

Roman Catholic Church Trust Property Act 1936

No 24

[1936-24]



New South Wales

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Roman Catholic Church Trust Property Act 1936 No 24



New South Wales

An Act to make certain provisions relating to property held upon any trust for or for the use, benefit or purposes of the Roman Catholic Church in New South Wales; to repeal the [Roman Catholic Diocese of Lismore Church Lands Act 1908](#) and the [Saint Patrick's College \(Manly\) Act 1914](#); and for purposes connected therewith.

Preamble

WHEREAS lands held on trust for or for the use or benefit or for purposes of the Roman Catholic Church in New South Wales are 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 lands so held, that provision be made for the vesting in bodies corporate to be created by this Act of lands so held, that conveyancing transactions in respect of lands 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 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 Trust Property Act 1936](#).
- (2) This Act shall commence upon the first day of August, one thousand nine hundred and thirty-six.

2 Definitions

In this Act, unless the context or subject-matter otherwise indicates or requires:

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.

Church means the Roman Catholic Church.

Church trust property 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 the Church or for the use or benefit or for any purpose of the Church, including the land the subject of the provisions of [Saint Patrick's College \(Manly\) Act 1914](#), but does not include land held on any trust, created before or after the commencement of this Act, for any Order or Community of the Church or for any association of members of the Church for the use or benefit of or for any purpose of any such Order, Community or association.

Diocesan Consultors means:

- (a) the Diocesan Consultors for the time being of a diocese,
- (b) in relation to a diocese in which a Cathedral Chapter exists, the members for the time being of that Cathedral Chapter, or
- (c) in relation to a diocese in which a College of Consultors exists, the members for the time being of that College of Consultors.

Diocese means a diocese (including an Archdiocese) for the time being of the Church, situated in New South Wales, and whether created before or after the commencement of this Act.

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.

3 Trustees for dioceses

There shall be for each diocese trustees of Church trust property, who shall be the Bishop of the diocese and the Diocesan Consultors of the diocese.

4 Trustees to be bodies corporate

- (1) The trustees of Church trust property for each Diocese 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: Provided that this subsection shall not operate to incorporate the trustees of Church trust property in any diocese created after the commencement of this Act until the publication in the Gazette of the notification required by section 5.
- (2) The corporate names of the trustees of Church trust property for the several dioceses existing at the commencement of this Act shall be:
 - (a) for the Archdiocese of Sydney, the trustees of the Roman Catholic Church for the

Archdiocese of Sydney, and

- (b) for the Diocese of Armidale, the trustees of the Roman Catholic Church for the Diocese of Armidale, and
- (c) for the Diocese of Bathurst, the trustees of the Roman Catholic Church for the Diocese of Bathurst, and
- (d) for the Diocese of Goulburn, the trustees of the Roman Catholic Church for the Diocese of Goulburn, and
- (e) for the Diocese of Lismore, the trustees of the Roman Catholic Church for the Diocese of Lismore, and
- (f) for the Diocese of Maitland, the trustees of the Roman Catholic Church for the Diocese of Maitland, and
- (g) for the Diocese of Wagga Wagga, the trustees of the Roman Catholic Church for the Diocese of Wagga Wagga, and
- (h) for the Diocese of Wilcannia-Forbes, the trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes.

(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 Church.

4A Change of name of body corporate—Archdiocese of Canberra and Goulburn

- (1) As from the commencement of the [*Roman Catholic Church Trust Property \(Amendment\) Act 1950*](#):
 - (a) the corporate name of the body corporate constituted by section 4 under the corporate name of the trustees of the Roman Catholic Church for the Diocese of Goulburn shall be the trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn,
 - (b) a reference in any Act or other instrument to the Diocese of Goulburn or to the trustees of the Roman Catholic Church for the Diocese of Goulburn shall be read and construed as a reference to the Archdiocese of Canberra and Goulburn or to the trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn, as the case may be.
- (2) Nothing contained in the [*Roman Catholic Church Trust Property \(Amendment\) Act*](#)

1950 shall prejudice or affect in any way the continuity of the body corporate referred to in subsection (1), but the same shall continue notwithstanding the provisions of the said Act.

- (3) The alteration of name effected by subsection (1) shall not affect any property, powers, rights, authorities, duties, functions, liabilities or obligations of the body corporate referred to in subsection (1), or render defective any legal or other proceedings instituted or to be instituted by or against the said body corporate.

Any legal or other proceedings may be continued or commenced by or against the corporation by the name of the trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn that might have been continued or commenced by or against the corporation by the name of the trustees of the Roman Catholic Church for the Diocese of Goulburn.

5 New dioceses

- (1) Upon the creation of a diocese after the commencement of this Act, the Bishop of the diocese so created and the Bishop of any diocese out of which the diocese is so created shall, by notification signed by them and published in the Gazette, announce the creation of the diocese, and its name and the corporate name of the trustees of Church trust property for the diocese.
- (2) A printed paper purporting to be a copy of the Gazette, and to have been printed by the Government Printer, and containing what purports to be a copy of a notification published pursuant to subsection (1) shall be conclusive evidence of the statements so published.
- (3) A diocese shall not be extinguished by the creation wholly or partly thereof of a new diocese or by any other alteration of its boundaries.

5A Change of name of diocese

- (1) If the name of a diocese is changed, the Bishop of the diocese concerned is, by notification signed by the Bishop and published in the Gazette, to announce the change of name of the diocese and of the body corporate consisting of the trustees of Church trust property for the diocese.
- (2) A printed paper purporting to be a copy of the Gazette and to have been printed by the Government Printer and containing what purports to be a copy of a notification published under subsection (1) is conclusive evidence of the statements so published.
- (3) The body corporate of the diocese concerned continues in existence under its new name so that its identity is not affected.
- (4) A reference in any Act or instrument, or in any other document, to the diocese (or body corporate) under its former name is to be read (except in relation to matters that

occurred before the change took place) as a reference to the diocese (or body corporate) under its new name.

- (5) Subsections (3) and (4) apply to the change of name of the Diocese of Maitland to the Diocese of Maitland-Newcastle (and the corresponding change of name of the body corporate of that Diocese) as if the change of name had been announced in accordance with subsection (1).

6 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.

The Bishop and two other members of each such body corporate shall constitute a quorum for the purpose of any meeting of the body corporate.

Every meeting of any such body corporate at which a quorum is present shall be competent to transact any business of the body corporate.

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.

Every instrument to which the common seal is so affixed shall be signed by the Bishop who is a member of the body corporate and by two other members of the body corporate.

- (2) A Bishop to whom any delegation has been made under section 9B shall while the delegation is in force have access to the common seal of the body corporate which made the delegation to him and may affix it to any instrument signed or to be signed by him in the course of his exercising or discharging any power, authority, duty or function the subject of the delegation.

The provisions of subsection (1) relating to the affixing of the common seal of a body corporate to, or the signing of, any instrument shall not apply to any instrument to which the common seal of the body corporate is affixed pursuant to the foregoing provisions of this subsection.

7 Vacancies and 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:

Provided that notwithstanding the suspension under this subsection of the powers and capacity of a body corporate created by this Act a Bishop, who is a member of that body corporate, may exercise and perform any power, authority, duty or function delegated under section 9B to him by that body corporate as if such powers and capacity were not suspended.

8 Vesting of Church trust property

- (1) All Church trust property which at the time of the creation of any body corporate by this Act is situated within the diocese for which the body corporate is created shall by virtue of this Act:
 - (a) vest in that body corporate upon its creation, and
 - (b) be thereupon divested from the person in whom it was vested before the creation of such body corporate.
- (1A) Where a boundary of a diocese is altered and any Church trust property vested in the body corporate created by this Act for that diocese is excluded from that diocese and included in some other existing diocese that property shall, on and from the day upon which that alteration takes effect:
 - (a) vest in the body corporate created by this Act for the diocese in which that property is then situated, and
 - (b) be divested from the body corporate created by this Act for the diocese from which it is excluded.
- (2) No vesting by virtue of this Act shall affect any encumbrance, lien, estate or interest to which, at the time of 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 to have been extinguished

unless the person entitled thereto has within a period of six months after the commencement of this Act 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 within such period 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) The reference in subsection (1) (b) to the person in whom Church trust property was vested before the creation of a body corporate includes, and shall be deemed to have always included, a reference to a body corporate created under section 4 in which that property was formerly vested.

9 Powers of bodies corporate

A body corporate created by this Act has all the powers of a natural person, including (without limiting the scope of those powers) the power:

- (a) to purchase, take on lease, or acquire by gift, devise, bequest, exchange or otherwise any real or personal property,
- (b) in relation to any Church trust property at any time vested in it:
 - (i) to sell it, and to exchange it for other land, and to transfer or convey Church trust property so sold or exchanged to the purchaser or person taking in exchange, 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 surrender of leases, upon such terms and subject to such conditions as to the body corporate shall appear desirable, and
 - (iv) to raise 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 Order or Community of the Church or for any association of members of the Church or for the use or benefit of or for any purpose of any such Order, Community or association, 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
- (c) 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.

9A Additional powers of bodies corporate

- (1) Every body corporate created by this Act shall have power from time to time:
 - (a) to apply for and obtain representation of the estate of any deceased person being an ordained clergyman of the Church of whose will such body corporate is the executor, or being a person under whose will the Church or any part thereof (not being a body corporate constituted by or under the [Roman Catholic Church Communities' Lands Act 1942](#), as amended by subsequent Acts) or such body corporate is a beneficiary, and
 - (b) to accept appointment and act as trustee under and in pursuance of any trust created wholly or partially for the benefit of the Church or any such part thereof or such body corporate over or in respect of any property real or personal,and to do all things necessary to administer such estate or trust.
- (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 or administering any trust.
- (3) Whenever the body corporate shall have been appointed executor, administrator or trustee 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, administrator or trustee 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.

9B Delegation of powers etc of bodies corporate

- (1) A body corporate created by this Act may from time to time by resolution delegate to the Bishop who is a member thereof all or any of its powers, authorities, duties and functions, other than a power conferred on it by this section or section 9C.
- (2) Any such delegation may be made either generally or for any particular case or class of cases and, unless expressed to be otherwise limited, shall be deemed to be in favour of the person for the time being administering the diocese for which the body corporate was created whether he is doing so as Archbishop or Bishop, Coadjutor Archbishop or Coadjutor Bishop, Vicar Capitular or Administrator.
- (3) Notwithstanding any such delegation the body corporate may continue to exercise and discharge the powers, authorities, duties and functions the subject of the delegation.
- (4) A person, when acting within the scope of any such delegation, shall be deemed to be

the body corporate by whom such delegation was made.

- (5) A body corporate may by resolution revoke any delegation made by it under this section.

9C 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 that 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 Church.
- (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 may be dealt with and applied for the use, benefit or purposes of the Church 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 Trust Property \(Amendment\) 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.

9D 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.

10 Execution of instruments

- (1) Every instrument bearing what purports to be the common seal of a body corporate created by this Act for any diocese created before or after the commencement of this Act, and purporting to be signed by the Bishop of that diocese and two other members of that body corporate or by that Bishop alone under and in pursuance of a delegation to him made under section 9B 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](#), as amended by subsequent Acts, shall not apply to or in respect of any instrument executed by a body corporate created by this Act or by the Bishop, who is a member of any such body corporate, under and in pursuance of a delegation to him made under section 9B.

11 Protection of purchasers etc

- (1) No purchaser, mortgagee, lessee or other person dealing with a body corporate created by this Act or with any person purporting to exercise powers delegated to him under section 9B, 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 propriety thereof, or the mode of exercising the same, or be affected by notice that the exercise of the power is unauthorised, irregular or improper, and a receipt for any money payable to the body corporate, signed by the Bishop who is a member thereof, shall be a sufficient discharge in favour of, and shall exonerate the person paying such money from all responsibility for the application of such money.
- (2) Where:
 - (a) an instrument purports to exercise a power conferred by this Act, and to pass or create an estate or interest in land described in the instrument as being Church trust property situated in a diocese therein named, and
 - (b) the land which the instrument purports to pass or affect is not, in fact, under the provisions of the [Real Property Act 1900](#), and
 - (c) the instrument is executed in accordance with the requirements of this Act by the body corporate created by this Act for the diocese so named in the instrument, and
 - (d) the instrument is registered under the provisions of the [Registration of Deeds Act](#)

1897,

such instrument shall:

- (i) in favour of every person claiming any estate or interest under or through the instrument, be conclusive evidence against every body corporate created by this Act claiming any estate or interest against that person, that the land described in the instrument as being Church trust property situated within the diocese named therein was Church trust property so situated at the time of the execution of the instrument, and that the body corporate by which the instrument was executed had at the time of the execution thereof an estate or interest in the land so described sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, and
 - (ii) in favour of every person claiming any estate or interest under or through the instrument and having taken for value, without notice that the land in which the instrument purports to create an estate or interest was not Church trust property situated within the diocese so named in the instrument or that the body corporate by which the instrument was executed had not an estate or interest sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, and in favour of every person claiming under or through any person having so taken, as against every person claiming under or through an instrument executed before the commencement of this Act or under or through an instrument executed by a body corporate created by this Act, and not in either such case registered under the [Registration of Deeds Act 1897](#), before the registration under that Act of the instrument by this subsection made evidence, be conclusive evidence that the land described in the instrument so made evidence as being Church trust property situated within the diocese named therein was at the time of the execution of that instrument, so situated, and that at the time of the execution of that instrument the body corporate by which it was executed had an estate or interest in the land so described sufficient to make that instrument effective to pass or create the estate or interest which that instrument purported to pass or create.
- (3) Any person, not being a body corporate created by this Act, deprived of any estate or interest in land by any such instrument as is mentioned in subsection (2) may bring and prosecute an action for damages against the body corporate by which the instrument was executed and any judgment recovered by the plaintiff in any such action shall be enforceable by execution against any real or personal property for the time being vested in the defendant body corporate, whether Church trust property or not, and any real or personal property taken by a purchaser on a sale in any such execution shall be free of all trusts affecting the same while vested in the execution debtor, except 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 free of all trusts to which it would be subject in the hands of the execution debtor.

12 Evidence

A certificate under the common seal of a body corporate created by this Act that the land described in the certificate is situated within the diocese for which that body corporate is created and is Church trust property shall:

- (a) for the purpose of an application by that body corporate to be registered as the proprietor pursuant to a vesting by this Act, of any land under the provisions of the [Real Property Act 1900](#) of which that body corporate is not the registered proprietor, be conclusive evidence of the facts so certified, and
- (b) in any action, suit or other proceeding, whether civil or criminal, be prima facie evidence of the facts so certified.

13 Trusts preserved

All Church trust property 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 Church in the diocese for which the body corporate exists: Provided however that the powers conferred by section 9 shall be exercisable in relation to all Church trust property notwithstanding any trust or provision affecting it in the hands of the body corporate.

14 Validation of grants

- (1) No title to any land to which this section 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 the [Roman Catholic Church Trust Property \(Amendment\) Act 1966](#), 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.
- (2) (Repealed)
- (3) In this section:

land to which this section applies means any land:

- (a) granted by the Crown before or after the commencement of the [Roman Catholic Church Trust Property \(Amendment\) Act 1966](#) for or for the use benefit or purposes of the Church, and
- (b) which was at the date of such grant subject to any reservation or dedication made before such commencement under the provisions of the Crown Lands Acts as defined in section 5 of the [Crown Lands Consolidation Act 1913](#) as amended by subsequent Acts.

15 Repeal

- (1) The *Roman Catholic Diocese of Lismore Church Lands Act 1908* and *Saint Patrick's College (Manly) Act 1914* are hereby repealed, but neither of those repeals shall affect:
 - (a) any right accrued or obligation incurred before the commencement of this Act, or
 - (b) the validity or invalidity or any operation, effect or consequence of any instrument executed or made or anything done or suffered before the commencement of this Act, or
 - (c) any action, proceeding or thing, at the commencement of this Act, pending or uncompleted.
- (2) Every such action, proceeding and thing may be carried on and completed as if the Acts hereby repealed remained in force.
- (3) Nothing in this section shall limit any saving in the *Interpretation Act of 1897*.

16 Exemption from duty

- (1) An instrument executed only for:
 - (a) a purpose ancillary to, or consequential on, the operation of section 8, or
 - (b) the purpose of giving effect to that section,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 by the *Roman Catholic Church Communities' Lands Act 1942*, or
 - (b) from a body corporate created by the *Roman Catholic Church Communities' Lands Act 1942* 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 Communities' Lands Act 1942*,is exempt from duty under the *Duties Act 1997*.