

# Anglican Church of Australia Trust Property Act 1917 No 21

[1917-21]



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—

- **Previously named**  
Church of England Trust Property Act 1917
- **Does not include amendments by**  
[Real Property Amendment \(Certificates of Title\) Act 2021 No 10](#) (not commenced — to commence 11.10.2021)
- **Note**  
In this Act, a reference to the Church of England or to the Church of England in Australia is to be construed as a reference to the Anglican Church of Australia—see [Anglican Church of Australia Act 1976](#), sec 4 (a) and Sch 1.

### 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](#).

File last modified 27 August 2021

# Anglican Church of Australia Trust Property Act 1917 No 21



New South Wales

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# Anglican Church of Australia Trust Property Act 1917 No 21



New South Wales

An Act to consolidate and amend the Acts relating to property held upon any trust for or for the use, benefit, or purposes of the Church of England in dioceses within New South Wales, and the Acts conferring powers upon the synods of the said dioceses with reference to the said property; and for other purposes.

## Preamble

**WHEREAS** the Acts relating to property held upon any trust for or for the use, benefit, or purposes of the Church of England in dioceses within New South Wales, and the Acts conferring powers upon the synods of the dioceses with reference to the said property are numerous, ambiguous, and discursive, and it is therefore expedient to consolidate and amend the same:

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:

## Part 1A Preliminary

### 1 Name of Act

This Act may be cited as the *Anglican Church of Australia Trust Property Act 1917*.

## Part 1 Repeal and amendment

### 2 Repeal

- (1) The Acts mentioned in Schedule 1 are hereby repealed, but notwithstanding the said repeal the said Acts shall continue to apply as if unrepealed to the Diocese of Newcastle and to all the trust property matters and things of or pertaining to the said diocese until the synod of the said diocese shall make an ordinance declaring a desire to have the benefit of this Act, and shall in the name and under the hand of the Bishop of the said diocese notify such ordinance in the Gazette, and immediately upon such notification and thenceforth the provisions of this Act shall apply to the said diocese and to all the trust property matters and things of or pertaining to the said diocese.

- (2) The said repeal shall not affect ordinances passed, trustees constituted as bodies politic and corporate, persons elected or appointed trustees or members of bodies politic and corporate, property vested, acts and things validated, or certificates given under the said Acts, or any of them.
- (3) Except so far as there is anything in this Act inconsistent therewith, this Act shall apply to all matters and things made, done, or commenced under the said repealed Acts, and at the commencement of this Act of any force or effect or capable of acquiring any force or effect by virtue of the said repealed Acts as if this Act had been in force at the time they were made, done, or commenced, and they were made, done, or commenced hereunder.

### **3 Amendment**

- (1) Sections 5 and 7 of the *Anglican Church of Australia Constitutions Act 1902* and clauses 3 and 6 of the Schedule to the said Act and all Acts and parts of Acts relating to church trust property shall, so far as may be necessary for the purposes of this Act, be read as amended and supplemented by this Act.
- (2) In the case of the Diocese of Sydney the following subsections shall apply:
  - (a) The present members of the council referred to in Saint James' School Compensation Trust Act, assented to the twenty-seventh day of August, one thousand eight hundred and eighty-six, and such persons as shall from time to time be members of the said council, including the Archbishop of Sydney for the time being as ex officio president, shall be and they are hereby constituted a body politic and corporate by the name of "Sydney Church of England Grammar School Council", and by such name they shall have perpetual succession and a common seal, and shall sue and be sued, or shall otherwise appear and answer and be answered, and may take and hold to them and their successors by grant, will, or otherwise, any real or personal property, and for any estate or interest therein.
  - (b) All property real and personal which immediately before the passing of this Act was vested in any person or persons other than the Church of England Property Trust Diocese of Sydney upon any trust for the purposes of the school referred to in the said Saint James' School Compensation Trust Act shall by virtue of this Act and without any other instrument vest in the said body constituted by subsection (a) upon the same trusts respectively for the purposes of the said school upon which the said property was held immediately before the passing of this Act, and it shall be lawful for the Church of England Property Trust Diocese of Sydney by deed or deeds under its corporate seal to assign and transfer to the said body constituted by subsection (a) at one time or from time to time all or any part or parts of other real and personal property now or hereafter to be held by the said church property trust upon any trust for the purposes of the said school.
  - (c) (Repealed)

## Part 2 Interpretation

### 4 Definitions

In this Act unless inconsistent with the context or subject matter:

**Bishop** includes Archbishop and the Bishop or Archbishop for the time being.

**Church of England** means Church of England in Australia.

**Church trust property** includes all or any part of any real and personal property which may for the time being be subject to any trust whether by dedication, consecration, trust instrument, or otherwise, for or for the use, benefit, or purposes of the Church of England in any diocese, and each such diocese is referred to as the diocese for which the church trust property in question is held.

**Corporate trustees** and **Corporate body of trustees** respectively include corporate bodies of trustees now or hereafter to be constituted for any diocese under the provisions of the [Church of England Trust Property Incorporation Act 1881](#) hereby repealed or of this Act.

**Diocese** includes any diocese now or hereafter to be formed and situated within New South Wales, or partly within and partly outside New South Wales and the identity of a diocese shall be deemed not to be affected by the formation wholly or partly thereof of a new diocese nor by any other alteration of boundaries or area nor by any change of name.

**Parish** includes any parish or ecclesiastical district now or hereafter to be formed and situated within New South Wales.

**Parish council** means the body of persons, if any, in which the general powers of governing the affairs of a parish are for the time being vested under the provisions of any ordinance of the synod of a diocese.

**Person** includes corporate trustees and a bishop.

**Purposes** includes religious, educational, cemetery, and all other purposes of the Church of England, whether such purposes are within or beyond the diocese or the State.

**Standing committee** includes any general governing council of a diocese created by or under the authority of its synod.

**Synod** includes any synod now or hereafter to be convened or held in pursuance of the provisions of the [Anglican Church of Australia Constitutions Act 1902](#), or any Act amending or taking the place of the same.

**Trust instrument** includes ordinances of synod and Acts of Parliament, though not expressly mentioned herein.

**Trustee, new trustee**, respectively, include corporate trustees and a bishop.

### **Part 3 Trustees constitution and succession**

#### **5 Existing corporate bodies**

The following bodies, that is to say:

- Church of England Property Trust Diocese of Sydney,
- Church of England Property Trust Diocese of Goulburn,
- The Corporate Trustees of the Diocese of Grafton and Armidale,
- Church of England Property Trust Diocese of Bathurst,
- Trustees of the Church Property for the Diocese of Riverina,
- The Corporate Trustees of the Diocese of Grafton,

are hereby declared to have been duly constituted as bodies politic and corporate by the said names respectively, under the provisions of the [Church of England Trust Property Incorporation Act 1881](#), and notwithstanding the repeal of the said Act they shall remain so constituted as aforesaid, and, except so far as there is anything in this Act inconsistent therewith, this Act shall apply to them as if this Act had been in force at the time they were constituted and they were constituted hereunder.

The bishop of a diocese shall ex officio be a member of the corporate body so constituted as aforesaid for such diocese, and the number of members shall be increased by one for the said purpose.

#### **6 New corporate bodies**

The synod of each diocese, other than the dioceses for which the said bodies in the preceding section mentioned were and remain so constituted as aforesaid, may at any time elect such persons as such synod desires, should together with the bishop of the diocese, ex officio, be incorporated as trustees for such diocese, and the bishop of such diocese shall notify such election in the Gazette, and immediately upon such notification and thenceforth the said persons and such persons as may from time to time be members of such body, together with the bishop of the diocese, ex officio, shall be and they are hereby constituted a body politic and corporate, by the name of incorporation mentioned in such notification, and by such name they shall have perpetual succession and a common seal, and shall sue and be sued, or shall otherwise appear and answer and be answered, and may take and hold to them and their successors by grant, will, or otherwise any real or personal property, and for any estate or interest therein.

#### **6A Term of office of member of corporate body of trustees**

(1) This section applies to the Diocese of Sydney but does not apply to any other diocese



until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) The members of a corporate body of trustees for a diocese to which this section applies (members ex officio excepted) hold office:

(a) for such term as is specified in respect of all members, or

(b) for such different terms as are specified in respect of different members or different classes of members,

in an ordinance of the synod of the diocese published in the Gazette under the hand of the Bishop.

(3) A member of a corporate body of trustees whose term of office as such a member expires is eligible for re-election as such a member.

## **7 Common seal and quorum**

The members for the time being of each corporate body of trustees shall have the custody of the common seal of such corporate body, and the form of such seal and all other matters relating thereto shall from time to time be determined at a meeting of the said corporate body, and three members for the time being of the said corporate body shall constitute a quorum.

## **8 Authority of members of corporate bodies**

Any deed or instrument, executed or signed, and any other act, matter, or thing done by any three members of any such corporate body as aforesaid, in pursuance of a resolution of the said corporate body and under the common seal of the said corporate body, shall be as effectual as if the same had been executed, signed, or done by all the members of the said corporate body.

## **9 Variation by synod**

It shall be lawful for the synod of a diocese from time to time, by ordinance, to vary the provisions of sections 7 and 8, in so far as the same relate to such diocese, and the said provisions shall, with reference to the said diocese and to all the church trust property matters and things of or held for or pertaining to the said diocese, be read from time to time as so varied by ordinance as aforesaid.

## **10 Change of name**

It shall be lawful for the synod of a diocese from time to time, by ordinance, to change the name of the corporate body of trustees constituted for such diocese.

## **11 Alteration of number of members of corporate body**

It shall be lawful for the synod of a diocese from time to time, by ordinance, to declare

what shall be the number of members of the corporate body of trustees constituted for such diocese, and in case of increase in the number such increase shall be effected by the synod of such diocese electing an additional member, or additional members, and in case of decrease in the number such decrease shall be effected by the synod of such diocese not electing a person, or persons, to fill a vacancy, or vacancies, declared under the provisions of this Act.

## **12 Vacancies in membership of corporate bodies**

It shall be lawful for the synod of a diocese from time to time, by resolution, to declare the existence of a vacancy, or vacancies, in the office of member of the corporate body of trustees of such diocese by reason of one or more of the members for the time being of such corporate body having died, resigned office, refused or neglected or having become incapable to act in the said office, or having for the space of six months ceased to reside within the said diocese, or by reason of some other matter to be specified in such resolution, and thereupon or at any time thereafter the synod of the said diocese may elect a person or persons to be, and such person or persons shall thereupon become a member or members of the said body in the place or places of the member or members referred to in the said resolution.

## **13 Alteration of number of trustees**

It shall be lawful for the synod of a diocese for which any church trust property is for the time being held from time to time, by ordinance, to declare what shall be the number of trustees of such property, and in case of increase in the number such increase shall be effected by the synod of such diocese electing a new trustee, or new trustees, by way of addition, and in case of decrease in the number such decrease shall be effected by the synod of such diocese not electing a person, or persons, to fill a vacancy, or vacancies, declared under the provisions of this Act.

## **14 Vacancies in office of trustee**

It shall be lawful for the synod of a diocese for which any church trust property is for the time being held from time to time by resolution to declare the existence of a vacancy or vacancies in the office of trustee of such property, by reason of one or more of the trustees having died, resigned office, refused or neglected, or having become incapable to act in the said office, or having for the space of six months ceased to reside within the said diocese, or by reason of some other matter to be specified in such resolution, and thereupon or at any time thereafter the synod of the said diocese may elect or by resolution provide for the election of a person or persons to be, and such person or persons shall upon such election become a trustee or trustees in the place or places of the trustee or trustees referred to in the said resolution.

## **15 New trustees for allocated property**

It shall be lawful for the synod of a diocese to elect a new trustee or new trustees

respectively for church trust property, which may be allocated under the provisions of this Act for such diocese.

#### **16 Separate trustees**

It shall be lawful for the synod of a diocese for which any church trust property is for the time being held by ordinance to provide for the election of separate trustees for any part or parts of such property, and to elect such separate trustees.

#### **17 Provision cumulative**

The provisions contained in section 14 are in addition to any other provision for the time being applicable to any church trust property.

#### **18 Bishops**

Every person for the time being acting and recognised as being the bishop of a diocese, and having been consecrated according to the manner and form prescribed and used by the Church of England, shall in the construction of all Statutes, Acts, grants, deeds, and other instruments be deemed to be and shall be the successor of the bishop of such diocese, notwithstanding that such bishop may not have been appointed under letters patent from the Crown, or may have been consecrated in New South Wales or elsewhere without any mandate or licence being issued by the Crown for such consecration, and shall in all respects within such diocese have and enjoy all and singular the same rights, powers, and privileges, whether created by Statute, Act, grant, deed, or other instrument whatsoever as were enjoyed or possessed therein by the bishops his predecessors, and in the case of the diocese of Sydney the Most Reverend John Charles Wright, DD, the present Archbishop, and all other persons for the time being acting and recognised and consecrated as aforesaid, shall in the construction of such instruments as aforesaid be deemed to be and shall be the successors from time to time of the Bishop of Australia and the Bishop of Sydney.

### **Part 4 Vesting trust property**

#### **19 In corporate trustees by consent**

Any church trust property which may at any time belong to or be vested in any trustee or trustees shall upon the consent of such trustee or trustees, or the majority of them given in writing, or upon the consent of the synod of the diocese for which such property is held, given by or under an ordinance of the synod of such diocese by virtue of such consent and without other assurance in the law, become vested in the corporate trustees of such diocese: Provided that if in consequence of death or disability the consent of any trustee or trustees cannot be obtained it shall be lawful for the bishop of the diocese to consent in the place of any such trustee.

## **20 Property vested in bishops**

All church trust property which may at any time belong to or be vested in the bishop of a diocese shall by force of this Act vest from time to time in the person who for the time being is or is deemed to be the successor of the bishop of such diocese as if such property had belonged or had been originally granted or conveyed to the bishop of such diocese and his successors as a body corporate, and notwithstanding that such person may not have been appointed bishop of such diocese under letters patent from the Crown or may have been consecrated in New South Wales or elsewhere without any mandate or licence being issued by the Crown for such consecration.

## **21 Property vested in new trustee**

Upon the election or appointment of a new trustee or new trustees under the provisions of this Act or of any ordinance in force for the time being in any diocese, all the church trust property in respect of which such election or appointment is made shall by virtue of such election or appointment and without other assurance in the law become vested in such new trustee or trustees, either alone or jointly with the surviving or continuing trustee or trustees as the case may require, and every new trustee so elected or appointed as aforesaid shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally made a trustee on the creation of the trust.

## **22 In case of new dioceses etc**

In each case where, by reason of the formation or proposed formation of a new diocese, or the alteration or proposed alteration of the boundaries or area of a diocese or otherwise, it shall seem expedient to the synod of a diocese for which any church trust property is for the time being held, it shall be lawful for the synod of such diocese by ordinance to allocate such church trust property for any other diocese or proposed diocese, and by virtue of such ordinance and without other assurance in the law such church trust property shall, from the times respectively in such ordinance provided, be held for such other diocese or proposed diocese instead of the diocese making such ordinance and be vested in the new trustee or new trustees respectively then or thereafter to be elected for such church trust property under the provisions of this Act, in the place of the trustee or trustees thereof for the time being, and upon the trusts to which the same shall for the time being be subject, but for or for the use, benefit, or purposes of the Church of England in the diocese or proposed diocese for which the same shall have been so allocated as aforesaid in the place of the diocese making such ordinance.

## **23 Property vested in separate trustees**

Upon the election of separate trustees under the provisions of any ordinance in force for the time being in a diocese, the church trust property mentioned in such ordinance shall, by virtue of such election and without other assurance in the law become vested in such separate trustees in the place of the trustees thereof for the time being, and the said separate trustees shall, with respect to such church trust property, have the same powers,

authorities, and discretions, and shall in all respects act as if they had been originally made trustees on the creation of the trust.

## **Part 5 Management and investment of trust property**

### **24 Management**

It shall be lawful for the synod of a diocese for which any church trust property is for the time being held, from time to time by ordinance, to provide and to vary any provision now or hereafter to be made for governing and controlling the management and user of such property for the purposes for which the same is for the time being held in trust, and for all things incidental to such government and control, including constitutions of councils, committees, and other bodies, whether incorporated or not, and such property shall be held, managed, and used under and in accordance with such ordinance accordingly, the provisions of the trust instrument or instruments (if any) to the contrary notwithstanding.

### **25 Investment**

It shall be lawful for the synod of a diocese for which any church trust property is for the time being held, from time to time by ordinance, to provide and to vary any provision now or hereafter to be made for the investment of such property, and for the pooling of separate church trust properties for the purpose of investment, and for averaging gains, losses, and interests, and for all other matters and things incidental to such investment and pooling.

## **Part 6 Sale, exchange, mortgage, lease etc of trust property**

### **26 Synod may direct sales or other dealings**

- (1) It shall be lawful for the synod of the diocese for which any church trust property is for the time being held if it shall appear to such synod expedient by reason of circumstances subsequent to the creation of the trusts of such property by ordinance to direct that such property be sold, exchanged, mortgaged, or let on mining, building, occupation, or other leases, or otherwise dealt with in manner provided by such ordinance, and to provide for accepting the surrender of any lease thereof and for laying out and dedicating parts thereof for any purpose or purposes, and to provide for the application of the real and personal property arising from any such sale, exchange, mortgage, letting, or other dealing as aforesaid: Provided that in the cases of the Diocese of Canberra and Goulburn no such ordinance in respect of property held for the sole benefit of some particular parish shall be assented to under the *Anglican Church of Australia Constitutions Act 1902*, or any Act amending or taking the place of the same, without the consent in writing of a majority of the members of the parish council (if any) for the time being of the parish, and in the case of property gratuitously granted or assured within twenty years preceding the time being by any private donor without the like consent of such donor if living.

(2) Despite subsection (1), an ordinance in relation to property held for the sole benefit of some particular parish in the Diocese of Sydney may only be assented to under the *Anglican Church of Australia Constitutions Act 1902*:

(a) either:

(i) with the written consent of a majority of the members of the parish council (if any) for the time being of the parish, or

(ii) if the ordinance was passed by at least two-thirds of the members of the synod of the Diocese of Sydney present and voting, and

(b) with the written consent of any living private donor who gratuitously granted or assured the property to the parish within the period of 20 years before the date of assent to the ordinance.

#### **26A Certain directions may be given in anticipation**

(1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) The synod of a diocese to which this section applies may by ordinance:

(a) direct that, upon specified real property becoming church trust property held for the diocese, it may be mortgaged, let on mining, building, occupation or other leases or otherwise dealt with as specified in the ordinance, and

(b) provide for the application of the personal property arising from any such mortgage, letting or other dealing.

#### **27 Deeds of conveyance etc**

It shall be lawful for the synod of a diocese by ordinance to direct what person or persons shall execute the deed or deeds or other instrument or instruments, and do all acts, measures, and things necessary for the purpose of carrying into effect the sale, exchange, mortgage, lease, or other dealing directed by ordinance of the synod of such diocese under the provisions of this Act, and the deed or deeds, or other instrument or instruments executed, and the acts, measures, and things done by such person or persons shall take effect as if the trust instrument relating to the church trust property comprised in the said ordinance had contained a power enabling such person or persons to effect such sale, exchange, mortgage, lease, or other dealing, and so as to operate, if necessary, by way of revocation and appointment of the use or otherwise as the said ordinance shall direct.

#### **27A Certain directions may be given by resolution**

(1) This section applies to the Diocese of Sydney but does not apply to any other diocese

until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

- (2) Subject to this section, where the synod of a diocese to which this section applies is authorised by section 26, 26A or 27 to give a direction for or with respect to a mortgage, the direction may be given instead:
  - (a) by resolution of its synod or of the standing committee of its synod, and
  - (b) in the case of the Diocese of Sydney—also by resolution of the Sydney Church of England Finance and Loans Board,being, in either case, a resolution that does not contravene or fail to comply with any ordinance referred to in subsection (3) or (4) that is applicable.
- (3) A direction may not be given under subsection (2) where:
  - (a) the same direction, if given by ordinance under section 26, would require a consent referred to in that section before it could be assented to, and
  - (b) that consent has not been given.
- (4) The synod of a diocese may, by ordinance, restrict or regulate the right of its members and of the members of its standing committee to move a resolution referred to in subsection (2) and prescribe the form that any such resolution shall take, and the synod of the Diocese of Sydney may similarly restrict, regulate and prescribe in relation to the Sydney Church of England Finance and Loans Board.
- (5) A resolution passed under subsection (2) shall be certified:
  - (a) by the Registrar of the diocese for which is held the church trust property to which the resolution relates or by a person for the time being acting in that office, or
  - (b) by a secretary of the synod of that diocese or by a person for the time being acting in that office.

## **28 Power of corporate trustees to let in certain cases**

A corporate body of trustees may let the church trust property vested in such body on lease for such term or terms as shall from time to time be approved of by the synod of the diocese for which such corporate body is constituted, or if the synod be not in session then as shall be approved of by the standing committee of such diocese: Provided, however, that until the first session of such synod after this Act comes into force in such diocese such corporate body may let such church trust property for any term of years not exceeding seven.

## **29 Protection of purchasers etc**

No purchaser, mortgagee, lessee, or other person, or the Registrar-General, upon any

sale, exchange, mortgage, lease, or other dealing purporting to be made under the powers granted by or under this Act, shall be concerned to see or inquire into the necessity or propriety thereof, or the mode of exercising the same nor be affected by notice that the exercise of the power is unauthorised, irregular, or improper, nor be concerned to see to the application or disposition of any purchase, mortgage, or other money or rent paid by him.

### **30 Discharge for purchase moneys etc**

The moneys (if any) arising from any sale, exchange, mortgage, lease, or other dealing purporting to be made under the powers granted by or under this Act shall be paid to the trustee or trustees in whom the property, the subject matter of such sale, exchange, mortgage, lease, or other dealing immediately theretofore vested, or to such other person or persons as the ordinance (if any) directing such sale, exchange, mortgage, lease, or other dealing may provide. And the receipt of the said trustee or trustees, or other person or persons, as the case may be, shall be an effectual discharge therefor.

### **31 Temporary investments**

Pending the application of any moneys to arise as aforesaid, the same may, after payment thereout of all proper costs, charges, and expenses, be invested in Government or real securities in New South Wales or in the Commonwealth of Australia, or on fixed deposit in any bank, or otherwise as the ordinance directing such dealing, or any ordinance of the synod of the said diocese in force for the time being and applicable thereto may provide.

## **Part 7 Variation of trusts**

### **32 Power of synod to vary trusts etc**

In each case where by reason of circumstances subsequent to the creation of the trusts, including trusts declared under this section, to which any church trust property is for the time being subject, it has in the opinion of the synod of the diocese for which such property is held become impossible or inexpedient to carry out or observe such trusts, it shall be lawful for the synod of such diocese by ordinance to declare such their opinion, and by the same or any subsequent ordinance to declare other trusts for or for the use, benefit, or purposes of the Church of England within the said diocese instead of such first-mentioned trusts, and such first-mentioned trusts shall thereupon by force of the said ordinance cease and determine, and such property shall thereupon be held upon such other trusts accordingly: Provided that such property shall be dealt with and applied for the benefit of the Church of England in the parish or parishes (if any) for the benefit of which such property was immediately before such ordinance held in trust, and for the same purposes as nearly as may be as the purposes for which such property was immediately before such ordinance held unless the synod of such diocese shall by ordinance declare that by reason of circumstances, subsequent to the creation of the first-mentioned trusts, it is, in the opinion of the synod, impossible or inexpedient to deal with or apply such property or some part thereof for the use or benefit of such parish or



parishes or for the same or the like purposes, in which case such property or such part thereof may be dealt with and applied for the use and benefit of the Church of England for such other purposes and in such other parish or parishes in the said diocese or otherwise as shall be declared by ordinance of the synod of the said diocese.

### **32A Limited substitution of trust of income**

(1) In this section:

**church trust property** does not include church trust property held for the sole benefit of a particular parish.

**prescribed period** in relation to an ordinance made under subsection (3) means:

- (a) where the ordinance specifies a particular period of 12 months as the prescribed period for the purposes of this section—that period of 12 months, or
  - (b) in any other case—the period of 12 months that next succeeds assent to the ordinance by the Bishop of the diocese.
- (2) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.
- (3) The synod of a diocese to which this section applies may by ordinance declare that it is temporarily inexpedient to carry out or observe the trusts to which the income from that property, or a specified part of that income, is subject.
- (4) Where the synod of a diocese makes an ordinance under subsection (3) with respect to any income it may, by the same or a subsequent ordinance, declare that, during the prescribed period for the ordinance, that income is held upon trusts, specified in the ordinance, for or for the use, benefit or purposes (whether within or beyond that diocese or the State) of the Church of England in Australia.
- (5) Income to which a declaration under subsection (4) relates shall, during the prescribed period for the ordinance by which the declaration is made, be held upon the trusts specified in that ordinance to the exclusion of any other trusts to which it was subject and shall, at the expiration of that prescribed period, become again subject to those other trusts.

## **Part 7A Joint use of church trust property**

### **32B Use of property jointly with other churches**

- (1) The synod of a diocese may, by ordinance, make provision, either generally or for a particular case, for and in relation to:
  - (a) the use, by the Anglican Church, of church trust property for a purpose of the

Anglican Church and by a church of another denomination for a purpose of that church, jointly or jointly and severally,

- (b) the acquisition, by the corporate trustees for the diocese, or by other trustees, of property to be so used, and
- (c) the application of moneys vested in:
  - (i) the corporate trustees for the diocese,
  - (ii) other trustees, or
  - (iii) any churchwardens or other persons holding office under an ordinance of the synod,

upon trust for the use, benefit or purpose of the Anglican Church in the diocese upon, or in connection with, any specified purpose as defined by subsection (2).

(2) In subsection (1), **specified purpose** means:

- (a) the acquisition of land or other property by:
  - (i) the corporate trustees for the diocese,
  - (ii) other trustees on behalf of the Anglican Church, or
  - (iii) trustees on behalf of a church of another denomination,to be used by the Anglican Church for a purpose of the Anglican Church and by a church of another denomination for a purpose of that church, jointly, or jointly and severally,
- (b) the erection of a building to be so used, or
- (c) the repair, alteration or maintenance of a building or other property so used, or to be so used.

(3) Subsection (2) applies to the erection of a building, and to the repair, alteration or maintenance of a building or other property, whether or not the land on which the building is to be erected, or is erected, or whether or not the property, is vested in:

- (a) the corporate trustees for the diocese,
- (b) other trustees on behalf of the Anglican Church, or
- (c) trustees on behalf of a church of another denomination.

(4) The power of the synod of a diocese to make ordinances under subsection (1) includes power to make ordinances authorising the bishop of the diocese to enter into an agreement with the proper authority of a church of another denomination for the use

of land or other property (including church trust property) by the Anglican Church for a purpose of the Anglican Church and by the church of that other denomination for a purpose of that church, jointly, or jointly and severally, and, in connection with that use, for the acquisition of land or other property, for the erection of a building on land or for the repair, alteration or maintenance of a building on land, or of other property, whether or not the land or other property is vested in:

- (a) the corporate trustees for the diocese,
  - (b) other trustees on behalf of the Anglican Church, or
  - (c) trustees on behalf of the church of that other denomination.
- (5) The corporate trustees for the diocese, and any other trustees holding office under, or in accordance with, this Act, are, by virtue of this subsection, authorised to hold land that is, for the time being, subject to a trust for the use, benefit or purpose of the Anglican Church and of a church of another denomination.
- (6) The synod of a diocese has, in relation to land or other property that is, for the time being, subject to a trust for the use, benefit or purpose of the Anglican Church and of a church of another denomination, and the corporate trustees for a diocese, or other trustees, in whom any such land or property is vested, have the like powers in relation to that land or property, as they have under this Act in relation to church trust property.
- (7) In the exercise of powers under section 26, by virtue of subsection (6) of this section, the synod of a diocese may make provision for the application of the real and personal property arising from the sale, exchange, letting or other dealing mentioned in section 26 for the use, benefit or purposes of:
- (a) the Anglican Church,
  - (b) a church of another denomination, or
  - (c) the Anglican Church and a church of another denomination, either jointly or severally.
- (8) In the exercise of powers under section 32 by virtue of subsection (6) of this section, the synod of a diocese may declare other trusts, in respect of property, for the use, benefit or purposes of:
- (a) the Anglican Church within the diocese,
  - (b) a church of another denomination, or
  - (c) the Anglican Church within the diocese and a church of another denomination, either jointly or severally,

instead of the trusts first mentioned in section 32, and the proviso to section 32 shall only apply to and in relation to so much (if any) of the property as is, under the other trusts, to be held for the use, benefit or purposes of the Anglican Church within the diocese.

(9) Subject to subsection (10), the use of the church trust property, and the application of church trust property (including moneys arising from the conversion into money of church trust property), in accordance with an ordinance made under this section, or in accordance with an agreement entered into in accordance with an ordinance made under this section, shall, for all purposes, be deemed to be, and to have been, lawfully used or applied notwithstanding the provisions of any trust upon which the property was or is, or the moneys were or are, held.

(10) Where:

- (a) church trust property, or church trust property from which moneys were derived, was gratuitously granted or assured by a private donor within 20 years before the use or application of the property or moneys in accordance with an ordinance or agreement referred to in subsection (9), and
- (b) the trust instrument (if any) relating to that property expressly forbade the use or application of the property by, or for purposes of, the church of the other denomination concerned, or by, or for such purposes of, a church of a denomination other than the Anglican Church,

subsection (9) does not apply to or in relation to the use or application of the property or moneys in accordance with that ordinance or agreement, unless the donor, if living, has consented to the property or moneys being so used.

(11) In this section, unless the contrary intention appears:

- (a) a reference to the Anglican Church shall be read as a reference to the Anglican Church of Australia,
- (b) a reference to the corporate trustees for a diocese shall be read as including a reference to the bishop of a diocese as trustee of land or other property,
- (c) a reference to the use of property by the Anglican Church shall be read as a reference to the use of property by a diocese, a parish, or a body established by a diocese or parish, including, but without limiting the generality of the foregoing, a body of persons worshipping regularly at a place according to the rites of the Anglican Church,
- (d) a reference to the use of property by a church of another denomination shall be read as a reference to the use of property by any unit of that church, howsoever designated, or by a body established by that church or such a unit, including, but without limiting the generality of the foregoing, a body of persons worshipping

regularly at a place according to the rites of that church,

- (e) a reference to a purpose of the Anglican Church shall be read as a reference to a religious, educational or other purpose of a diocese, parish or body referred to in paragraph (c), and
- (f) a reference to a purpose of a church of another denomination shall be read as a reference to a religious, educational or other purpose of a unit or body of that church referred to in paragraph (d).

## **Part 8 Evidence**

### **33 Membership of corporate bodies**

A certificate signed by the bishop of a diocese for which there is for the time being a corporate body of trustees shall be prima facie evidence and in favour of all persons purchasing, advancing moneys on, leasing, or otherwise acquiring or possessing any estate or interest in the church trust property therein referred to, and the Registrar-General shall be conclusive evidence that the persons named in such certificate are the duly constituted members of such corporate body of trustees and that they became such members at the date or respective dates mentioned in such certificate.

### **34 Trusteeship**

A certificate signed by the bishop of a diocese for which any church trust property in such certificate referred to is for the time being held shall be prima facie evidence and in favour of all persons purchasing, advancing moneys on, leasing, or otherwise acquiring or possessing any estate or interest in such property, and the Registrar-General shall be conclusive evidence that the persons named in such certificate are the duly constituted trustees of such property, and that they became such trustees at the date or respective dates and in the manner mentioned in such certificate, and in the case of lands under the operation of the *Real Property Act 1900* or any Act amending or taking the place of the same shall entitle such trustees to be registered as the proprietors thereof accordingly, and to have a certificate of title issued to them without any formal transfer.

### **35 Making of ordinances and resolutions**

A document purporting to be a copy ordinance or resolution certified and recorded in accordance with this Act or any Act repealed by this Act or a certified or office copy thereof shall be prima facie evidence and in favour of all persons purchasing, advancing moneys on, leasing, or otherwise acquiring or possessing any estate or interest in the property therein referred to shall be conclusive evidence that an ordinance in terms of such copy was duly made and assented to, or that a resolution in those terms was duly passed, and that all necessary consents and directions were duly given, and that all proceedings in connection therewith were regular and in due form, and that such ordinance or resolution was not repealed or amended except, if at all, by such ordinance

or resolution or ordinances or resolutions, as the case may be, as shall for the time being be certified and recorded in accordance with this Act or any such repealed Act.

### **36 Notification in Gazette**

A copy of the Gazette containing a notification purporting to be published in pursuance of the provisions or any of the provisions of this Act, or any Act repealed by this Act, shall be prima facie evidence of the matters therein notified and the notification of which is authorised by this Act or any such repealed Act.

## **Part 9 General**

### **37 Repeal or amendment of ordinances**

Subject and without prejudice to any past operation of any ordinance made or resolution passed under the provisions of this Act or any Act hereby repealed, and subject and without prejudice to any estate, right, privilege, obligation, or liability vested, acquired, accrued, or incurred under any such ordinance or resolution:

- (a) the synod of a diocese may by ordinance repeal or amend:
  - (i) any ordinance made by that synod,
  - (ii) any resolution passed by that synod or its standing committee, or
  - (iii) where the diocese is the Diocese of Sydney—any resolution of the Sydney Church of England Finance and Loans Board,
- (b) the standing committee of the synod of a diocese may by resolution repeal or amend any resolution of that committee, and
- (c) the Sydney Church of England Finance and Loans Board may by resolution repeal or amend any resolution of that Board.

### **38 Delegation of powers etc by bishop**

During the absence from New South Wales of a bishop of a diocese, a commissary appointed by such bishop may exercise all the powers and functions, and do and make all the things referred to in this Act, or such of them as shall be referred to in such appointment, as the case may be, in the place of such bishop.

### **39 Delegation of powers etc of bishop by ordinance**

During the absence of a bishop as aforesaid and in cases where no commissary is appointed as aforesaid or some only of such powers, functions, and things are referred to in the appointment of such commissary, or during the incapacity of a bishop of a diocese arising from illness or any cause other than such absence as aforesaid, or during a vacancy in the see, the person or persons appointed for the purpose or purposes by ordinance of the synod of such diocese or in default of such ordinance or so far as the

same shall not extend to any of such purposes the person next in ecclesiastical rank or degree in such diocese and resident therein may exercise all the powers and functions and do and make all the things referred to in this Act or such of them as are not referred to in any such appointment of a commissary as aforesaid, as the case may be, in the place of such bishop.

#### **40 Delegation of powers etc of synod**

During the recess of the synod of a diocese such committee, council, or other body of persons (if any) as shall from time to time be constituted or appointed for the purpose by or under ordinance of the synod of such diocese may, in place of the synod of such diocese, exercise such of the powers and functions, and do and make such of the things referred to in this Act as shall from time to time be determined by ordinance of the synod of such diocese, and the synod of such diocese may, for the purpose aforesaid, from time to time by ordinance regulate the procedure of such committee, council, or other body of persons: Provided that no ordinance passed by any such committee, council, or other body of persons as aforesaid shall take effect or have any validity unless within one month after the passing thereof the same shall be assented to under the [Anglican Church of Australia Constitutions Act 1902](#) or some Act amending or taking the place of the same.

#### **41 Validity of acts etc under delegation**

The preceding provisions of this Act shall, so far as applicable, apply to all powers, functions, and things so exercised, done, and made in the place of the bishop of the diocese and in the place of the synod of the diocese as in this Part respectively provided for, as if such powers, functions, and things had been validly exercised, done, and made by the bishop of the diocese, or by the synod of the diocese, as the case may be.

#### **42 Notification as to trustees**

Each ordinance made under this Act under sections 9, 10, 11, 13, or 16, and each resolution and election made under sections 12, 14, 15, or 16, and each consent given under section 19, shall be forthwith notified in the Gazette under the hand of the bishop of the diocese.

#### **43 Record of ordinances**

Each ordinance or resolution made under this Act under sections 22, 24, 25, 26, 26A, 27, 27A, 32, 32A, 32B, 37, 39 or 40 may be recorded as follows:

- (a) In case any lands therein referred to are under the provisions of the [Real Property Act 1900](#), or any Act amending or taking the place of the said Act, a copy of such ordinance, certified by the bishop of the diocese, or of such resolution, certified as provided by section 27A (5), shall be deposited with the Registrar-General for safe custody and reference in accordance with the provisions of the Act.
- (b) In case any lands therein referred to are not under the provisions of the [Real Property](#)

*Act 1900*, or any Act amending or taking the place of the said Act, a copy of such ordinance certified by the bishop of the diocese, or of such resolution certified as provided by section 27A (5), shall be filed in the office of the Registrar-General in accordance with the provisions of the *Registration of Deeds Act 1897* or any Act amending or taking the place of the said Act.

#### **44 Existing dioceses**

- (1) Every diocese existing at the commencement of the *Church of England Trust Property (Amendment) Act 1923* shall be deemed to have been validly formed as from the date of its formation.
- (2) Any alteration made before the commencement of that Act in the boundaries of any diocese shall be deemed to have been validly made as from the date of the alteration.

#### **45 New dioceses**

- (1) A provincial synod convened or held in pursuance of the provisions of the *Anglican Church of Australia Constitutions Act 1902*, or any Act amending or taking the place of the same, may make ordinances for and with respect to:
  - (a) the formation of new dioceses, and
  - (b) the alteration of boundaries of dioceses.
- (2) A new diocese shall not be formed by separation of any area from a diocese unless the synod of the diocese consents by an ordinance to the separation.
- (3) A new diocese shall not be formed by the union of two or more dioceses, or parts of dioceses, unless the synod of each of those dioceses consents by an ordinance to the union.
- (4) The boundaries of a diocese shall not be altered unless the synod of the diocese consents by an ordinance to the alteration.
- (5) In the case of the Diocese of Sydney the consent shall not be valid unless the ordinance is passed with an absolute majority in each order.

#### **46 Validation of conveyances**

No title to any land granted by the Crown for or for the use, benefit, or purposes of the United Church of England and Ireland or the Church of England shall be held bad either at law or in equity by reason of any breach or non-performance before or after the commencement of the *Church of England Trust Property (Amendment) Act 1923* of any condition, trust, or proviso contained in the Crown grant of the land, and any right of forfeiture or reverter in respect of any such condition, trust, or proviso shall be deemed to have been waived by the Crown as from the date of the Crown grant.



## 47 Exclusion of defeasance clauses from certain conveyances

Each of the following deeds of conveyance, namely, deed of conveyance dated the thirteenth day of June, one thousand nine hundred and five, from the Minister for Public Works for the State of New South Wales to the Most Reverend William Saumarez Smith and others Registered Number 166 Book 784, and deed of conveyance dated the thirteenth day of June, one thousand nine hundred and five, from the said Minister to the Church of England Property Trust Diocese of Sydney Registered Number 169 Book 784, shall have and shall be deemed always to have had effect as though the proviso contained therein providing, inter alia, for the forfeiture and reverter to the Crown in certain events of the land thereby conveyed had not been inserted in the deed of conveyance.

## Schedule 1

Date of assent	Title or short title	Reference to Act
31 March 1881	<i>Church of England Trust Property Incorporation Act 1881.</i>	44th Vic
22 June 1887	<i>Sydney Bishopric and Church Property Act 1887.</i>	51st Vic
21 May 1889	<i>Church of England Property Act of 1889.</i>	52nd Vic
28 October 1892	<i>Church of England Property Act of 1889 Amendment Act of 1892.</i>	56th Vic
24 July 1896	<i>Church of England Property Act of 1889 Further Amendment Act of 1896.</i>	60th Vic
24 November 1897	<i>Church Acts Repealing Act of 1897.</i>	61st Vic
11 December 1906	<i>Bathurst Cathedral Validating Act 1906.</i>	
15 October 1913	<i>Church of England Trust Property Incorporation Act Amendment Act 1913.</i>	

## Schedule 2 Transferred provisions from **Camperdown Cemetery Act 1948**

### 1 Definitions

In this Schedule:

***cemetery land*** means the land described in the Second Schedule to the repealed Act (as in force immediately before its repeal).

***repealed Act*** means the *Camperdown Cemetery Act 1948*.

## **2 Vesting of land in Church of England Property Trust Diocese of Sydney**

- (1) Subject to this Schedule the cemetery land is hereby vested in the Church of England Property Trust Diocese of Sydney for an estate in fee simple to hold the same subject to the same trusts and for the same purposes as those upon and for which the trustees appointed under the *Camperdown Cemetery Trust Act of 1871* held the cemetery land immediately before the commencement of the repealed Act:

Provided that nothing contained in this subclause or in clause 4 (1)–(4) shall revive any exclusive right of interment in the cemetery land divested by section 5 (2) of the repealed Act (as in force immediately before its repeal).

- (2) The provisions of sections 26 and 32 shall apply to so much of the cemetery land as is not described in the notification in the Gazette referred to in section 6 (2) of the repealed Act (as in force immediately before its repeal).

## **3 Power to fill in vaults**

Notwithstanding anything contained in this Schedule, the Minister administering the [Conversion of Cemeteries Act 1974](#) shall have power, on the recommendation of the Director-General of the Ministry of Health, to cause any vault in the cemetery land to be filled in for the purpose of preventing such vault from giving off drainage which in the opinion of the Director-General of the Ministry of Health is detrimental to public health.

## **4 Trustees of land**

- (1) As soon as practicable after completion of the redesigning and reconstruction of the cemetery area pursuant to section 6 of the repealed Act the Standing Committee of the Synod of the Diocese of Sydney shall appoint trustees of such area. The trustees so appointed shall not exceed 7 in number.
- (2) Such trustees shall have the care, control and management of such area and shall, subject to this Schedule, administer the same in accordance with the same trusts and for the same purposes as those upon and for which the cemetery land comprised in such area was held immediately before the commencement of the repealed Act.
- (3) While such area is under the care, control and management of trustees appointed under this clause the Church of England Property Trust Diocese of Sydney shall be discharged from any duty, obligation or liability arising out of or connected with the trusts and purposes upon and for which such area is held.
- (4) The Standing Committee of the Synod of the Diocese of Sydney may appoint a new trustee to fill any vacancy occurring for any reason among the trustees appointed pursuant to this clause.
- (5) The amount paid to the Church of England Property Trust Diocese of Sydney pursuant to section 6 (5) (a) of the repealed Act shall be invested by the said Church of England

Property Trust in any of the securities authorised by the *Trustee Act 1925*.

- (6) The said Church of England Property Trust shall as soon as practicable after the first day of July in each year pay the interest arising from such investment during the period of 12 months immediately preceding (after deducting therefrom any expenses reasonably incurred by the said Church of England Property Trust in connection with such investment during that period) to the trustees of the said cemetery area who shall apply such interest to the permanent upkeep of such area.

#### **5 Property vested in trustees under Camperdown Cemetery Trust Act of 1871**

Upon the appointment of trustees pursuant to clause 4:

- (a) the property referred to in section 7 (1) of the repealed Act (as in force immediately before its repeal) or the residue thereof shall vest in the trustees so appointed and shall be applied by them in furtherance of the trusts and purposes referred to in clause 4 (2), and
- (b) without prejudice to anything done, prior to such appointment, by the said Church of England Property Trust under the powers conferred by section 7 (2) of the repealed Act (as in force immediately before its repeal), such powers shall, as from such appointment, cease and determine in respect of the said Church of England Property Trust and shall be exercisable thereafter by the trustees so appointed.

#### **6 Protection from claims for compensation**

Except where otherwise in the repealed Act (as in force immediately before its repeal) expressly provided, no compensation shall be made or be payable to any person in respect of the divesting of any estate or interest by the repealed Act or in respect of the performance of any act authorised by the repealed Act.

#### **7 Provisions transferred to this Schedule**

Clauses 2-6 re-enact (with minor modifications) sections 5 (1) and (3), 5A, 6 (4) and (5), 7 (3) and 13 of the repealed Act and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.