

Anglican Church of Australia (Bodies Corporate) Act 1938 No 15

[1938-15]



New South Wales

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Provisions in force

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

Notes—

- **Previously named**
Church of England (Bodies Corporate) Act 1938

Authorisation

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Anglican Church of Australia (Bodies Corporate) Act 1938 No 15



New South Wales

An Act to make provision for and with respect to the constitution of bodies corporate for the purposes of managing, governing and controlling institutions and organisations of the Church of England and of holding, managing and dealing with church trust property of the Church of England; and for purposes connected therewith.

Preamble

WHEREAS it is expedient that bodies corporate should be constituted for the purposes of managing, governing and controlling certain institutions and organisations of the Church of England and of holding, managing and dealing with certain church trust property of the Church of England:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

1 Name of Act

- (1) This Act may be cited as the *Anglican Church of Australia (Bodies Corporate) Act 1938*.
- (2) This Act shall be read and construed with the *Church of England Trust Property Act 1917*, as amended by subsequent Acts.

2 Definitions

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

Body corporate means a body corporate constituted by or under this Act.

Ordinance includes any ordinance which takes effect pursuant to section 11.

3 Constitution of certain bodies corporate

- (1) The members for the time being of the board appointed under the Glebe Administration Ordinance 1930, of the Synod of the Diocese of Sydney, as amended

by subsequent ordinances of the Synod of that diocese, shall be a body corporate under the name of the "Glebe Administration Board".

- (2) The members for the time being of the council appointed under the Sydney Church of England Girls' Grammar School Ordinance of 1895, of the Synod of the Diocese of Sydney, as amended by subsequent ordinances of the Synod of that diocese, shall be a body corporate under the name of the "Sydney Church of England Girls' Grammar School Council".
- (3) The members for the time being of the council appointed under the Abbotsleigh College Ordinance 1924, of the Synod of the Diocese of Sydney, as amended by subsequent ordinances of the Synod of that diocese, shall be a body corporate under the name of "The Council of Abbotsleigh".
- (4) Each of such bodies corporate shall for the purposes of this Act be deemed to have been constituted at the instance of the Synod of the Diocese of Sydney.

4 Power to constitute further bodies corporate

- (1) In this section the expression **unincorporated body** means the board, committee, council or other body constituted (either before or after the commencement of this Act) by or under the authority of an ordinance of the Synod of a diocese for the purpose of managing, governing or controlling any institution or organisation of the Church of England, or of holding, managing and dealing with any church trust property.
- (2) The Synod of a diocese may, by ordinance, declare that it is expedient for the purpose of managing, governing or controlling any institution or organisation of the Church of England or of holding, managing or dealing with any church trust property subject to the control of that Synod, that the persons who for the time being are the members of the unincorporated body named in the ordinance should be constituted a body corporate under the name set out in the ordinance.
- (3) Where any such ordinance is passed the Governor may, by order published in the Gazette, declare that the persons who for the time being are the members of the unincorporated body shall be a body corporate, and, as from the date of such publication or from such later date as may be specified in the order, such persons shall become and be a body corporate under the name set out in the ordinance.
- (4) Any such body corporate shall for the purposes of this Act be deemed to have been constituted at the instance of the Synod of the diocese which passed the ordinance declaring the expediency of constituting the body corporate.

5 Filing of certain ordinances

- (1) As soon as practicable after the commencement of this Act a copy of each of the ordinances mentioned in section 3 certified by the bishop of the diocese shall be filed

in the office of the Registrar-General in the manner prescribed.

As soon as practicable after an ordinance amending any such ordinance is passed, a copy of such amending ordinance, certified by the bishop of the diocese, shall be filed in the office of the Registrar-General in the manner prescribed.

- (2) Where a body corporate is constituted under section 4, a copy of the order and a copy of the ordinance referred to in the order, certified by the bishop of the diocese shall, as soon as practicable after the date of publication of the order, be filed in the office of the Registrar-General in the manner prescribed.

As soon as practicable after an ordinance amending any such ordinance is passed, a copy of such amending ordinance, certified by the bishop of the diocese, shall be filed in the office of the Registrar-General in the manner prescribed.

- (3) Regulations may be made under the *Conveyancing Act 1919-1932* prescribing the manner in which any such ordinance shall be filed.
- (4) Production of a copy of any ordinance filed in accordance with this section, certified by the Registrar-General or a deputy Registrar-General, shall be received in all courts as conclusive evidence of the contents of the ordinance, and in favour of any person dealing bona-fide and for value with the body corporate to which the ordinance relates shall, together with this Act and any other ordinances so filed which relate to such body corporate, be conclusive evidence of the provisions for the time being applicable with respect to the office of members of the body corporate and of the objects and purposes, for the time being, of such body corporate unless such person shall have notice to the contrary.
- (5) The provisions of this section relating to the filing of ordinances shall be in addition to and not in substitution for the provisions of any other Act relating to the recording or filing of ordinances.
- (6) This section shall apply only to and in respect of an ordinance which:
- (a) makes provision for or in relation to the office of members of a body corporate including the commencement, tenure and termination of such office, or
 - (b) defines the objects and purposes of the body corporate.

6 Powers and functions of bodies corporate

- (1) Each body corporate constituted by or under this Act shall have perpetual succession and a common seal, may enter into contracts in its corporate name, may sue and be sued, and may take and hold any real or personal property.
- (2) Each body corporate constituted by or under this Act shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed by any ordinance of the Synod of the diocese at whose instance the body corporate was

constituted:

(a) upon the unincorporated body, the members of which are incorporated by or under this Act, or

(b) upon the body corporate.

(3) In this section the expression **unincorporated body** includes the board and the councils referred to in section 3, and also includes unincorporated bodies as defined in section 4.

7 Common seal, quorum etc

(1) The members for the time being of each body corporate constituted by or under this Act shall have the custody of its common seal, and the form of such seal and all other matters relating thereto shall, subject as in this section mentioned, be, from time to time, determined at a meeting of the body corporate.

(2) The quorum at meetings of each body corporate constituted by or under this Act shall, unless a different number is for the time being prescribed by an ordinance of the Synod at whose instance the body corporate was created, be one-fourth of the number of members of such body corporate.

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

(3) No act or proceeding of any body corporate constituted by or under this Act shall be invalidated or prejudiced by reason only of the fact that, at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the body corporate.

(4) The common seal of any body corporate constituted by or under this Act shall not be affixed to any instrument except in pursuance of a resolution passed at a meeting of the body corporate.

Every instrument to which the common seal is so affixed shall, unless a lesser number is prescribed by ordinance of the Synod of the diocese at whose instance the body corporate was constituted, be signed by three members of the body corporate.

(5) Section 51A of the *Conveyancing Act 1919–1932* shall not apply to or in respect of any instrument executed by a body corporate constituted by or under this Act.

8 Certificate of bishop

A certificate signed by the bishop of a diocese at the instance of the Synod of which a body corporate has been constituted, stating that the persons named in the certificate are, at the date of the certificate, the members of the body corporate and that they became such members at the date or respective dates specified in the certificate, shall be

prima facie evidence of the facts so stated, and shall, in favour of any person dealing bona-fide and for value with the body corporate in respect of any property, real or personal, vested in or held by that body corporate, and the Registrar-General, Crown Solicitor, or other person registering or certifying title, be conclusive evidence of the facts so stated.

9 Vesting of property

(1) Subject to subsection (2):

- (a) all real and personal property which, immediately before the commencement of this Act, was vested in or held by any person (including the Church of England Property Trust, Diocese of Sydney) upon any trust for the management, government or control of which the Glebe Administration Board is constituted shall, without any conveyance, vest in the Glebe Administration Board,
- (b) all real and personal property which, immediately before the commencement of this Act, was vested in or held by any person (including the Church of England Property Trust, Diocese of Sydney) upon trust for the Sydney Church of England Girls' Grammar School shall, without any conveyance, vest in the Sydney Church of England Girls' Grammar School Council,
- (c) all real and personal property which, immediately before the commencement of this Act, was vested in or held by any person (including the Church of England Property Trust, Diocese of Sydney) upon trust for Abbotsleigh shall, without any conveyance, vest in The Council of Abbotsleigh,
- (d) all real and personal property which, immediately before the date upon which a body corporate is constituted pursuant to section 4, is vested in any person (including the corporate trustees of the diocese at the instance of the Synod of which the body corporate was constituted) upon any trust for the management, government and control of which the body corporate is constituted shall, without any conveyance, vest in the body corporate.

(2) Where the property, or any part of the property referred to in subsection (1):

- (a) is vested in or held by the corporate trustees and is subject to any mortgage, charge or other incumbrance, such property shall not vest in the body corporate unless and until either the mortgage, charge or incumbrance is discharged or the corporate trustees and the person entitled to the benefit of the mortgage, charge or incumbrance consent in writing to the vesting,
- (b) is vested in or held by any person other than the corporate trustees and is subject to any mortgage, charge or other incumbrance, such property shall not vest unless and until either the mortgage, charge or incumbrance is discharged or such person and the person entitled to the benefit of the mortgage, charge or incumbrance consent in writing to the vesting.

- (3) All property conveyed or transferred to or vested in a body corporate under this section shall be deemed to be church trust property within the meaning of the *Church of England Trust Property Act 1917*, as amended by subsequent Acts, and that Act, as so amended, shall apply to and in respect of such property.
- (4) Where the members of an unincorporated body are constituted a body corporate by or under this Act, the body corporate shall have and be subject to all the rights, powers, remedies, liabilities and obligations and may exercise and discharge all or any of the rights, powers and remedies which the members of the unincorporated body would have had and been subject to and might have exercised and discharged if the body corporate had not been so constituted.
- (5) Where any property is vested in a body corporate pursuant to this section that body corporate 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 theretofore vested or by whom it was theretofore held, 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 him and vested in the body corporate.
- (6) In subsections (4) and (5) the expression **unincorporated body** includes the board and the councils referred to in section 3, and also includes unincorporated bodies as defined in section 4.

10 Powers of Synod

- (1) The constitution by or under this Act of a body corporate shall not prejudice or in any way affect the power of the Synod of the diocese at whose instance the body corporate was constituted, to make ordinances for or with respect to the institution or organisation for the management, government or control of which the body corporate was constituted or for or with respect to any church trust property vested in the body corporate.
- (2) Without prejudice to the generality of subsection (1) the Synod of a diocese at whose instance a body corporate is constituted may, from time to time, by ordinance:
 - (a) change the name of such body corporate,
 - (b) fix the number of members of such body corporate, prescribe the method of election or appointment and of retirement of such members and prescribe the circumstances in which a vacancy in the office of any such member shall occur.

11 Power to delegate

- (1) The Synod of a diocese may by ordinance:

- (a) constitute or appoint a board, committee, council or body of persons, and
 - (b) provide for the exercise, by that board, committee, council or body during the recess of the Synod, of such of the powers, authorities, duties and functions of the Synod as may be specified in the ordinance and as relate to any act, matter or thing arising under this Act, and
 - (c) regulate the procedure of such board, committee, council or body.
- (2) Any ordinance passed by any board, committee, council or body appointed under the powers conferred pursuant to subsection (1) shall have and take effect as an ordinance when the same has been assented to under the *Church of England Constitutions Act Amendment Act of 1902* or any Act amending or replacing that Act:
- Provided that no such assent shall be given after the expiration of one month from the date upon which the ordinance is passed by the board, committee, council or body.