if the body corporate were being wound up by the Court.

## 26 Amendment of Act following winding up

The Governor may, by proclamation published in the Gazette, amend sections 2 and 4, or Schedule 2, as the case requires, to omit the corporate name of a body corporate that has been wound up under this Act and the canonical name of the relevant community.

## 27 Regulations

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

## Schedule 1

(Sections 9 and 14)

<b>Name</b>	<b>Tenure of Office</b>
Reverend Edward Slater	28 June 1818 to 5 February 1822.
Reverend Williams Morris	5 February 1822 to 20 June 1834.
Reverend Philip Connolly	3 May 1820 to 18 February 1833.
Reverend Daniel Power	3 January 1827 to 14 March 1830.
Reverend John Joseph Therry	3 May 1820 to 25 May 1864.
Reverend John McEncroe	17 August 1832 to 18 February 1833.
Reverend William Ullathorne	18 February 1833 to 16 November 1840.

Abbot Henry Gregory	1 January 1844 to 31 December 1861.
The Most Rev Henry Davis	8 December 1848 to 17 May 1854.
Most Rev John Bede Polding	13 September 1835 to 16 March 1877.
Most Rev Roger Bede Vaughan	16 March 1877 to 18 August 1883.
Most Eminent and Most Rev Patrick Francis Moran	21 March 1884 to 16 August 1911.
Most Rev Michael Kelly	16 August 1911 to 8 March 1940.
Most Rev Norman Thomas Gilroy	8 March 1940 -
Most Rev Timothy O'Mahony	25 March 1871 to 31 October 1877.
Most Rev Eleazar Torreggiana	25 November 1879 to 28 January 1904.
Most Rev Patrick Joseph O'Connor	28 January 1904 to 15 July 1932.
Most Rev John A. Coleman	15 July 1932 -
Most Rev Matthew Quinn	14 November 1865 to 16 January 1885.
Most Rev Joseph Patrick Byrne	9 August 1885 to 12 January 1901.
Most Rev John Dunne	14 August 1887 to 22 August 1919.
Most Rev Michael O'Farrell	30 November 1920 to 3 April 1928.
Most Rev John Francis Norton	3 April 1928 -
Most Rev William Lanigan	9 June 1867 to 13 June 1900.
Most Rev John Gallagher	13 June 1900 to 26 November 1923.
Most Rev John Barry	29 June 1924 to 22 March 1938.
Most Rev Terence Bernard McGuire	14 June 1938 -
Most Rev Jeremiah Joseph Doyle	28 August 1887 to 4 June 1909.
Most Rev John Carroll	6 March 1910 -
Most Rev James Murray	14 November 1865 to 9 July 1909.
Most Rev Patrick Vincent Dwyer	6 June 1897 to 28 March 1931.
Most Rev Edmund Gleeson	15 September 1929 -
Most Rev Joseph Dwyer	13 October 1918 to 11 October 1939.
Most Rev Francis Augustine Henschke	11 October 1939 -
Most Rev John Dunne	14 August 1887 to 25 December 1916.
Most Rev William Hayden	8 September 1918 to 18 May 1930.
Most Rev Thomas Martin Fox	1 June 1931 -

## Schedule 2

(Sections 2, 4 and 8)

<b>Column 1</b>	<b>Column 2</b>
<b>(Canonical Name)</b>	<b>(Corporate Name)</b>
The Franciscan Missionaries of Mary.	Trustees of the Franciscan Missionaries of Mary.
The Society of the Sacred Heart of Jesus.	Trustees of the Society of the Sacred Heart of Jesus.
The Congregation of Our Lady of Charity of the Good Shepherd.	Trustees of the Sisters of the Good Shepherd.
The Oblate Fathers of Mary Immaculate.	Trustees of the Oblate Fathers.
The Congregation of the Brothers of St. Patrick.	Trustees of the Patrician Brothers.
The Society of Jesus.	The Trustees of the Jesuit Fathers.
The Sisters of Saint Joseph of California (Greenwich).	Trustees of the Sisters of Saint Joseph of California (Greenwich).
The Congregation of the Little Sisters of the Poor.	Trustees of the Little Sisters of the Poor.
The Ursuline Nuns of the Roman Union of Ursuline.	Trustees of the Ursuline Nuns of the Roman Union of Ursuline.
Poor Clares.	Trustees of the Poor Clares.
The Congregation of the Presentation Sisters of Lismore.	The Trustees of the Presentation Sisters, Diocese of Lismore.
The Fathers of the Congregation of the Most Holy Redeemer.	Trustees of the Redemptorist Fathers.
The Daughters of Our Lady of Compassion (Broken Hill).	The Mother Aubert Home of Compassion Trust Board.
The Order of Capuchin Friars Minor.	Trustees of the Order of Capuchin Friars Minor.
The Superior Council of Australia of the Society of St. Vincent de Paul.	Society of St. Vincent de Paul, National Council of Australia.
The Amalgamated Sisters of Mercy, Diocese of Wilcannia-Forbes.	Trustees of the Amalgamated Sisters of Mercy, Diocese of Wilcannia-Forbes.
The Sisters of Mercy, Broken Hill.	Trustees of the Sisters of Mercy, Broken Hill.
The Sisters of Mercy, Gunnedah.	Trustees of the Sisters of Mercy, Gunnedah.
The Sisters of Mercy, Goulburn and Amalgamated Houses.	The Sisters of Mercy, Goulburn and Amalgamated Houses.
The Sisters of Mercy, Singleton.	The Trustees of the Sisters of Mercy (Singleton).
The Congregation of the Presentation Sisters, Wagga.	The Trustees of the Presentation Sisters, Wagga.

Hospitaller Brothers of St. John of God.	The Trustees of the Hospitaller Brothers of St. John of God.
The Carmelite Nuns, Parkes.	The Trustees of the Carmelite Nuns, Parkes.
The Blessed Sacrament Fathers.	The Trustees of the Blessed Sacrament Fathers.
The Sisters of Saint Joseph of Goulburn.	The Trustees of the Sisters of Saint Joseph of Goulburn.
The Sisters of St. Joseph of Maitland.	The Trustees of the Sisters of St. Joseph, Maitland.
The Order of the Hermits of St Augustine in Australasia.	The Trustees of the Order of Hermits of St. Augustine in Australasia.
The Franciscan Order of Friars Minor.	The Trustees of the Franciscan Fathers.
Society of the Divine Word.	Trustees of the Society of the Divine Word.
Society of St. Paul.	Society of St. Paul.
The Society of the Catholic Apostolate.	The Trustees of the Society of the Catholic Apostolate.
Sylvestrine Congregation of the Order of Saint Benedict.	The Trustees of the Sylvestrine Benedictine Monks.
The Congregation of the Adorers of the Most Sacred Heart of Jesus of Montmartre.	Trustees of the Benedictine Adorers of the Sacred Heart (Australia).
Sisters of the Holy Family of Nazareth.	Trustees of the Sisters of the Holy Family of Nazareth.
Daughters of Charity of Saint Vincent de Paul.	Trustees of the Daughters of Charity of Saint Vincent de Paul.
Congregation of the Marist Sisters.	Trustees of the Congregation of the Marist Sisters.
Carmelite Fathers.	Trustees of the Carmelite Fathers.
The Sisters of St. John of God.	The Sisters of St. John of God.
Missionary Sisters of the Society of Mary.	The Trustees of the Missionary Sisters of the Society of Mary.
The Daughters of Saint Paul.	Trustees of the Daughters of Saint Paul.
Pious Society of St. Charles.	Trustees of the Pious Society of St. Charles.
The Marist Brothers of the Schools, Southern Province.	The Trustees of the Marist Brothers, Southern Province.
Franciscan Order of Friars Minor Conventual.	Trustees of the Order of Friars Minor Conventual.
Secular Institute of the Schoenstatt Sisters of Mary.	The Trustees of the Secular Institute of the Schoenstatt Sisters of Mary.
Society of St. Francis of Sales.	The Salesian Society Incorporated.
Franciscan Sisters of Mercy of Luxembourg.	The Trustees of the Franciscan Sisters of Mercy of Luxembourg.
Congregation of the Sisters of Nazareth.	The Trustees of the Sisters of Nazareth.



Sisters Pious Disciples of the Divine Master.	The Trustees of the Sisters Pious Disciples of the Divine Master.
Eparchy of St Peter and Paul of Melbourne for Ukrainian Catholics in Australia, New Zealand and Oceania.	Trustees of the Ukrainian Catholic Church in Australia, Eparchy of St Peter and Paul of Melbourne.
The Institute of the Blessed Virgin Mary.	Trustees of the Loreto Property Association.
Society of Christ.	Trustees of the Society of Christ.
Hungarian Catholic Community of New South Wales.	Trustees of the Hungarian Catholic Community of New South Wales.
The Discalced Nuns of the Order of Our Blessed Lady of Mount Carmel, Dulwich Hill.	Trustees of the Discalced Carmelite Nuns, Dulwich Hill.
The Discalced Nuns of the Order of Our Blessed Lady of Mount Carmel, Lismore.	Trustees of the Discalced Carmelite Nuns, Lismore.
The Discalced Carmelite Fathers.	The Trustees of the Discalced Carmelite Fathers.
Order of the Most Holy Redeemer.	Trustees of the Redemptoristine Nuns.
The Poor Clare Colletines.	Trustees of the Poor Clare Colletines.
Catholic Secondary Schools' Association of New South Wales and Australian Capital Territory.	Catholic Secondary Schools' Association of New South Wales and Australian Capital Territory.
The Daughters of Mary Help of Christians.	The Trustees of the Daughters of Mary Help of Christians.
Schoenstatt Fathers.	The Secular Institute of Schoenstatt Fathers.
The Order of the Congregation of the Sisters of Perpetual Adoration of the Most Blessed Sacrament.	The Trustees of the Sisters of Perpetual Adoration of the Most Blessed Sacrament.
The Society of Christian Doctrine.	The Trustees of the Society of Christian Doctrine.
The Maronite Sisters of the Holy Family.	The Trustees of the Maronite Sisters of the Holy Family.
The Nuns of the Order of St. Benedict.	The Trustees of the Benedictine Abbey Jamberoo.
The Franciscan Sisters of the Heart of Jesus.	The Trustees of the Franciscan Sisters of the Heart of Jesus.
The Sisters of the Dominican Third Order Regular of Malta.	The Sisters of the Dominican Third Order Regular of Malta.
Metropolitan Central Council of the Society of St. Vincent de Paul.	The Trustees of the Society of St. Vincent de Paul (NSW).
Congregation of the Sisters of the Blessed Virgin Mary under title of Help of Christians of Sydney.	The Trustees of the Sisters of Our Lady Help of Christians (Sydney).
Board of Management, Clergy Remuneration and Retirement, Archdiocese of Sydney.	The Trustees of the Board of Management, Clergy Remuneration and Retirement, Archdiocese of Sydney.

The Lebanese Maronite Order.	Trustees of the Lebanese Maronite Order.
The Legion of Mary Senatus of Sydney.	Trustees of the Legion of Mary Senatus of Sydney.
The Missionary Sisters of the Blessed Virgin Mary, Queen of the World.	Trustees of the Missionary Sisters of the Blessed Virgin Mary, Queen of the World.
The Maronite Church of Australia.	The Trustees of the Maronite Church of Australia.
Institute of Sisters of Mercy of Australia.	Trustees of the Institute of Sisters of Mercy of Australia.
The Order of Saint Paul the First Hermit.	The Trustees of the Pauline Fathers and Brothers.
The Sisters of St. Paul de Chartres.	Trustees of the Sisters of St. Paul de Chartres.
The Congregation of Sisters Adorers of the Blood of Christ.	The Trustees of the Sisters Adorers of the Blood of Christ.
The Sisters of Our Lady of China.	Trustees of the Sisters of Our Lady of China.
The Missionary Sisters Oblates of the Holy Family.	Trustees of The Missionary Sisters Oblates of the Holy Family.
Board of Management, Clergy Remuneration and Retirement, Diocese of Broken Bay.	The Trustees of the Board of Management, Clergy Remuneration and Retirement, Diocese of Broken Bay.
Board of Management, Clergy Remuneration and Retirement, Diocese of Parramatta.	The Trustees of the Board of Management, Clergy Remuneration and Retirement, Diocese of Parramatta.
Roman Catholic Province of Sydney and Archdiocese of Canberra and Goulburn.	The Trustees of the Province of Sydney and Archdiocese of Canberra and Goulburn.
Manly Union.	The Trustees of the Manly Union.
Society of the Missionaries of the Sacred Heart.	Trustees of the Missionaries of the Sacred Heart.
Tabgha Centre.	Trustees of the Tabgha Centre.
Chinese Sisters of the Immaculate Conception.	Trustees of the Chinese Sisters of the Immaculate Conception.
The Servants of the Blessed Sacrament.	Trustees of the Servants of the Blessed Sacrament.
Vietnamese Catholic Community.	The Trustees of the Vietnamese Catholic Community.
Australian Catholic Chinese Community.	Trustees of the Australian Catholic Chinese Community.
The Salesians of Don Bosco, Boys' Town, Engadine NSW.	The Trustees of Boys' Town, Engadine NSW.
Society of the Missionaries of Charity.	Trustees of the Society of the Missionaries of Charity.
Missionary Sisters of Christ the King.	Trustees of the Missionary Sisters of Christ the King.
Sons of Divine Providence.	Trustees of the Sons of Divine Providence.
Congregation of the Lebanese Maronite Missionary.	The Trustees of the Lebanese Maronite Missionary.
Catholic Healthcare.	Trustees of Catholic Healthcare.

The Sisters of St Therese of Lisieux.	Trustees of the Sisters of St Therese of Lisieux.
Sisters of the Order of St. Basil the Great.	The Trustees of the Sisters of the Order of St. Basil the Great.
Conference of Leaders of Religious Institutes in New South Wales.	Trustees of the Conference of Leaders of Religious Institutes in New South Wales.
Australian Conference of Leaders of Religious Institutes.	Trustees of the Australian Conference of Leaders of Religious Institutes.
Sisters of St Joseph NSW.	Trustees of the Sisters of St Joseph NSW.
Catholic Cemeteries Board.	Catholic Cemeteries Board.
The Council of Catholic School Parents [NSW & ACT].	The Council of Catholic School Parents [NSW & ACT].
Catholic Women's League Archdiocese of Sydney.	Trustees of the Catholic Women's League Archdiocese of Sydney.
The Missionary Society of St. Paul.	The Trustees of the Missionary Society of St. Paul.
The Catholic Women's League, Diocese of Broken Bay.	The Trustees of the Catholic Women's League, Diocese of Broken Bay.
Aid to the Church in Need.	The Trustees of Aid to the Church in Need.
Congregation of St. Michael the Archangel.	The Trustees of the Congregation of St. Michael the Archangel.
Community Animation Service, Movement for a Better World.	Trustees for the Community Animation Service, Movement for a Better World.
Pontifical Mission Societies, otherwise known as Catholic Mission.	Catholic Mission.
Passionist Sisters of St Paul of the Cross.	Trustees of The Passionist Sisters of St Paul of the Cross.
Daughters of St Anne.	Trustees of The Daughters of St Anne.
Carmelite Missionaries.	Trustees of the Carmelite Missionaries.
Missionaries of St Francis de Sales, Pune Province.	Trustees of the Missionaries of St Francis de Sales, Pune Province.
Catholic Women's League, Diocese of Armidale.	Trustees of the Catholic Women's League, Diocese of Armidale.
Maitland Clergy Central Fund.	Trustees of the Maitland Clergy Central Fund.
The Mission Congregation of the Servants of the Holy Spirit.	Trustees of the Mission Congregation of the Servants of the Holy Spirit.
John Paul II Institute for Marriage and Family, Melbourne.	John Paul II Institute for Marriage and Family, Melbourne.
Catholic Aged Care Sydney.	Trustees of Catholic Aged Care Sydney.

The Congregation of the Dominican Sisters of Malta in New South Wales.	The Congregation of the Dominican Sisters of Malta in New South Wales.
The Australian Association of the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes, and of Malta.	Order of Malta.
Missionaries of St Francis de Sales, Visakhapatnam Province.	The Trustees of the Missionaries of St Francis de Sales, Visakhapatnam Province.
Ministers of the Infirm.	The Trustees of the Ministers of the Infirm.
Religious Sisters of Mercy of Alma.	The Trustees of the Religious Sisters of Mercy of Alma.
Dominican Sisters of St. Cecilia Congregation.	Trustees of the Dominican Sisters of St. Cecilia Congregation.
Mary Aikenhead Ministries.	Trustees of Mary Aikenhead Ministries.

**Editorial note—**

Proclamations pursuant to section 26 omitting the following bodies corporate from this Schedule have been published as follows:

The Trustees of the Society of St. Gerard Majella (Gazette No 148 of 2.12.2005, p 9861)