

# Roman Catholic Church Communities' Lands Amendment Act 2001 No 11

[2001-11]



New South Wales

## Status Information

### Currency of version

Repealed version for 15 July 2001 to 30 June 2005 (accessed 17 July 2024 at 19:27)

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.

### Notes—

- **Repeal**

The Act was repealed by Sch 3 to the [Statute Law \(Miscellaneous Provisions\) Act 2005 No 64](#) with effect from 1.7.2005.

### 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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# Roman Catholic Church Communities' Lands Amendment Act 2001 No 11



New South Wales

An Act to amend the *Roman Catholic Church Communities' Lands Act 1942* so as to provide for the voluntary or compulsory winding up of bodies corporate created by the Act; and for other purposes.

## 1 Name of Act

This Act is the *Roman Catholic Church Communities' Lands Amendment Act 2001*.

## 2 Commencement

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

## 3 Amendment of *Roman Catholic Church Communities' Lands Act 1942 No 23*

The *Roman Catholic Church Communities' Lands Act 1942* is amended as set out in Schedule 1.

## Schedule 1 Amendments

(Section 3)

### [1] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

**Assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Court** means the Supreme Court.

**Liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**Member** of a body corporate that is the trustee of community land for a community means:

- (a) the Provincial for the community, and
- (b) the community consultors for the community.

**Relevant diocese** in relation to a body corporate means the Diocese within which the principal site or house in New South Wales of the community of whose land the body corporate is or was the trustee is or was last situated.

**Rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

**[2] Section 2 (1), definition of “community consultors”**

Insert “governing” before “council”.

**[3] Section 2 (1), definition of “Provincial” and section 2 (2) (a) (i)**

Insert “, Leader” after “Superior” wherever occurring.

**[4] Sections 2, 4 (2) and 8 (4) and (5)**

Omit “the Second Schedule” wherever occurring.

Insert instead “Schedule 2”.

**[5] Section 2 (2) (b)**

Omit “The Second Schedule”. Insert instead “Schedule 2”.

**[6] Sections 9 (1) and 14 (1)**

Omit “the First Schedule” wherever occurring. Insert instead “Schedule 1”.

**[7] Section 19 Exemption from duty**

Omit “section 8” from section 19 (1) (a).

Insert instead “section 8, 22 or 23”.

**[8] Section 19 (1) (b)**

Omit “that section”. Insert instead “those sections”.

**[9] Section 19**

Insert “and duty under the *Duties Act 1997*” after “stamp duty” wherever occurring.

**[10] Sections 20-27**

Insert after section 19:

## **20 Voluntary winding up**

- (1) A body corporate created by this Act may be voluntarily wound up under this section if:
  - (a) a notice of the proposed voluntary winding up of the body corporate is published in a newspaper circulating in the relevant diocese, and
  - (b) at least one month after that notice is published at least 75 per cent of the members of the body corporate have passed a resolution in favour of voluntary winding up, and
  - (c) the Bishop of the relevant diocese has issued a certificate under the Bishop's hand and seal:
    - (i) approving the voluntary winding up of the body corporate, and
    - (ii) certifying that the requirements of this subsection have been satisfied in relation to the body corporate.
- (2) Except with the leave of the Court, the members of a body corporate cannot resolve that it be wound up voluntarily if proceedings for the body corporate to be wound up by the Court under section 21 have been commenced and have not been finally determined.
- (3) A body corporate is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the body corporate continue until it is wound up under this section.
- (4) If the Bishop has certified that all of the requirements of subsection (1) have been satisfied in relation to a body corporate, the body corporate must be wound up.
- (5) The Bishop who approves a voluntary winding up of a body corporate must ensure that notice of the winding up of a body corporate under the [Corporations Act 2001](#) of the Commonwealth is published in a newspaper circulating in the relevant diocese.
- (6) Subsection (3) ceases to apply if the Bishop decides not to approve a voluntary winding up.

## **21 Winding up by the Court**

- (1) The Court may order the winding up of a body corporate created by this Act if:
  - (a) at least 75 per cent of the members of the body corporate have passed a resolution in favour of winding up by the Court, or

- (b) the community of whose land the body corporate is the trustee has suspended its operations or religious duties, or both, for a continuous period of not less than 12 months (whether before or after the commencement of this section) immediately before the order is made, or
  - (c) the body corporate is unable to meet its liabilities, or
  - (d) the Court is otherwise of the opinion that it is just and equitable that the body corporate be wound up.
- (2) An application to the Court for the winding up of a body corporate may be made by:
- (a) the body corporate (but only if a resolution is passed by at least 75 per cent of the members of the body corporate in favour of making the application), or
  - (b) the Bishop of the relevant Diocese.

## 22 Procedure for winding up

- (1) The winding up of a body corporate in New South Wales is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (the **applied provisions**), subject to the following modifications:
- (a) the applied provisions have effect subject to the provisions of sections 20 and 21 of this Act,
  - (b) a reference in the applied provisions to a company, Part 5.1 body or Part 5.7 body is taken to include a reference to a body corporate,
  - (c) a past or present member of a body corporate is not liable to pay the body corporate's liabilities on the winding up or the costs, charges or expenses of the winding up despite anything to the contrary in the applied provisions,
  - (d) the distribution of surplus property after a body corporate is wound up is to be dealt with in accordance with section 23 despite anything to the contrary in the applied provisions,
  - (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:

- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

### **23 Distribution of surplus property**

- (1) Despite the provisions of any other Act or law, if there is property of a former body corporate after the body corporate is wound up, the liquidator must transfer the property to another body corporate created by this Act, or under the *Roman Catholic Church Trust Property Act 1936*, specified in writing by the Bishop of the relevant Diocese of the wound up body corporate.
- (2) The Bishop of the relevant Diocese must inform the Attorney General of that transfer.
- (3) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.
- (4) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.

### **24 Vesting of assets after winding up of body corporate**

- (1) To the extent to which any assets:
    - (a) are given to a body corporate that has been wound up under this Act, or to a person for the benefit of that body corporate, or
    - (b) are payable to, or recoverable by, the body corporate or any person on behalf of the body corporate,
- by or under an instrument that takes effect on or after the date on which the body corporate is wound up, a reference in the instrument to the body corporate is to be treated as a reference to the Bishop of the relevant Diocese.

(2) In this section:

**instrument** means an instrument (other than this Act) that creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any will or any judgment, order or process of a court or tribunal.

## **25 Application to Court**

The Bishop of the relevant Diocese, or any other interested person who has leave of the Court, may apply to the Court:

- (a) to determine any question arising in the winding up of a body corporate under this Act, or in the application by section 22 of provisions of the [Corporations Act 2001](#) of the Commonwealth to the winding up, or
- (b) to exercise all or any of the powers that the Court might exercise if the body corporate were being wound up by the Court.

## **26 Amendment of Act following winding up**

The Governor may, by proclamation published in the Gazette, amend sections 2 and 4, or Schedule 2, as the case requires, to omit the corporate name of a body corporate that has been wound up under this Act and the canonical name of the relevant community.

## **27 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **[11] First Schedule**

Omit "First Schedule" from the heading to the Schedule.

Insert instead "Schedule 1".

### **[12] Second Schedule**

Omit "Second Schedule" from the heading to the Schedule.

Insert instead "Schedule 2".