

# Antiochian Orthodox Church Property Trust Act 1993 No 20

[1993-20]



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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# Antiochian Orthodox Church Property Trust Act 1993 No 20



New South Wales

An Act to constitute as a corporation the Antiochian Orthodox Church 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 *Antiochian Orthodox Church Property Trust Act 1993*.

### 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.

**Bishop** means the person for the time being administering a diocese, whether as Archbishop or Bishop, Hierarch or Exarch.

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

**Church** means the Catholic and Apostolic Orthodox Church of Antioch, Archdiocese of Australia and New Zealand, a part of the Orthodox Patriarchate of Antioch, a hierarchical religious body whose leader, overseer and shepherd is the Patriarch of the See of Antioch and all the East, and includes any Church entity.

**Church entity** means a body, corporate or unincorporate, established by the Church after the appointed day which:

- (a) has objectives not inconsistent with those of the Church as set out in the constitution, and
- (b) is certified in writing by a Bishop to be a Church entity for the purposes of this Act.

**Company** means any one or more of the companies limited by guarantee and incorporated in New South Wales under the names set out in Schedule 1.

**constitution** means the constitution of the Church approved by His Holiness Ignatius IV Patriarch of the See of Antioch and all the East, as amended from time to time, or any document for the time being approved by the Patriarch of the See of Antioch and all the East to replace that constitution.

**conveyance** includes transfer, assignment and assurance.

**Trust** means the Antiochian Orthodox Church 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 Antiochian Orthodox Church Property Trust.
- (2) The Trust is to consist of a Board of Trustees comprising the following members:
  - (a) the Archbishop,
  - (b) the Bishops,
  - (c) a President, a Vice-President, a Secretary and a Treasurer appointed by the Archbishop or, if no such persons have been appointed, 4 lay persons nominated by the Archbishop.
- (3) If there is more than one Secretary appointed by the Archbishop, the Secretary who was appointed first is to be a member of the Board.
- (4) The procedures of the Trust are the same as the procedures specified in the constitution for the Board or those procedures as amended by the by-laws, except as provided by this Act.
- (5) The quorum for a meeting of the Board is 3 members (one of whom must be a Bishop).
- (6) Every meeting of the Trust at which a quorum is present is competent to transact any

business of the Trust.

- (7) No capacity or power of the Trust is to be affected by the existence of vacancies in its membership except as provided by this section.
- (8) If for any reason a quorum of the Trust cannot be constituted all powers exercisable by the Trust and its capacity for doing any act or thing are to be suspended, but are, by virtue of this Act, to be revived as soon as a quorum of the Trust is capable of being constituted.
- (9) Despite the suspension under subsection (8) of the powers and capacity of the Trust, a Bishop may exercise and perform any function delegated to the Bishop by the Trust under section 17 as if such power and capacity were not suspended.

## **5 New dioceses**

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

## **6 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 execute any document and to do any other thing the execution or doing of which, in its opinion, is necessary or convenient to achieve its objects,
  - (f) to operate and conduct educational, welfare and health institutions, organisations or other bodies,

(g) 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](#).

## **7 Trust may hold property jointly**

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

## **8 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.

## **9 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 may be distributed ratably for the benefit of carrying out the several purposes or activities for which the money invested is held in trust.

(3) Any loss arising from the investment of the fund is to be distributed ratably to the detriment of 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 purpose of or relating to the Church.

(5) Any sum so advanced is 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 taken to be a charge on the assets held by the Trust for the purpose for which the advance is made.

## **10 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 derived 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 towards 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.

## **11 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 purpose 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.

## **12 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 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 Board 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 any object or purpose specified or approved by the Trust.

## **13 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**

#### **14 Vesting of property in the Trust on the appointed day**

- (1) Any property that was, immediately before the appointed day, vested in a Company or in any other person in trust for the Church is, on that day, divested from that company 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.

#### **15 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 14 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 to be treated as a reference to the Trust.

## **Part 4 Miscellaneous matters**

### **16 Seal**

- (1) The seal of the Trust is to be kept by a 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 a Bishop and not fewer than 2 other members of the Board, and
  - (c) with an attestation by the signatures of those members 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 a Bishop and not fewer than 2 other members of the Board is taken to have been executed in accordance with this section.

### **17 Delegation of trust functions**

- (1) The Trust may by resolution delegate to a Bishop all or any of its functions (other than this power of delegation).
- (2) A Bishop acting within the scope of any delegation:
  - (a) is to have access to the seal of the Trust, and
  - (b) may affix the seal to any instrument which the Bishop signs.

### **18 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.

## **19 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.

## **20 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.

## **21 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.

## **22 Exoneration from inquiry**

Whenever the Trust acquires, disposes of or otherwise deals with property, it is not necessary for:

- (a) a vendor, purchaser, mortgagee, lessee or other person who is a party to any such dealing, or
- (b) the Registrar-General or any other person registering or certifying title to the property,

to inquire whether the Trust has power to so deal with the property and none of those persons is affected by notice that the Trust has no such power.

### **23 Indemnification of certain persons**

A member of the Board 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.

### **24 Service of documents**

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

### **25 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 with respect to the affairs of the Trust and the manner in which the Trust is constituted.
- (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.

### **26 Savings and transitional provisions**

Schedule 2 has effect.

## **Schedule 1 Companies holding property in trust for the Church**

(Section 3)

The Antioch Orthodox Church of New South Wales  
St Nicholas Antiochian Orthodox Parish Association  
St Mary's Antiochian Orthodox Parish Association Ltd  
St Elias Antiochian Orthodox Parish Association Wollongong Limited  
The Australasian Antiochian Orthodox Diocese Trust

## **Schedule 2 Savings and transitional provisions**

(Section 26)

### **1 Definition**

In this Schedule, **former trustee** means a Company 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 14:

- (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 document 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.