

# Baptist Churches of New South Wales Property Trust Act 1984 No 4

[1984-4]



New South Wales

## Status Information

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### Provisions in force

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### Authorisation

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# Baptist Churches of New South Wales Property Trust Act 1984 No 4



New South Wales

An Act to constitute the Baptist Churches of New South Wales Property Trust and to define its powers, authorities, duties and functions; and to provide for the vesting of certain property in the Trust.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Baptist Churches of New South Wales Property Trust Act 1984*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

***appointed day*** means the day appointed and notified pursuant to section 2 (2).

***Assembly*** means an Assembly constituted under the by-laws.

***Baptist Church*** means a congregation affiliated with the Baptist Union.

***Baptist Union*** means The Baptist Union of New South Wales as constituted by and under the provisions of the Incorporation Act.

***by-laws*** means by-laws of the Baptist Union made under the Incorporation Act.

**congregation** means all of the persons:

- (a) whose names appear as church members in the roll or register of any association or society,
- (b) who hold as their general tenets the doctrines set forth in Schedule A to the Incorporation Act, and
- (c) who are in the habit of meeting together for the public worship of God in any church building or in any other building,

and each of those persons shall be deemed to be a member of the congregation consisting of all of those persons.

**deacon**, in relation to a congregation, means:

- (a) a person elected to a position of deacon of the congregation, or
- (b) a person elected to a position of leadership in the congregation (whether the holder of the position is described as an elder or by any other term).

**district** means an area of land that the Executive Committee has determined in writing is a district for the purposes of this Act.

**District Association** means an association of Baptist Churches recognised as such by the Baptist Union in accordance with the by- laws.

**Executive Committee** means the Executive Committee of the Baptist Union.

**functions** includes powers, authorities and duties.

**Incorporation Act** means the [Baptist Union Incorporation Act 1919](#).

**property** includes real and personal property and any estate or interest therein.

**secretary**, in relation to a congregation, means:

- (a) a person elected to the position of secretary of the congregation, or
- (b) if no person has been elected to a position of that title—a person elected to a position that exercises the responsibilities of a secretary of the congregation (whether the holder of the position is described as a Church secretary, an administrator or a public officer, or by any other term).

**Trust** means the Baptist Churches of New South Wales Property Trust constituted by this Act.

**trust property** means property vested in the Trust by or pursuant to this Act.

- (2) A reference in this Act to the exercise of a function includes, where the function is a

duty, a reference to the performance of the duty.

- (3) The provisions of this Act, other than Schedule 4, do not affect the operation of Schedule 4 (Transferred provisions—*Saint Andrew's Cathedral Site Agreements and Central Baptist Church Act 1936*).

## **5 Saving of certain rights**

Nothing in, or done under, this Act shall operate to deprive any person of any right arising out of contract or tort that was vested in the person immediately before the appointed day, and any such right that, immediately before that day, was enforceable in respect of any property vested in the Trust by this Act may be enforced against the Trust.

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

### **6 Constitution of the Trust**

- (1) There is hereby constituted a corporation under the name of “Baptist Churches of New South Wales Property Trust” which shall, subject to this Act, consist of 7 persons elected by the Assembly.
- (2) At each annual Assembly convened after the appointed day an election of members of the Trust shall be held to fill the offices of the members of the Trust which will become vacant at the end of that Assembly.
- (3) A person is not eligible to be elected as a member of the Trust unless the person is a member of a Baptist Church affiliated with the Baptist Union.
- (4) Subject to this Act, David Frederick Baker, Frederick James Church, Harry John Kidd, Bruce Ashby King, Roger Franklyn Pepper, Ivan Bruce Thornton and Peter Lawrence Young shall:
- (a) be deemed, for the purposes of subsection (1), to have been duly elected at an Assembly as members of the Trust for a term of office commencing with the appointed day and extending until the end of the annual Assembly next succeeding the appointed day, and
- (b) if otherwise qualified, be eligible for re-election as members of the Trust.
- (5) Should any person specified in subsection (4) not be living on the appointed day, a casual vacancy shall be deemed to have arisen on that day in the office to which he would have been deemed to have been elected pursuant to that subsection had he been living on that day.

### **7 Terms of office of members**

- (1) At the annual Assembly next succeeding the appointed day, 2 members of the Trust shall be elected for a term of office of 3 years, 2 members shall be elected for a term

of office of 2 years and 3 members shall be elected for a term of office of 1 year.

- (2) A member of the Trust elected subsequently to those elected at the annual Assembly next succeeding the appointed day shall be elected for a term of office of 3 years.
- (3) Subject to section 9, each of the members of the Trust elected after the appointed day at an annual Assembly shall:
  - (a) take office as a member of the Trust immediately after the end of that Assembly,
  - (b) hold office as a member of the Trust until the end of the annual Assembly convened in the last year of the term of years for which the member was elected, and
  - (c) if otherwise qualified, be eligible for re-election as a member of the Trust.

## **8 Quorum**

Four members of the Trust shall constitute a quorum for the purpose of any meeting of the Trust, and a decision supported by a majority of the votes of the members present and voting at a meeting of the Trust at which a quorum is present shall be the decision of the Trust.

## **9 Vacation of office**

A member of the Trust shall be deemed to have vacated office if the member:

- (a) dies,
- (b) resigns the office by notice in writing to the Trust and the Trust resolves to accept the resignation,
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,
- (e) (Repealed)
- (f) is absent from 3 consecutive meetings of the Trust, notice of which has been given to the member, without prior leave of absence having been granted by the Trust,
- (g) is removed from office by resolution of an Assembly, but only if opportunity has been given to the member to address the meeting of the Assembly at which the resolution is considered before the resolution is made,



- (h) ceases to be a member of a Baptist Church affiliated with the Baptist Union,
- (i) is or becomes an employee of the Trust or the Baptist Union or of any committee or agency of the Baptist Union, or
- (j) is removed from office by or pursuant to the by-laws.

## **10 Casual vacancies**

- (1) Where, by reason of the occurrence of casual vacancies, the number of members of the Trust for the time being holding office is reduced to less than 4, the continuing members of the Trust shall appoint, as members of the Trust filling the vacancies until the end of the next succeeding annual Assembly, persons (who are eligible to be elected as members of the Trust) not fewer in number than that required to increase to 4 the number of members for the time being holding office as members of the Trust.
- (2) Where the continuing members of the Trust appoint a person under subsection (1), they shall nominate the person the vacancy in whose office shall be filled by the person so appointed.
- (3) Except as provided by subsection (1), where there is a casual vacancy in the membership of the Trust, the continuing members of the Trust may appoint a person (who is eligible to be elected as a member of the Trust) to fill the vacancy.
- (4) A person appointed under this section shall:
  - (a) take office as a member of the Trust upon being so appointed, and
  - (b) hold office as a member of the Trust for the balance of the term of office of the member the vacancy in whose office the person was appointed to fill.
- (5) Section 9 applies to and in respect of a member of the Trust appointed under this section in the same way as it applies to and in respect of an elected member of the Trust.

## **11 By-laws**

Subject to this Act, the by-laws may make provision for or with respect to the election, admission, retirement and removal from office of members of the Trust and the regulation and procedure of the first meeting of the Trust.

## **12 Officers and employees of the Trust**

- (1) The Trust may:
  - (a) appoint a chairman of the Trust (being one of the members of the Trust), and a secretary and treasurer of the Trust (neither of whom needs to be a member of the Trust) and also the time, place and procedure of all meetings of the Trust after the

first,

- (b) fix the terms of office of the chairman, secretary and treasurer of the Trust,
  - (c) retire or remove from office the chairman, secretary or treasurer of the Trust for such reason as it considers sufficient or in such circumstances as are defined by it, and
  - (d) define the functions of members of the Trust and of the persons for the time being holding the offices of chairman, secretary and treasurer of the Trust.
- (2) Without affecting the generality of section 50 of the *Interpretation Act 1987*, the Trust may:
- (a) employ staff and make provision for payment of salaries, wages, expenses, allowances, superannuation, commissions, emoluments and other remuneration for the secretary, treasurer and staff of the Trust, and
  - (b) make provision for the payment of all other expenses and liabilities incurred in the exercise of its functions under this Act.
- (3) Nothing in subsection (2) affects any requirement made by this Act with respect to property vested in the Trust.

### **13 Common seal**

- (1) The members for the time being of the Trust shall have the custody of its common seal and, subject to subsections (2) and (3), the form of the common seal and all other matters relating thereto shall be as determined by the Trust.
- (2) The common seal of the Trust shall not be affixed to any instrument except in pursuance of a resolution of the Trust and every instrument to which the common seal is so affixed shall be signed by 2 members of the Trust and countersigned by the secretary of the Trust or another person duly appointed by the Trust so to do.
- (3) An instrument purporting to have been:
  - (a) sealed with the common seal of the Trust,
  - (b) signed by not less than 2 members of the Trust, and
  - (c) countersigned by the secretary of the Trust or another person duly appointed by the Trust so to do,shall, in the absence of evidence to the contrary, be deemed to have been executed in accordance with subsection (2).

#### **14 Form and execution of certain contracts etc**

- (1) Any deed, contract, agreement or other instrument relating to any property or matter which, if made or executed by a natural person, would be by law required to be in writing under seal may be made or executed on behalf of the Trust in writing under the common seal of the Trust.
- (2) Any contract, agreement or other instrument relating to any property or matter which, if made or executed by a natural person, would be by law required to be in writing signed by the party to be charged or bound thereby may be made or executed on behalf of the Trust in writing by any person acting under its authority express or implied.

#### **15 Execution under seal by agent etc**

The Trust may, by writing under its common seal, expressly empower any person, in respect of any specified matter, as its agent or attorney to execute any deed, contract, agreement or other instrument on its behalf, and any such document signed by any such agent or attorney on behalf of the Trust and under his or her seal shall bind the Trust and have the same effect as if it were under its common seal.

### **Part 3 Acquisition and vesting of trust property**

#### **16 Vesting of certain property in the Trust**

- (1) Subject to this Act, any property that, immediately before the appointed day, was vested in the Baptist Union upon trust:
  - (a) for any congregation, society, District Association or other unincorporated association of persons (including a committee or agency of the Baptist Union),
  - (b) for any person, or
  - (c) for any charitable or other purpose,is hereby divested from the Baptist Union and is hereby vested, without any further conveyance or transfer, in the Trust.
- (2) For the avoidance of doubt, the vesting effected by subsection (1):
  - (a) includes all property that, immediately before the appointed day, was vested in the Baptist Union pursuant to section 10 of the Incorporation Act as in force before that day, and
  - (b) excludes:
    - (i) all property that, immediately before the appointed day, was vested in the Baptist Union beneficially in its own right, and

(ii) the property known as 58 Parramatta Road and 70 Arundel Street, Glebe, being the whole of the land comprised in the folio of the Register kept under the *Real Property Act 1900* and numbered Volume 7037 Folio 147.

- (3) The vesting effected by subsection (1) shall not affect:
- (a) any reservation, mortgage, charge, encumbrance, lien or lease that, immediately before the appointed day, affected the property so vested, or
  - (b) except as provided by subsection (4), any trust on which that property was held immediately before that day.
- (4) Where property vested in the Trust by subsection (1) was, immediately before the appointed day, held by the Baptist Union on behalf of a congregation upon the trusts and subject to the provisos and conditions set out in Schedule B to the Incorporation Act (whether or not the property was vested in the Baptist Union under section 10 of that Act), the property shall, on its being so vested in the Trust:
- (a) cease to be held on behalf of the congregation upon those trusts and subject to those provisos and conditions, and
  - (b) be held by the Trust on behalf of the congregation subject to the provisions of this Act relating to any such property.
- (5) No attornment to the Trust by any lessee of property vested in it by this section shall be necessary.
- (6) Any instrument, within the meaning of the *Stamp Duties Act 1920*, executed only for:
- (a) a purpose ancillary to, or consequential on, the operation of subsection (1) or (3), or
  - (b) the purpose of giving effect to either or both of those subsections,
- is not chargeable with stamp duty.
- (7) Nothing in this section revives any trust extinguished by the operation of section 11 of the Incorporation Act as in force before the appointed day.

## **17 Trust property of Baptist Union committees etc**

- (1) Any property that, on or after the appointed day, is vested in the Baptist Union upon trust for any committee or agency of the Baptist Union and which is required to be applied:
- (a) for the benefit of any congregation, or
  - (b) where there is no congregation in the district in which the property is situated, for the purpose of:

- (i) the public worship of God by a congregation when the congregation is formed in the district in which the property is situated,
- (ii) the instruction of children or adults, or both, or
- (iii) the provision of a residence for a pastor of the Baptist denomination,

shall, upon the request of the committee or agency and without any further conveyance or transfer, become vested in the Trust upon trust for that committee or agency and shall be applied for the benefit of that congregation or for that purpose, as the case may require.

- (2) The Trust shall, at the request of any committee or agency of the Baptist Union, act as trustee for the committee or agency, as the case may be, in relation to the acceptance of, or the taking of title to, any property from any third party whether by way of purchase, gift, transfer, conveyance, assignment, appointment, grant, release, mortgage, lease, charge, encumbrance, easement or otherwise, where the property, when acquired, will be required to be applied exclusively as referred to in subsection (1) (a) or (b).
- (3) Upon delivery at any time to the Trust of a certificate given by a committee or agency of the Baptist Union identifying any property and stating that a congregation (for whose benefit the property was, immediately before delivery of the certificate, vested in the Trust upon trust for the committee or agency) has become a Baptist Church, the Trust shall thereupon hold that property upon trust for the benefit of that Baptist Church and that property shall thereafter be managed and dealt with by the Trust in accordance with this Act.
- (4) No attornment to the Trust by any lessee of property vested in it pursuant to this section shall be necessary.
- (5) A request referred to in subsection (1) or (2) or a certificate referred to in subsection (3) has effect for the purposes of this section only if:
  - (a) the making of the request or the giving of the certificate, as the case may be, is authorised by a resolution of the committee or agency by which it is made or given,
  - (b) the request or certificate, as the case may be, is in writing and countersigned by the President or Vice-President for the time being of the Baptist Union, and
  - (c) in the case of a certificate referred to in subsection (3), the giving of which would have the effect of requiring the Trust to act as trustee in relation to property which would be subject to a trust imposed otherwise than by the operation of this Act—the certificate is given with the consent of the Trust granted with the concurrence of the Executive Committee.

## **18 Change of trustees**

- (1) All property which, on or after the appointed day, is vested in any person (other than the Trust) or persons as trustee or trustees for any congregation (not being property which may be vested in the Trust pursuant to section 17) shall, upon the consent of that trustee or the majority of those trustees and of the Trust, without any further conveyance or transfer, become vested in the Trust and be held by it on behalf of that congregation.
- (2) If in consequence of any disability (including, in the case of natural persons, death or absence from New South Wales) the consent of a trustee cannot be obtained for the purposes of subsection (1), the President for the time being of the Baptist Union may consent in place of the trustee, and, in any such case, the consent of the President shall, for the purposes of that subsection, be deemed to be the consent of the trustee.
- (3) The consent of a trustee or of the President shall be deemed not to have been given for the purposes of subsection (1) with respect to any property actually used, occupied or enjoyed by any congregation having a roll or register of church membership, unless the consent is given at the direction of the congregation.
- (4) A notice signed by 2 members for the time being of the Trust, to the effect that a trustee or the President for the time being of the Baptist Union in place of any trustee has, for the purposes of this section, consented to the property mentioned in the notice becoming vested in the Trust and:
  - (a) that the property was not actually used, occupied or enjoyed by any congregation when that consent was given, or
  - (b) that the property was actually used, occupied or enjoyed by a congregation and that, in pursuance of a direction duly made by that congregation, the trustee, or the President in his or her place, consented to its becoming vested in the Trust,shall be prima facie evidence of the matters alleged in the notice.
- (5) All property which becomes vested in the Trust under this section shall, from the date of its so vesting, cease to be held upon the trusts to which prior to that vesting it was subject, and shall be held, managed and dealt with by the Trust in accordance with this Act.
- (6) The vesting effected by this section shall be without prejudice to any reservation, mortgage, charge, encumbrance, lien or lease that, immediately before the vesting, affected the property so vested.

## **19 Purchase by Trust as trustee etc**

- (1) Subject to subsection (2), the Trust shall, at the direction of any Baptist Church or District Association, act as trustee for that Baptist Church or District Association, as

the case may be, in relation to the acceptance of, or the taking of title to, any property from any third party whether by way of purchase, gift, transfer, conveyance, assignment, appointment, grant, release, mortgage, lease, charge, encumbrance, easement or otherwise, and any such property shall be held, managed and dealt with by the Trust in accordance with this Act.

- (2) A direction which would have the effect of requiring the Trust to act as trustee in relation to property which would be subject to a trust imposed otherwise than by the operation of this Act may be duly given pursuant to this section only with the consent of the Trust granted with the concurrence of the Executive Committee.
- (3) A notice signed by 2 members for the time being of the Trust, to the effect that a direction of a Baptist Church or District Association described in the notice has been duly given pursuant to this section shall be prima facie evidence of the matter alleged in the notice.

## **20 Certain funds etc vested in the Trust**

- (1) On the appointed day:
  - (a) the trustees and managers for the time being of the funds or settlements associated with the Baptist Union and referred to in Schedules 1 and 2 shall be deemed to have retired,
  - (b) the Trust shall be deemed to be appointed or elected (as the case may require) in the place of those trustees and managers,
  - (c) any provision of an instrument and any resolution relating to, or to the trustees or managers of, those funds or settlements shall have no effect in so far as they are inconsistent with any provision of this Act or of any by-law in force for the time being and relating to those funds or settlements, including any such provision relating:
    - (i) to the convening or holding of, the quorum for, or the procedure or voting at, meetings of those trustees or managers, or
    - (ii) to the signing of cheques or other instruments or to any other procedural matter concerning the management of those funds or settlements, and
  - (d) any provision of an instrument referred to in paragraph (c) which, in the absence of this paragraph, would have the effect of preventing the Trust from exercising a power of investment conferred on it by this Act shall be deemed not to have that effect.
- (2) Each loan made by the Trust from any of the funds or settlements referred to in Schedule 2 shall be made only with the consent of the committee of the Baptist Union known as the “Department of Home Ministries” or, if that committee has ceased to

exist, of the committee of the Baptist Union which, in the opinion of the Trust when the loan is made, exercises functions similar to those exercised by the committee which was so known.

(3) Where, on or after the appointed day:

(a) a prescribed body is the trustee or manager of a trust fund or settlement, and

(b) the prescribed body:

(i) certifies that the trust fund or settlement is associated with the Baptist Union, and

(ii) consents in writing to the appointment of the Trust as the trustee or manager of the trust fund or settlement,

the Executive Committee may, by special resolution, appoint the Trust as trustee or manager, as the case may require, of that trust fund or settlement.

(4) On the passing of a special resolution under subsection (3), the provisions of subsection (1) (a)–(d) apply to and in respect of the trust fund or settlement to which the resolution relates in the same way as those provisions apply to and in respect of the funds and settlements referred to in Schedules 1 and 2.

(5) In subsection (3), **prescribed body** means:

(a) the Baptist Union, or

(b) the members for the time being of a committee of the Baptist Union.

## **21 Powers of the Trust, generally**

(1) Without affecting the generality of section 50 of the *Interpretation Act 1987*, but subject to this Act, the Trust may acquire, hold, manage, deal with, mortgage, charge or dispose of property of any kind and may borrow or raise or secure the payment of money in such manner as the Trust may think fit and may make, endorse and deal with negotiable instruments of any kind.

(2) Where any property is vested in the Trust by or pursuant to this Act, the Trust shall, in relation to that property, have and be subject to all the rights, powers, remedies, liabilities and obligations, and may exercise and discharge, in relation to that property, all or any of the rights, powers and remedies which the person in whom the property was vested, or by whom it was held, immediately before it was vested in the Trust, would have had and been subject to and might have exercised and discharged in relation to that property if the property had not been divested from that person and vested in the Trust.



## 21A Certain property held in trust

- (1) The repeal of section 30 (2) by the *Baptist Churches of New South Wales Property Trust (Amendment) Act 1992* does not override a declaration by the replacement trustee that the replacement trustee will hold the property upon the same trusts as those under which the Trust held it.
- (2) Section 22 applies to the exercise by a replacement trustee of the replacement trustee's functions respecting trust property as if the references to the Trust in that section were references to the replacement trustee.
- (3) In this section, **replacement trustee** means a body or person appointed, at any time before the commencement of Schedule 1 (7) (b) to the *Baptist Churches of New South Wales Property Trust (Amendment) Act 1992*, under section 30 (2) (as in force immediately before that commencement) to act as a trustee or as one of the trustees of trust property in place of the Trust.

## Part 4 General duties and powers of the Trust

### 22 General functions of Trust

- (1) Subject to this Act, in the exercise of its functions under this Act, the Trust may request the direction of the Executive Committee and act upon any such direction, if given.
- (2) Subject to this Act and to the terms of any trust to which trust property is subject, the Trust may:
  - (a) erect buildings or permit buildings to be erected on land which is trust property,
  - (b) permit buildings erected on any such land to be used for any one or more of the objects prescribed by subsection (3),
  - (c) subject to subsection (4), repair, alter, enlarge, demolish or partially or wholly rebuild any building erected on any such land,
  - (d) permit a person to officiate as pastor in any church building erected upon any such land, but only if:
    - (i) the person is of the Baptist denomination and holds as general tenets the doctrines set forth in Schedule A to the Incorporation Act, and
    - (ii) except in the case of a pastor appointed before the appointed day, the person has been chosen by the congregation which for the time being worships in the church building and, in any case, has not been removed from the office of pastor by that congregation,
  - (e) despite paragraph (d), permit an occasional minister or other person to officiate in

any such church building, but only if:

- (i) the pastor or the deacons of the congregation that for the time being worships in the church building concurs or concur, or
  - (ii) where there is no pastor and there are no deacons of that congregation—the officer who is a member of that congregation and who is nominated by that congregation for the purposes of this subparagraph concurs,
- (f) borrow or raise money by granting a legal or an equitable mortgage over any trust property or part of trust property or by making, endorsing or dealing with any negotiable instrument but, where the money is borrowed or raised at the direction of a congregation, only in such amounts and for such one or more of the purposes prescribed by subsection (5) as may be directed by the congregation, being purposes which are for the benefit of:
- (i) the congregation giving the direction,
  - (ii) another congregation or other congregations, any District Association or the Baptist Union or any of its committees or agencies, or
  - (iii) a qualifying corporation,
- (g) sell any trust property or part thereof by public auction or private contract, or partly in each mode, or exchange trust property or part thereof for other property but, where the property is held on behalf of a congregation, only in such manner, upon such terms and subject to such conditions as to title or otherwise as may be directed by the congregation, and demise trust property or any part thereof but, where the property is so held, only for such period, at such rent and upon such terms and conditions as may be directed by the congregation,
- (h) invest or otherwise deal with or dispose of trust property which is not land but, where the property is held on behalf of a congregation, only in such manner and for such one or more of the purposes prescribed by subsection (5) as may be directed by the congregation, being purposes which are for the benefit of:
- (i) the congregation giving the direction,
  - (ii) another congregation or other congregations, any District Association or the Baptist Union or any of its committees or agencies, or
  - (iii) a qualifying corporation, and
- (i) accept gifts and loans or other advances of money made to it:
- (i) either with or without giving security therefor, and
  - (ii) whether or not the loans or other advances are made subject to the payment

of interest.

- (3) The objects prescribed by this subsection are the following:
- (a) the public worship of God according to the usages of the Baptist denomination,
  - (b) the instruction of children or adults, or both,
  - (c) the provision of a residence for a pastor of the Baptist denomination or for a person employed in the work of a Baptist Church or other work connected with that denomination,
  - (d) the provision of recreational and community welfare services ancillary to the work of a Baptist Church or other work connected with the Baptist denomination,
  - (e) the promotion of such religious or philanthropic purposes as the Executive Committee from time to time determines.
- (4) A church building, school or manse on land vested in the Trust may be repaired, altered, enlarged, demolished, rebuilt or substituted by another building, and another building may be erected on land so vested, by the Trust only if the Trust has been directed to do so:
- (a) in the case of a church building, school or land—by the congregation that is entitled to use the church building, school or land, or
  - (b) in the case of a manse—by the congregation whose pastor is entitled to use the manse, or
  - (c) if the Executive Committee has determined in writing that the matter is minor and that the secretary of a congregation can give such a direction in the particular circumstances—by the secretary of the congregation that is entitled to use the church building, school or land, or of the congregation whose pastor is entitled to use the manse, as the case may be.
- (5) The purposes prescribed by this subsection are as follows:
- (a) purposes which are ancillary to the attainment of the objects prescribed by subsection (3),
  - (b) the purpose of improving trust property, including:
    - (i) the repair or enlargement of any building which is trust property, and
    - (ii) the erection of a church building, school or manse on trust property,
  - (c) the purchase of other trust property.
- (6) In its dealings with trust property pursuant to this section, the Trust shall ensure, to

the extent that it is capable of so doing, that provision is made for the payment of all expenses incurred by the Trust or the Baptist Union in connection with those dealings, including legal costs, out of trust property, other than land.

(7) Where trust property, being money, is to be expended by the Trust for the benefit of a congregation, the Trust may, if so directed by the congregation, pay the money or any part thereof to the secretary or treasurer of, or other officer appointed for the purpose of receiving the money by, the congregation whose receipt shall be a sufficient discharge to the Trust for the expenditure of the money and the Trust shall not be bound to see to the application of the money in respect of which any such receipt has been given.

(8) In this section:

**qualifying corporation**, in relation to a direction given under subsection (2) (f) or (h), means a corporation:

- (a) that has objects that are not inconsistent with the general objects of the Baptist Union, and
- (b) the constitution of which provides:
  - (i) that a person is not eligible for membership of the corporation unless that person is a member of the specific congregation giving the direction, and
  - (ii) that a person ceases to be a member of the corporation if that person ceases to be a member of the specific congregation giving the direction, and
  - (iii) that no alteration or amendment to its constitution can take effect without the consent in writing of the Trust, and
- (c) whose directors and other officers are:
  - (i) members of the corporation (and accordingly members of the congregation giving the direction), or
  - (ii) members of another congregation, or
  - (iii) persons whom the Executive Committee is satisfied are committed adherents of evangelical doctrines or committed members of an evangelical church or party, and
- (d) that has a proportion of directors or other officers who are neither members of the corporation nor of a congregation that is no more than that determined by the Executive Committee in writing from time to time.

### **23 Power of Trust to invest money separately or in common fund**

(1) The Trust may, in its discretion, deal with any money in its hands, whether or not it is

subject to any trust, in either of the following ways:

- (a) on the separate account of any trust the property of which it forms part,
  - (b) as part of a common fund established and kept in the books of the Trust, except where the money is required to be invested in some other specified manner and investment in a common fund is specifically prohibited by the terms of the trust governing dealings with the money.
- (2) The Trust, except to the extent, if any, that it is expressly forbidden so to do by the terms of any trust to which the Trust is subject, may invest any funds subject to its control, whether at the time in a state of investment or not and whether forming part of the common fund referred to in subsection (1) or not, in the following forms of investment:
- (a) in any manner in which trust money may be invested by a trustee under the [Trustee Act 1925](#), or any other Act or any Act or Ordinance of the Commonwealth or of any State or Territory thereof,
  - (b) on deposit with any bank carrying on business within the Commonwealth,
  - (c) in accordance with such terms, provisions and conditions as are prescribed by or under any general or special order of the Supreme Court of New South Wales, in any manner authorised by any such order,
  - (d) in the debentures or debenture stock or the preference stock or shares of any company incorporated under the law of any State of the Commonwealth, being a company which is listed on a stock exchange within the Commonwealth and which has a paid up capital of not less than \$5,000,000 and which has paid dividends upon its ordinary capital at the rate of at least 5 per cent per annum for at least the 10 years next preceding the time of investment (of which fact a letter certifying to that fact and purporting to be signed by the secretary of the company shall be sufficient evidence),
  - (e) in loans, either secured or unsecured, being loans to any Baptist Church or District Association or to the Baptist Union and being loans made upon such terms and conditions as to the making of loans as the Trust thinks fit.
- (3) The Trust shall not make any investment pursuant to subsection (2) (d) which would result, when the investment is made, in the total of the money invested by the Trust pursuant to that paragraph exceeding one quarter of the total amount of the funds subject to its control at that time.
- (4) Any sum advanced by the Trust by way of a loan made pursuant to subsection (2) shall bear interest at a rate fixed by the Trust or, at the discretion of the Trust, may be advanced free of interest.

- (5) Investments made with money forming part of the common fund shall not be made on account of, or belong to, any particular trust, but the Trust shall cause to be kept in the books of the Trust an account showing at all times the current amount in the common fund to the credit of each trust.
- (6) Subject to this Act, the Trust may sell investments belonging to the common fund and apply the money for the purpose of attaining its objects.
- (7) The Trust may at any time withdraw from the common fund any amount at credit in the common fund on the account of any trust and may invest, pursuant to subsection (2), any such amount on the account of that trust otherwise than as part of the common fund.
- (8) Subject to section 24 (2), no capital appreciation or diminution in the value of any investments made from the common fund shall increase or diminish the amount at credit in the common fund on the account of any particular trust and, on the withdrawal from the common fund of any amount invested therein, the trust in question shall be entitled to be credited with the actual amount which was so invested without regard to any such appreciation or diminution.
- (9) In its administration of the common fund, the Trust shall be subject to the control and direction of the Executive Committee.

#### **24 Allocation of income received on investments made from common fund**

- (1) The Trust may charge, at the rate fixed for the time being by the Executive Committee, an annual management commission in respect of income received by the Trust in the course of its administration of the common fund or of any particular investment.
- (2) Income received from the investment of money forming part of the common fund shall be part of that fund and shall be credited to an account to be called the "Income Suspense Account" and shall be allocated therefrom, after deduction of the management commission charged under subsection (1), ratably between the accounts of the particular trusts for which the money so invested is held, and any loss arising from any such investment shall be debited to the Income Suspense Account and shall also be allocated between those accounts ratably.
- (3) Subject to subsection (2), any capital appreciation, profit, income or remuneration (which is not on the account of any particular trust) and any commission or other remuneration earned by the Trust as executor, administrator or trustee, belongs to the Trust.

#### **25 Determination of capital and income**

The Trust may, in the exercise of its functions, determine whether any money vested in it shall be considered as capital or income and out of what part of trust property and

whether out of income, accumulated income or capital, any expenses, outgoings or losses shall be paid or borne.

## **26 Claims for compensation on compulsory acquisition etc**

The Trust may act in relation to the exchange, dedication or compulsory acquisition of any property vested in it, may make claims for compensation in respect thereof and may agree to and settle any such claims, for such considerations, and on and subject to such terms and conditions, as may appear advisable to it.

## **27 Trust may act as executor etc**

(1) The Trust may:

- (a) apply for and obtain, or join in applying for and obtaining, probate of the will, or letters of administration of the estate, of a deceased person, where a Baptist Church, a District Association, the Baptist Union or any committee or agency of the Baptist Union or the Trust has a beneficial interest, vested or contingent, in the estate of that person, or
- (b) accept appointment, and act, as trustee or a joint trustee under and in pursuance of any trust where the property subject to the trust is not vested in the Trust by, or pursuant to, this Act and the trust was created wholly or partly for the benefit of a Baptist Church or District Association, or the Baptist Union or any committee or agency of the Baptist Union,

and may do all things necessary for the exercise of its functions as executor, administrator or trustee, as the case may be.

(2) On behalf of the Trust, a member of the Trust or a person employed by the Trust may, if authorised by the Trust for the purpose, swear an affidavit, make a declaration or statement, give security and do any other act or thing that is by any charter, Act, rule of court or regulation required to be done by a person applying for or granted probate or letters of administration, or administering a trust, as the case may be.

(3) The Trust may:

- (a) renounce executorship, or
- (b) decline to act as administrator of an estate.

(4) Any commission or other remuneration earned by the Trust as executor, administrator or trustee, as the case may be, shall belong to the Trust.

## **28 Reimbursement of Trust**

(1) Where:

- (a) the Trust is required to pay to any other person any money for which it is liable by

reason of:

- (i) its having complied with a direction given by or on behalf of a congregation, or
  - (ii) its having lawfully incurred the liability on behalf of the congregation, and
- (b) the money has not been paid to the Trust or on behalf of the Trust to the other person within 6 months of the service on the congregation in accordance with subsection (3) of a written notice:
- (i) requiring payment of the money, and
  - (ii) stating the intention of the Trust to exercise its powers under this section,

the Trust may:

- (c) mortgage or sell all or any trust property held by the Trust on behalf of the congregation at such time, in such manner and upon such terms and conditions as it thinks fit, and
  - (d) out of the proceeds of the mortgage or sale, pay the money the subject of the notice to the Trust or other person, as the case may require, and reimburse the Trust or pay, as the case may require, all interest and other expenses, including legal costs, if any, incurred in connection with the exercise of its powers under this section.
- (2) Any residue of money held by the Trust after it has exercised its powers under subsection (1) with respect to trust property held by it for the benefit of a congregation shall continue to be held by the Trust in accordance with this Act for the benefit of the congregation.
- (3) A notice is served on a congregation in accordance with this section:
- (a) where there is a secretary or deacon of the congregation, if it is served personally on the secretary or deacon,
  - (b) where there is no secretary or deacon of the congregation, if it is served personally on 2 members of the congregation and:
    - (i) it is affixed to the noticeboard or door of the church building in which the congregation worships for the time being, or
    - (ii) where there is no such church building, it has been exhibited on 3 consecutive Sundays upon land used, occupied or enjoyed by the congregation.

## **29 Baptist Union temporarily has trust property functions of dissolved congregations**

- (1) This section applies if, while any trust property situated in a district is vested in the Trust, a congregation which is or was established in the district is dissolved or



dispersed so that there are no members of a congregation in that district meeting together for the public worship of God according to the usages of the Baptist denomination.

- (2) Until a congregation having 10 members or more is again formed in that district, the Baptist Union is to have and may exercise all of the functions with respect to the trust property that the dissolved or dispersed congregation would otherwise have had and would otherwise have been capable of exercising.
- (3) However, for the first 6 months after the dissolution or dispersal:
  - (a) the Baptist Union may not direct the Trust to sell or dispose of any trust property held by it on behalf of the dissolved or dispersed congregation, and
  - (b) the Trust must not sell or dispose of any such trust property.

**29AA Baptist Union temporarily has trust property functions of congregations with small membership**

- (1) This section applies if, while any trust property situated in a district is vested in the Trust, a congregation which is or was established in the district consists of less than 10 members.
- (2) Until the congregation increases in membership to 10 members or more:
  - (a) the Baptist Union is to have and may exercise all of the functions with respect to the trust property that the congregation would otherwise have had and would otherwise have been capable of exercising, and
  - (b) the congregation does not have those functions and is not capable of exercising them.
- (3) The Baptist Union must not exercise any function pursuant to subsection (2) with respect to trust property held on behalf of a congregation unless the Baptist Union has first consulted the members of the congregation.
- (4) However, for the first 2 years during which the congregation consists of less than 10 members:
  - (a) the Baptist Union may not direct the Trust to sell or dispose of any trust property held by it on behalf of the congregation unless the members of the congregation consent, and
  - (b) the Trust must not sell or dispose of any trust property held by it on behalf of the congregation unless the members of the congregation consent.

**29A Dissolution or dispersal of an organisation**

- (1) In this section:

**organisation** means a society, District Association or other unincorporated association of persons (including a committee or agency of the Baptist Union but not including a congregation) that is or was established in a district in which trust property is situated (or, in the case of a committee or agency of the Baptist Union, that is or was established in New South Wales).

- (2) This section applies to an organisation that (whether before or after the commencement of this section):
  - (a) is dissolved or dispersed so that there are no members meeting in respect of that district for the purposes of the organisation (or, in the case of a committee or agency of the Baptist Union, in New South Wales), or
  - (b) in the case of a District Association, decreases its membership to fewer than 4 Baptist Churches.
- (3) The Baptist Union has and may exercise all of the functions with respect to trust property which an organisation to which this section applies might have exercised before it became an organisation to which this section applies.
- (4) This section ceases to apply to an organisation if:
  - (a) in the case of an organisation referred to in subsection (2) (a)—the organisation is again formed in the district (or, in the case of a committee or agency of the Baptist Union, in New South Wales), or
  - (b) in the case of a District Association—the District Association increases its membership to 4 or more Baptist Churches.
- (5) Subsection (3) does not authorise the Baptist Union to direct the Trust to sell or dispose of (and the Trust must not sell or dispose of) any trust property on behalf of an organisation to which this section applies:
  - (a) if the organisation is dissolved or dispersed, until the expiration of 6 months after the dissolution or dispersal, or
  - (b) if a District Association decreased its membership to fewer than 4 Baptist Churches:
    - (i) until the expiration of a period of 2 years during which the District Association consists of fewer than 4 Baptist Churches, or
    - (ii) unless all members of the District Association consent to the sale or disposition before the expiration of that period.

### **30 Power to retire**

- (1) Without limiting any other power conferred upon the Trust by this Act, the Trust may

at any time of its own motion decline to act as trustee in respect of property which would otherwise be vested in the Trust (except property that is so vested by or pursuant to section 16, 17, 18 or 19).

(2) (Repealed)

### **31 Trust may hold property jointly**

The Trust may hold or acquire any real or personal property either alone or jointly with another or others as joint tenant or tenant-in-common.

## **Part 5 Miscellaneous**

### **32 Administration of congregation not affected**

The administration of the affairs of any congregation shall not, except as by this Act specially directed, be in any manner affected by this Act.

### **33 Construction of certain instruments**

(1) To the extent to which, by a deed, will or other instrument that takes effect on or after the appointed day, any property:

(a) is devised, bequeathed, given, granted, released, conveyed or appointed to the Baptist Union or any committee of the Baptist Union or any unincorporated agency of the Baptist Union, in each case for the benefit of, or in trust for, any Baptist Church or District Association or for the religious, social, educational or charitable work of any Baptist Church or District Association, or

(b) is payable to, or receivable or recoverable by, the Baptist Union or any committee of the Baptist Union or any unincorporated agency of the Baptist Union, in each case on behalf of any Baptist Church or District Association or for the religious, social, educational or charitable work of any Baptist Church or District Association,

the deed, will or other instrument shall be read and construed as if any reference in it to the Baptist Union or to a committee of the Baptist Union or to any unincorporated agency of the Baptist Union were a reference to the Trust, which shall take, receive or recover, as the case may require, the property in its name, but for the benefit of, or in trust for, the Baptist Church or District Association or for the religious, social, educational or charitable work of the Baptist Church or District Association, as the case may be.

(2) A receipt or acknowledgment for any property that vests in the Trust pursuant to this section shall exonerate the person or persons liable to pay, deliver or transfer the property to the Trust from any liability to see to the application thereof, and from any liability for the loss, misapplication or non-application thereof, if the receipt or acknowledgment:

- (a) is executed in accordance with section 13 (2) under the common seal of the Trust,  
or
  - (b) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust or any 2 members thereof.
- (3) Where, by reason of the provisions of any deed, will or other instrument, conditions attach to any property that vests in the Trust pursuant to this section, the Trust shall hold, manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with the property in accordance with those conditions, but where no conditions attach or in so far as those conditions do not extend or are not applicable to any such property the Trust shall, subject to subsection (5) (b), hold, manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with that property in accordance with section 22 (2).
- (4) Where, in the absence of this subsection, any property would fail to vest in the Trust pursuant to this section by reason that:
- (a) a former Baptist Church or District Association was dissolved or dispersed or had otherwise ceased to exist, or
  - (b) a former committee of the Baptist Union or unincorporated agency of the Baptist Union had ceased to exist,
- the Baptist Church, District Association, committee or unincorporated agency, as the case may be, shall, for the purpose only of enabling the property so to vest, be deemed not to have ceased to exist.
- (5) Where, by reason of the operation of subsection (4), any property vests in the Trust pursuant to this section:
- (a) in trust for, or on behalf of, a former Baptist Church or District Association, the Baptist Church or District Association shall, for the purposes of the application of section 29 or 29A to and in respect of that property, be deemed to have ceased to exist immediately after the vesting of the property, or
  - (b) in trust for, or on behalf of, a former committee of the Baptist Union or unincorporated agency of the Baptist Union, the property shall be dealt with by the Trust in accordance with section 22 (2).

#### **34 Waiver of certain conditions etc in Crown grants**

- (1) No title to any land vested in the Trust by this Act shall be held bad either at law or in equity by reason of any breach or non-performance before, on or after the appointed day 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), (3) (Repealed)

### **35 Evidence**

- (1) A certificate under the common seal of the Trust to the effect that property therein specified is held by it upon trust for the Baptist Union, a committee or agency of the Baptist Union or for any Baptist Church or District Association shall, in any action, suit or other proceeding, civil or criminal, be prima facie evidence that the property so specified is so held.
- (2) A certificate under the common seal of the Trust to the effect that the estate or interest of persons therein specified in land so specified is an estate or interest vested in the Trust by this Act shall, for the purposes of any application by the Trust to be registered under the *Real Property Act 1900*, as the proprietor of that estate or interest pursuant to that vesting, be conclusive evidence of the matter so certified.
- (3) A certificate signed by the President of the Baptist Union and 2 members of the Executive Committee to the effect that the Executive Committee has determined:
  - (a) that an object described in the certificate is a general object of the Baptist Union within the meaning of section 22,
  - (b) that the boundaries of a district are as described in the certificate,
  - (c) that property specified in the certificate is within a district so described,
  - (d) that a congregation so described is or is not in existence or has been dissolved or dispersed, or
  - (e) that a congregation so described consists of less than 10 members,at a time specified in the certificate shall, for the purposes of this Act, be conclusive evidence of the matter referred to in paragraph (a), (b), (c), (d) or (e) which is expressed in the certificate as having been so determined.

### **36 Receipt for certain money**

A receipt for money payable to the Trust shall exonerate the mortgagee, purchaser or other person by whom or on whose behalf the money is so payable from any liability to see to the application thereof, and from any liability for the loss, misapplication or non-application thereof, if the receipt:

- (a) is executed in accordance with section 13 (2) under the common seal of the Trust, or
- (b) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust or any 2 members thereof.

### **37 Exoneration from inquiry**

No purchaser, mortgagee, lessee or other person dealing with the Trust and neither the Registrar-General, the Crown Solicitor nor any other person registering or certifying title shall, upon any sale, exchange, mortgage, lease or other dealing purporting to be entered into by the Trust, be concerned to see or inquire into the necessity for or the propriety of the exercise by the Trust of its powers or the mode of exercising them or be affected by notice that the exercise of any such power is unauthorised, irregular or improper.

### **38 Indemnification of certain persons**

A member of the Trust, and any other person, bona fide exercising a function in relation to trust property pursuant to this Act or any by-law or pursuant to any regulation or direction of an Assembly, and their executors and administrators, shall be entitled to be indemnified out of trust property against all expenses and liabilities incurred by them in connection with the exercise by them of the function.

### **39 Service of documents**

The service of any writ, statement of claim, summons or other legal process on the Trust may be effected by serving it on the secretary for the time being of the Trust or on any person appearing to be authorised by the Trust to accept service thereof.

### **40 Legal proceedings**

- (1) Legal proceedings relating to any trust property or to any contract or other matter arising out of the management, administration or development of any trust property may be brought in the name of the Trust.
- (2) The Trust may sue and be sued in all actions and proceedings for the purposes of ascertaining whether any property is property that is vested in the Trust by or pursuant to this Act and of ascertaining the trusts upon which any such property is held.

### **41 Power of Executive Committee to alter trusts**

- (1) Subject to subsection (2), in every case where by reason of the circumstances subsequent to the creation of the trusts, including trusts declared under this section, to which any property vested in the Trust is for the time being subject, it has, in the opinion of the Trust, become impossible or inexpedient to carry out or observe the trusts, it shall be lawful for the Executive Committee by resolution to record that opinion, and by the same or any subsequent resolution, with the consent of the Trust first had and obtained, to declare other trusts for, or for the use, benefit or purpose of, the body for which the property was previously held under the firstmentioned trusts, and the firstmentioned trusts shall thereupon by force of the resolution cease and determine and the property shall thereupon be held upon the other trusts accordingly.

- (2) In determining the trusts upon which property shall be held pursuant to a resolution made under subsection (1), the Executive Committee shall ensure that the property shall, by reason of those trusts, be required to be dealt with for purposes which, in its opinion, are as nearly as may be the same as the purposes for which the property was held immediately before the making of the resolution, unless the Executive Committee by that resolution declares that, by reason of circumstances subsequent to the creation of the trusts on which the property was formerly held by the Trust, it is, in the opinion of the Executive Committee, impossible or inexpedient for the property or some part thereof to be dealt with for those purposes, in which case the property or that part thereof may be dealt with and applied for the use and benefit of the body for which it was previously held but for such other purposes as may be declared by resolution of the Executive Committee.

#### **42 Directions of congregation to Trust**

- (1) A direction of a congregation is, for the purposes of this Act, given when:
- (a) a resolution in favour of the direction has been passed by the required majority at a meeting of the congregation of which notice has been given in accordance with this section, and
  - (b) in the case only of a congregation with between 10 and 20 members—the Executive Committee has consented to the direction being given.
- (2) (Repealed)
- (3) Notice of a meeting of a congregation has been given in accordance with this section when the following procedures have been completed:
- (a) a notice:
    - (i) setting out the object of the meeting, together with the day, hour and place of the holding thereof, and the nature of the proposed resolution, and
    - (ii) signed by the secretary for the time being of the congregation, or (in the case of his or her neglect for 7 days or absolute refusal to sign the notice after request in writing made by 2 members of the congregation who would be entitled to vote if they were to be present at the meeting or in the case of there being no secretary) signed by 2 members of the congregation who would be so entitled to vote,shall be posted on the door or notice board of the building which is used for public worship by the congregation on at least 2 successive Sundays immediately preceding the day appointed for the meeting to take place, and
  - (b) a notice setting out the object of the meeting, together with the day, hour and place of the holding thereof (but not necessarily setting out the nature or terms of

the proposed resolution) shall be read during some part of each of the public worship services held on the 2 Sundays referred to in paragraph (a) in the building referred to in that paragraph.

- (4) The chairman of a meeting held under this section:
- (a) shall be a person chosen by the majority of the votes of the members of the congregation who are of or above the age of 18 years and personally present at the meeting, and
  - (b) shall not have a casting vote but, if he or she is a member of the congregation, shall have a deliberative vote.
- (4A) For the purposes of this section, a resolution is passed by the required majority if it is passed:
- (a) by a majority of not less than 75% of the personal votes of such of the members of the congregation as are of or above the age of 18 years and as are present and vote at the meeting, and
  - (b) by at least 10 persons.
- (5) Unless a poll is demanded at the meeting by at least 5 members entitled to vote, a declaration in writing signed by the chairman of a meeting held under this section to the effect that the resolution has been passed by the required majority of votes shall be prima facie evidence of the fact without proof of the number or proportion of the votes cast in favour of or against the resolution.
- (6) In relation to any meeting held under this section, the provisions of any written constitution of the congregation, the members of which are present at the meeting, shall be observed in addition to the requirements of this section, except where any such provision is inconsistent with this section.
- (7) The requirements of this section with respect to a meeting shall be deemed not to have been breached by reason only that notice of the meeting may not have been read during some part of each of the public worship services held on the 2 successive Sundays immediately preceding the day appointed for the meeting to take place if a notice in writing similar to that posted, pursuant to subsection (3) (a), on the door or notice board of the building used for public worship by the congregation is delivered or sent by pre-paid post to each of the persons who would be entitled to vote at the meeting at his or her last known address or at his or her address as shown in the roll or register of the congregation so as to be received by each of those persons not less than 5 nor more than 21 days prior to the day appointed for the meeting to take place.
- (8) For the purposes of subsection (7), a notice sent by pre-paid post shall be deemed to have been received on the second day following the date of posting.



- (9) An accidental omission to give a notice under subsection (7) to any person, or the failure of any person to receive any such notice, shall not invalidate any resolution passed at the meeting to which the notice relates.

#### **43 Meetings of District Associations for purpose of giving directions to Trust**

- (1) A direction of a District Association shall be deemed to have been given, for the purposes of this Act, whenever a resolution in favour of the direction has been passed at a meeting of the District Association by a majority of not less than three quarters of the personal votes of such of the persons entitled under the provisions of the constitution of the District Association to vote as are of or above the age of 18 years and as are present and vote at the meeting, being a meeting of the District Association of which notice setting out the object of the meeting, together with the day, hour and place of the holding thereof, and the nature of the proposed resolution has been given in accordance with the provisions of the constitution of the District Association.
- (2) (Repealed)
- (3) Unless a poll is demanded at the meeting by at least 5 persons entitled to vote, a declaration in writing signed by the chairman of a meeting held under this section to the effect that the resolution has been passed by the required majority of votes shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) In relation to any meeting held under this section, the provisions of any written constitution of the District Association, the members of which are present at the meeting, shall be observed in addition to the requirements of this section, except where any such provision is inconsistent with this section.

#### **44 Certain provisions of [Associations Incorporation Act 2009](#) not to apply**

- (1) Schedule 2 to the [Associations Incorporation Act 2009](#) does not apply in relation to trust property.
- (2) This section applies to an association which was incorporated before or after the commencement of Schedule 1 (9) to the [Baptist Churches of New South Wales Property Trust \(Amendment\) Act 1992](#).

#### **45 Savings, transitional and other provisions**

Schedule 3 has effect.

### **Schedule 1 Funds**

(Section 20 (1) (a))

Baptist Ministers Sustentation Fund as constituted by Deed or Declaration bearing date 16th March 1891, and made by Hugh Dixson, Joseph Palmer, James White, James Cunningham, Robert Nall, William

White and William Buckingham.

The Aged and Infirm Ministers' Trust Fund as constituted by Deed or Declaration bearing date 6th August 1903, and made by Hugh Dixson, Herbert Priestley, William White, George Pitty Barbour and James Cunningham.

Home Mission Manse Fund as constituted by Deed or Declaration bearing date 26th July 1920, and made by William Ardill, Alfred Spurgeon White, Joseph Henry Burnet, Charles Edward Groves and Henry James Moreton.

The Baptist Union of New South Wales Loan and Building Fund (including the "Home Work Section Capital Account") established under regulations approved by the Baptist Union.

## Schedule 2 Funds subject to borrowing restriction

(Section 20 (1) (a), (2))

The Centenary Church Extension Capital Fund established by special resolution of the Baptist Union.

The Baptist Union of NSW Church Extension Fund (also called "The Church Extension Loan Fund") established by resolution of the Executive Committee.

The Home Work Council Legacy Fund (also called the "Department of Home Ministries Legacy Fund") established by the Department of Home Ministries (formerly called the "Home Work Council").

## Schedule 3 Savings, transitional and other provisions

(Section 45)

### Power to retire

Section 30 (2), as in force immediately before it was repealed by Schedule 1 (7) (b) to the [Baptist Churches of New South Wales Property Trust \(Amendment\) Act 1992](#), continues to have effect in relation to a direction given to the Trust under that subsection before its repeal and that had not been complied with as if that subsection were still in force.

## Schedule 4 Transferred provisions—[Saint Andrew's Cathedral Site Agreements and Central Baptist Church Act 1936](#)

### 1 Definitions

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

**Baptist Union** means the Baptist Union of New South Wales.

**repealed Act** means the [Saint Andrew's Cathedral Site Agreements and Central Baptist Church Act 1936](#).

**trustees** means the trustees of the Central Baptist Church, Bathurst Street, Sydney, formerly known as the Bathurst Street Baptist Church.

## **2 Vesting of lands—trusts and conditions**

The lands vested in the trustees and more particularly described in the Third Schedule to the repealed Act (as in force immediately before its repeal) shall vest in the Baptist Union for an estate in fee simple and shall be held by the said corporation together with the building required by section 10 of that Act to be erected thereon, upon the trusts and subject to the provisions and conditions set out in the Fourth Schedule to that Act.

## **3 Transferred provisions to which [Interpretation Act 1987](#) applies**

Clauses 1 and 2 re-enact (with minor modifications) sections 8 and 9 of the repealed Act and are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.