

# Lutheran Church of Australia (New South Wales District) Property Trust Act 1982 No 101

[1982-101]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Authorisation

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# Lutheran Church of Australia (New South Wales District) Property Trust Act 1982 No 101



New South Wales

An Act to constitute the Lutheran Church of Australia (New South Wales District) Property Trust and to define its powers, authorities, duties and functions; to provide for the vesting of certain property in the Trust; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Lutheran Church of Australia (New South Wales District) Property Trust Act 1982*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in 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### 3 (Repealed)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).

**Church** means the Lutheran Church of Australia, New South Wales District.

**Church Council** means the Church Council constituted under the Constitution.

**Congregation** means a group of persons who are members of the Lutheran Church of Australia and who have constituted themselves as an organised local body which is a member of the Church.

**Constitution** means the Constitution of the Church as in force for the time being.

**Parish** means a Congregation or group of Congregations which is served by one or more pastors of the Church.

**President** means the President for the time being of the Church.

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

**Synod** means the Synod constituted under the Constitution.

**Trust** means the Lutheran Church of Australia (New South Wales District) Property Trust constituted by this Act.

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

- (2) Except in respect of the matters and to the extent set forth in this Act, nothing in this Act shall be held to affect the government, management or administration of any Congregation or Parish coming under the operation of this Act.

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

### **5 Constitution and appointment of members**

- (1) There is hereby constituted a corporation under the name of “Lutheran Church of Australia (New South Wales District) Property Trust” which shall, subject to this Act, consist of 5 members, of whom:
- (a) 2 shall be appointed by the Church Council from among its members, and
  - (b) 3 shall be members of the Lutheran Church of Australia appointed by the Synod who may be, but shall not necessarily be, members of the Church Council.
- (2) Subject to this Act, Keith Otto Douglas Nagel and Robert Paul Hamann, who shall be deemed to be appointed by the Church Council, and Milton Gerald Briese, William Frederick Meeske and Carl Albin Dohler, who shall be deemed to be appointed by the Synod, shall be deemed to have been duly appointed as members of the Trust to hold office until the end of the ordinary convention of the Synod next succeeding the appointed day and, if otherwise qualified, shall be eligible for re-appointment as members of the Trust.
- (3) The Church Council and Synod shall appoint members of the Trust during each period in which an ordinary convention of the Synod is held after the appointed day.
- (4) Subject to this Act, the members of the Trust appointed pursuant to subsection (3) during the period in which an ordinary convention of the Synod is held after the appointed day:
- (a) shall take office as members of the Trust immediately after the end of that convention,

(b) shall hold office as members of the Trust until the end of the next succeeding ordinary convention of the Synod, and

(c) if otherwise qualified, shall be eligible for re-appointment as members of the Trust.

(5) Should any person specified in subsection (2) not be living on the appointed day, a casual vacancy shall be deemed to have arisen in the office to which he would have been appointed pursuant to that subsection had he been living on that day.

## **6 Quorum**

Two members of the Trust shall constitute a quorum for the purpose of any meeting of the Trust and:

(a) where only 2 of the members of the Trust are present at a duly convened meeting of the Trust, the unanimous decision of those 2 members, or

(b) where more than 2 such members are present at such a meeting, the decision of a majority of the votes of the members present and voting at the meeting,

shall be the decision of the Trust.

## **7 Vacation of office**

(1) A member of the Trust shall be deemed to have vacated his office if he:

(a) dies,

(b) resigns his office by notice in writing given to the Trust,

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his 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) ceases to be a member of the Lutheran Church of Australia,

(f) being a member of the Church Council and as such appointed by the Church Council to be a member of the Trust, ceases to be a member of the Church Council, or

(g) is removed from his office under subsection (2).

(2) The Church Council shall be deemed to have removed a member of the Trust from office if a duly convened meeting of the Church Council at which not less than 75 per cent of the members of the Church Council is present resolves to remove that member

by not less than a two-thirds majority.

## **8 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 3, the Church Council shall appoint, as members of the Trust filling the vacancies, subject to this Act, until the end of the next succeeding ordinary convention of the Synod, persons not fewer in number than that required to increase to 5 the number of members for the time being holding office as members of the Trust.
- (2) Subject to subsection (1), where there is a casual vacancy in the membership of the Trust, the Church Council may appoint a person to fill the vacancy, subject to this Act, until the end of the next succeeding ordinary convention of the Synod.

## **9 Common seal**

- (1) The members for the time being of the Trust shall have the custody of its common seal and, subject to this section, the form of the common seal and all other matters relating thereto shall be determined by the Trust.
- (2) The common seal of the Trust shall not be affixed to any instrument except in pursuance of a resolution passed at a duly convened meeting of the Trust and every instrument to which the common seal is so affixed shall be signed by not less than 2 members of the Trust.
- (3) An instrument purporting to have been sealed with the common seal of the Trust and purporting to have been signed by not less than 2 members of the Trust shall be deemed to have been executed in accordance with subsection (2).

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

- (1) Any deed, instrument, contract or agreement relating to any property or matter which, if made or executed by a private 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 instrument, contract or agreement relating to any property or matter which, if made by or between private persons, would be required to be in writing signed by the parties to be charged thereby 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 private persons, would by law be valid although made by parol only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority express or implied.

- (4) Any contract which is entered into or any instrument, contract or agreement which is signed on behalf of the Trust shall, if it is entered into or signed in accordance with a resolution of the Synod for the time being in force, be deemed to have been entered into or signed with the express authority of the Trust.

#### **11 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, instrument, contract or agreement on its behalf, and any deed, instrument, contract or agreement so executed by such an agent or attorney on behalf of the Trust shall bind the Trust and have the same effect as if it were under its common seal.

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

#### **12 Vesting of property in the Trust**

- (1) Subject to this Act, any property that, immediately before the appointed day, was vested in any person upon trust for the Church or a Congregation, Parish, Society, Association, Auxiliary or Institution of the Church, is hereby divested from that person and is, to the extent that it was so vested, hereby vested in the Trust.
- (2) The vesting effected by subsection (1) shall be without prejudice to:
- (a) any special trust,
  - (b) any resulting trust,
  - (c) any trust in favour of a donor,
  - (d) any trust in favour of a person other than the Church, and
  - (e) any reservation, mortgage, charge, encumbrance, lien or lease,
- that, immediately before the appointed day, affected the property vested.
- (3) No attornment to the Trust by any lessee of land vested in it by this section shall be necessary.
- (4) 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 (2),  
or
  - (b) the purpose of giving effect to either or both of those subsections,
- is not chargeable with stamp duty.



### **13 Transfer of property to the Trust**

Any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church may request the Trust to accept a transfer of title of any property held by any person on behalf of that Congregation, Parish, Society, Association, Auxiliary or Institution and the Trust, in its discretion, may, or (if the Synod or the Church Council so directs) shall, accept any such transfer and shall hold any property so transferred for and on behalf of the Congregation, Parish, Society, Association, Auxiliary or Institution which made the request.

### **14 Powers of Trust**

Subject to section 12 (2), the Trust shall have power:

- (a) to hold on behalf of the Church any property vested in the Trust by virtue of the operation of section 12 and to manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with any such property in accordance with any direction of the Synod or the Church Council given in that behalf,
- (b) to hold on behalf of any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church any property transferred by or by the direction of that Congregation, Parish, Society, Association, Auxiliary or Institution to the Trust and to manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with any such property in accordance with any direction of the Congregation, Parish, Society, Association, Auxiliary or Institution on whose behalf the property is so held, or if the Congregation, Parish, Society, Association, Auxiliary or Institution ceases to exist, then in accordance with any direction of the Synod or the Church Council given in that behalf,
- (c) to take in the name of the Trust and to hold any property devised, bequeathed, lent or otherwise made available by or under any will, deed of gift, deed of trust or other instrument for the support or advancement of any of the activities, work or objects of the Lutheran Church of Australia whether any particular activity, work or object is specifically named or referred to in that will, deed of gift, deed of trust or other instrument or not,
- (d) where conditions attach to any property referred to in paragraph (c) by reason of the provisions of a will, deed of gift, deed of trust or other instrument, to manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with any such property in accordance with those conditions, or where no conditions attach or in so far as those conditions do not extend or are not applicable to any such property, to manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with any such property in accordance with any direction of the Synod or the Church Council given in that behalf,
- (e) to apply the proceeds, profits or income of, or arising from, the management, administration, sale, exchange, mortgage, lease, disposal of or other dealing with

property referred to in paragraph (c) in accordance with the conditions (if any) attaching thereto by the will, deed of gift, deed of trust or other instrument concerned, or, if no such conditions attach thereto or in so far as those conditions do not extend or are not applicable thereto, to apply those proceeds or profits or that income in accordance with any direction of the Synod or the Church Council given in that behalf,

- (f) to purchase, lease or otherwise acquire property and hold property in the name of the Trust as directed by the Synod or the Church Council or as requested by any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church and to manage, administer, sell, exchange, mortgage, lease, dispose of or otherwise deal with any such property in accordance with the like directions,
- (g) to do all things necessary for the proper administration of the properties, estates, bequests or trusts held by the Trust subject to the limitations imposed by law,
- (h) to refuse to hold or manage or administer any property in the hands of or acquired by or on behalf of any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church unless directed by the Synod or the Church Council so to do,
- (i) to invest any money held by it and not required to be dealt with otherwise in such manner and on such security as may be directed by the Synod or the Church Council and failing any such direction to invest that money in:
  - (i) securities authorised or deemed to be authorised by any law in force for the time being relating to the investment of trust funds,
  - (ii) any security which may, in the opinion of the Trust, benefit the activities, work or objects of the Church or any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church on whose behalf the money is held,
  - (iii) loans to any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church in New South Wales or the Australian Capital Territory, or
  - (iv) loans to any person or organisation where the principal money will be used for the support or advancement of the activities, work or objects of the Lutheran Church of Australia,
- (j) to borrow on such terms and for such purposes as it shall consider expedient or as may be directed by the Synod or the Church Council and to use the money so borrowed according to its own discretion or if the Synod or the Church Council gives directions as to use, then in accordance with those directions,
- (k) at the request of any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church on whose behalf it holds title to property, to mortgage that property to support a liability undertaken by the Congregation, Parish, Society, Association, Auxiliary or Institution, and

- (l) to borrow against any trust property such sums as may be necessary to insure or otherwise protect any such property.

## **15 Construction of deeds etc**

- (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 recoverable by the Church or by any person (not being the Trust) for the Church, or
  - (b) is payable to, or receivable by, the Church or any such person (not being the Trust) on behalf of the Church or for the benefit of the activities, work or objects of the Church,

the deed, will or other instrument shall be construed and take effect as if the reference therein to the Church or, as the case may be, to that person, were a reference to the Trust.

- (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 this Act under the common seal of the Trust,
  - (b) is in writing signed by 2 persons purporting to be members of the Trust, or
  - (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust or 2 members thereof.

## **16 Duties of Trust**

- (1) Subject to this Act, the Trust shall hold trust property upon trust for the Church or for the Congregation, Parish, Society, Association, Auxiliary or Institution of the Church by or by whose direction it is transferred to the Trust and upon any other trust affecting the property while it is vested in the Trust.
- (2) Subject to subsection (1), the trust shall hold, manage, administer and otherwise deal with trust property in accordance with the directions of the Synod or the Church Council.

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

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 on 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.

## **18 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 Church or for any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church 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*, or any application by the Trust to be recorded under the *Crown Lands Consolidation Act 1913* or the regulations made thereunder, as the proprietor or holder, as the case may be, of that estate or interest pursuant to that vesting, be conclusive evidence of the matters so certified.

## **19 Certain rights enforceable by the Trust**

Where, immediately before the appointed day, there was vested in any person divested of property by this Act a right (including a chose in action) arising out of contract or tort and relating to that property, the right is hereby vested in, and may be enforced by, the Trust.

## **Part 4 General**

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

Subject to any direction of the Synod or the Church Council, 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.

### **21 Receipt for certain money**

A receipt for money payable to the Trust shall exonerate a purchaser, mortgagee, lessee or any other person by 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 this Act under the common seal of the Trust,
- (b) is in writing signed by 2 persons purporting to be members of the Trust, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust or 2 members thereof.

## **22 Exoneration from enquiry**

No purchaser, mortgagee, lessee or other person dealing with the Trust, 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 entered into by the Trust, be concerned to see or enquire 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.

## **23 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 him 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.

## **24 Indemnification of certain persons**

A member of the Trust, and any other person, exercising a power or performing a duty in relation to trust property pursuant to this Act or pursuant to any direction of the Synod or the Church Council, and their executors and administrators, shall be entitled to be indemnified out of the trust property against all expenses or liabilities incurred by the member or other person in connection with the exercise by him of the power or the performance by him of the duty.

## **25 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 President or on the Secretary of the Church Council or on any person appearing to be authorised by the Trust to accept service thereof.

## **26 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 or in his own name on behalf of the Trust by any person authorised so to do by the Trust.
- (2) The Trust may sue and be sued in all actions and proceedings whether at law or in equity 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.

## **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 the Church or any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church has a beneficial interest, vested or contingent, in the estate of that person, or
- (b) accept appointment, and act, as trustee or co-trustee under and in pursuance of any trust where the trust property is not vested in the Trust by or pursuant to this Act, and the trust was created wholly or partly for the benefit of the Church or any Congregation, Parish, Society, Association, Auxiliary or Institution of the Church,

and may do all things necessary for the exercise or performance of its powers, authorities, duties or 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 or rule of court, 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,
  - (b) decline to act as administrator of an estate, or
  - (c) retire, or decline to act, as trustee of property (not being property vested in it by or pursuant to this Act).
- (4) Any commission or other remuneration earned by the Trust as an executor, administrator or trustee appointed under the authority of this section shall belong to the Trust and shall be used and applied by it for or towards any object or purpose specified or approved by the Synod or the Church Council in respect thereof.

## **28 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.

## **29 Resolutions**

- (1) The Synod may, by resolution, regulate and control the management and administration of, and dealings with, trust property.
- (2) A certificate signed by the President that specifies in the certificate or an annexure thereto the form of a resolution under subsection (1) and states that the resolution was in force on a day or during a period specified in the certificate shall be conclusive

evidence that the resolution was in force in that form on that day or during that period, as the case may be.

- (3) A resolution under subsection (1) may from time to time be rescinded, revoked, altered or varied by the Synod but no such rescission, revocation, alteration or variation shall take effect unless it is approved in the same manner as the resolution.