Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992 No 10

[1992-10]

New South Wales

Status Information

Currency of version

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

Provisions in force

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

Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the Administrative Arrangements (Minns Ministry—Administration of Acts) Order 2023.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

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New South Wales

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New South Wales

An Act to constitute as a corporation the Holy Apostolic Catholic Assyrian Church of the East Property Trust, to specify the Trust's 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 *Holy Apostolic Catholic Assyrian Church of the East Property Trust Act 1992*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

appointed day means the day on which section 4 commences.

Association means the association incorporated in New South Wales under the name "Trustees of the Holy Apostolic Catholic Assyrian Church of the East Incorporated".

Bishop means the Bishop of the Diocese.

Board means the Board of Trustees as referred to in section 4 (2).

Church means the Holy Apostolic Catholic Assyrian Church of the East.

conveyance includes transfer, assignment and assurance.

Diocesan Committee means the Diocesan Committee of the Diocese.

Diocesan Executive Committee means the Diocesan Executive Committee of the Diocese.

Diocese means the Holy Apostolic Catholic Assyrian Church of the East, Diocese of Australia.

Trust means the Holy Apostolic Catholic Assyrian Church of the East Property Trust constituted by this Act.

trust property means property vested in or acquired by the Trust.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2 Constitution and functions of the Trust

4 Constitution of the Trust

(1) There is constituted by this Act a corporation under the corporate name of the Holy Apostolic Catholic Assyrian Church of the East Property Trust.

(2) The Trust is to consist of a Board of Trustees comprising:

(a) the Bishop, and

(b) the members of the Diocesan Executive Committee, including the Treasurer and Secretary, and

(c) 2 members of the Church elected by the Diocesan Committee in accordance with the by-laws.

(3) The quorum for a meeting of the Board is 3 members (one of whom must be the Bishop) or, if the by-laws specify a greater number, that greater number.

(4) A decision supported by a majority of the votes (one of that majority being the vote of the Bishop) cast at a meeting of the Board at which a quorum is present is the decision of the Board.

(5) Any act, matter or thing done by the Board in the name of, or on behalf of, the Trust is taken to have been done by the Trust.

(6) The procedures of the Trust are those specified in the by-laws.

5 Functions of the Trust

(1) The functions of the Trust are as follows:

(a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,

(b) to acquire property by gift or by devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,

(c) to borrow or lend money for the purposes of the Church,

(d) to mortgage, charge or otherwise encumber trust property,

(e) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.

(2) The Trust has such other functions as are conferred or imposed on it by this Act.

(3) This section does not limit section 50 of the *Interpretation Act 1987*.

6 Trust may hold property jointly

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

7 Investment

The Trust:

(a) may invest or lend any funds held by it in accordance with the terms of any trust to which the funds are subject, and

(b) may also invest or lend any such funds in accordance with the *Trustee Act 1925*, unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.

8 Blending of trust funds

(1) The Trust may invest trust funds held by it for different purposes or activities, or any part of those funds, as one fund (***the fund***).

(2) Any income arising from the investment of the fund is to be distributed ratably among the several purposes or activities for which the money invested is held in trust.

(3) Any loss arising from an investment of the fund is to be distributed ratably among the several purposes or activities for which the money invested is held in trust.

(4) The Trust may make advances out of funds referred to in this section for any activity, service, institution or interest of the Church.

(5) Any sum so advanced is to be taken to be an investment of the money and bears interest at a rate fixed by the Trust.

(6) The sum advanced, and any interest on that sum, is to be taken to be a charge on the assets held by the Trust for the activity, service, institution or interest of the Church

for which the advance is made.

9 Co-operative use of property

(1) In this section, ***scheme of co-operation*** means a scheme entered into by the Trust:

(a) with or involving a church of another denomination or any congregation or activity of such a church, and

(b) concerning the use of trust property.

(2) The Trust may permit trust property to be used, managed and administered for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.

(3) Any proceeds obtained by the Trust from a scheme of co-operation are to be applied in the manner determined by the Trust.

(4) Conditions that the Trust may determine under this section include:

(a) conditions with respect to the making of monetary contributions for the acquisition, construction, alteration, maintenance or repair of property vested in or held on behalf of a co-operating church or congregation, and

(b) the giving or taking of a security or charge over any property.

(5) Trust property may be used in accordance with a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.

(6) Trust property is not to be regarded as property that is subject to an express trust expressly forbidding its use under a scheme of co-operation merely because it is directed to be held in trust for worship within, or for the purposes of, the Church.

10 Variation of trusts

(1) The Trust may by resolution declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purposes or any other of its terms.

(2) The Trust may, by the same or a later resolution, declare that the property is subject to another trust and, on the making of such a declaration:

(a) the trust that is to be replaced ceases, and

(b) the property is to be held subject to the other trust.

(3) In making such a declaration, the Trust must ensure that the property is dealt with as nearly as is possible for the purposes for which the property was held immediately

before the declaration.

(4) However, the Trust may by resolution declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the trust that is to be replaced.

(5) On making a resolution under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of the Church as the Trust declares by resolution.

11 Trust may act as executor etc

(1) The Trust:

(a) may apply for and obtain, or join in applying for and obtaining, probate of the will, or the letters of administration for the estate, of a deceased person if the Church has a beneficial interest (vested or contingent) in the estate of that person, and

(b) may accept appointment, and act, as trustee or co-trustee under a trust if the trust property is not already vested in the Trust by or in accordance with this Act, and the trust was created wholly or partly for the benefit of the Church, and

(c) may do all things necessary for the exercise of its functions as executor, administrator or trustee.

(2) If authorised by the Trust to do so, a member of the Trust or a person employed by the Trust may, on behalf of the Trust:

(a) swear an affidavit, or

(b) make a declaration or statement, or

(c) give security and do any other act or thing,

that is, by any charter, enactment or rule of court, required to be sworn, made or done by a person applying for or granted probate or letters of administration or who is administering a trust.

(3) The Trust may:

(a) renounce executorship, or

(b) decline to act as administrator of an estate, or

(c) retire, or decline to act, as trustee of property (other than property vested in it by or in accordance with Part 3).

(4) Any commission or other remuneration earned by the Trust as an executor, administrator or trustee appointed under the authority of this section belongs to the

Trust and the Trust may use or apply the commission or remuneration only for an object or purpose specified or approved by the Trust.

12 Claims for compensation on compulsory acquisition etc

In relation to the exchange, dedication or compulsory acquisition of any trust property, the Trust may:

(a) act on behalf of the Church and make claims for compensation, and

(b) agree to and settle any such claims for such amount, and on such terms and conditions, as it thinks fit.

Part 3 Vesting of property in the Trust

13 Vesting of property in the Trust on the appointed day

(1) Any property that was, immediately before the appointed day, vested in the Association or in any other person in trust for the Church is, on that day, divested from the Association or that person and is, to the extent that it was so vested, vested (without conveyance) in the Trust.

(2) The vesting of the property in the Trust does not affect:

(a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or

(b) any trust on which the property was held,

immediately before the vesting of the property.

(3) No attornment to the Trust by a lessee of land vested in the Trust by this section is necessary.

(4) An instrument executed only for:

(a) the purpose of giving effect to this section, or

(b) a purpose ancillary to, or consequential on, the operation of this section,

is exempt from New South Wales stamp duty.

14 Vesting of property in the Trust after the appointed day

To the extent to which an instrument (including a will) provides for any property (other than property to which section 13 applies):

(a) to be given to the Church or to a person (other than the Trust) for the benefit of the Church, or

(b) to be payable to, or receivable by, the Church or any person (other than the Trust) on behalf of the Church, or

(c) to be recoverable by the Church or by any person (other than the Trust) for the Church,

a reference in the instrument to the Church, or to that person, is taken to be a reference to the Trust.

Part 4 Miscellaneous matters

15 Seal

(1) The seal of the Trust is to be kept by the secretary of the Trust and is to be affixed to a document only:

(a) in accordance with a resolution of the Trust, and

(b) in the presence of the Bishop and not fewer than 2 other members of the Board, and

(c) with an attestation by the signatures of those persons of the fact of the affixing of the seal.

(2) An instrument purporting to have been sealed with the seal of the Trust and purporting to have been signed by the Bishop and not fewer than 2 other members of the Board is taken to have been executed in accordance with this section.

16 Form and execution of certain instruments

(1) Any instrument relating to any property or matter which, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Trust in writing under the seal of the Trust.

(2) Any instrument relating to any property or matter which, if made by or between individuals, would by law be required to be in writing signed by the parties to be bound by it may be made on behalf of the Trust in writing by any person acting under its authority, express or implied.

(3) Any contract relating to any property or matter which, if made between individuals, would by law be valid although made orally only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority, express or implied.

17 Execution under seal by agent etc

(1) The Trust may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed or other document on its behalf as its agent

or attorney.

(2) Any deed signed by such an agent or attorney under his or her seal on behalf of the Trust binds the Trust and has the same effect as if it were under the seal of the Trust.

18 Evidence

(1) A certificate under the seal of the Trust to the effect that property specified in the certificate is held by it in trust for the Church is, in any legal proceedings, evidence that the property is so held.

(2) A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the *Real Property Act 1900* as the proprietor of that estate or interest, conclusive evidence of the matters so certified.

19 Receipt for certain money

A receipt for money paid to the Trust which:

(a) is executed under the seal of the Trust, or

(b) is in writing signed by not fewer than 2 members of the Board, or

(c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust or by not fewer than 2 members of the Board,

exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.

20 Exoneration from inquiry

If the Trust acquires, disposes of or otherwise deals with property:

(a) a vendor, purchaser, mortgagee, lessee or other person who is a party to any such dealing, and

(b) the Registrar-General or any other person registering or certifying title to the property,

do not have to inquire whether the Trust has power to so deal with the property and are not affected by notice that the Trust does not have such power.

21 Indemnification of certain persons

A member of the Trust and any other person, exercising in good faith a function in relation to trust property in accordance with this Act or any by-law, and the executor or administrator of any such member or person, are entitled to be indemnified out of trust property against all expenses and liabilities that they incur in connection with the exercise of the function.

22 Service of documents

Any document may be served on the Trust by delivering it to, or sending it by post to, the secretary of the Trust or any person apparently authorised by the Trust to accept service.

23 By-laws

(1) The Trust may make by-laws, not inconsistent with this Act, for the control, management and administration of, and dealings with, trust property and the constitution and procedure of the Trust.

(2) A certificate under the seal of the Trust to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is conclusive evidence that the by-law was in force on that day.

(3) A by-law may be amended or repealed by a subsequent by-law made under this section.

24 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 24)

1 Definition

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

2 Claims and liabilities

On and from the appointed day, the following provisions have effect in relation to property vested in the Trust in accordance with section 13:

(a) the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act,

(b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act,

(c) proceedings before a court or tribunal by or against a former trustee that, immediately before the appointed day, were pending or in the course of being heard become proceedings by or against the Trust,

(d) to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the appointed day, it becomes an act, matter or thing done or omitted to be done by the Trust,

(e) a reference in any instrument to a former trustee becomes a reference to the Trust,

(f) time that had commenced to run in relation to a former trustee becomes time that had commenced to run in relation to the Trust.