



Australian Capital Territory

Roman Catholic Church Property Trust Act 1937 No 2

Republication No 3

Republication date: 21 August 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Roman Catholic Church Property Trust Act 1937* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 21 August 2002. It also includes any amendment, repeal or expiry affecting the republished law to 12 September 2001.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see [Legislation Act 2001](#), section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Roman Catholic Church Property Trust Act 1937

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Amendments incorporated to
12 September 2001



Australian Capital Territory

Roman Catholic Church Property Trust Act 1937

An Act relating to property held upon any trust for or for the use, benefit or purposes of the Roman Catholic Church in the Australian Capital Territory

1 Name of Act

This Act is the *Roman Catholic Church Property Trust Act 1937*.

2 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see [Legislation Act 2001](#), s 155).

Bishop means the person for the time being administering the Archdiocese of Canberra and Goulburn whether as Archbishop, Coadjutor Archbishop, Coadjutor Bishop, Auxiliary Bishop, Vicar Capitular or Administrator.

Church means the Roman Catholic Church.

church trust property means land situated in the ACT, for the time being subject to any trust created, before or after the commencement of this Act, for the Church or for the use or benefit or for any purpose of the Church, but does not include land held on any trust, created, before or after the commencement of this Act, for any order or community of the Church or for any association of members of the Church for the use or benefit of, or for any purpose of, any such order, community or association.

diocesan consultors means the Diocesan Consultors for the time being of the diocese.

diocese means the Archdiocese of Canberra and Goulburn.

land includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity.

the trust means the body corporate created by section 4.

2A Application of Legislation Act

The *Legislation Act 2001* does not apply to instruments made by the trust.

3 Trustees for the diocese

There shall be trustees of church trust property, who shall be the Bishop of the diocese and the diocesan consultors of the diocese.

4 Trustees to be a body corporate

- (1) The trustees of church trust property shall, under this Act, be a body corporate, having perpetual succession and a common seal, and be capable of acquiring, holding and disposing of any property, real or personal, and of suing and be sued in its corporate name, and of doing and suffering all such acts and things as bodies corporate may by law do or suffer.
- (2) The corporate name of the trustees of church trust property shall be the trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn.

5 Common seal and quorum

- (1) The Bishop shall have the custody of the common seal of the trust, and the form of such seal and all other matters relating to it shall be from time to time determined at meetings of the trust.
- (2) The Bishop and 2 other members of the trust shall constitute a quorum for the purpose of any meeting of the trust.
- (3) Every meeting of the trust at which a quorum is present shall be competent to transact any business of the trust.
- (4) The common seal of the trust shall not be attached to any instrument except in pursuance of a resolution passed at a meeting of the trust.

- (5) Every instrument to which the common seal is so attached shall be signed by the Bishop.

6 Vacancies and membership

- (1) Subject to this section, no capacity or power of the trust shall be affected by the existence of vacancies in its membership.
- (2) 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 shall be suspended, but shall, under this Act, revive as soon as a quorum of the trust is capable of being constituted.

6A Objects of trust

The objects of the trust include—

- (a) the operation of educational, welfare and health organisations and bodies; and
- (b) the advancement of the interests of the Church.

7 Vesting of church trust property

- (1) All church trust property that at the commencement of this Act is situated within the ACT shall under this Act—
 - (a) vest in the trust; and
 - (b) be divested from the person in whom it was vested before the commencement of this Act.
- (2) No vesting under this Act shall affect any encumbrance, lien, estate or interest to which, at the time of the vesting, the property so vested was subject in the hands of the person from whom it was divested.
- (3) The trust shall become, jointly with the person liable at the time of the vesting, and, severally, liable under every contract, engagement and cause of action, in relation to the property vested, under which the person from whom the property was divested was liable at the time of the vesting.

- (4) The trust shall be liable to indemnify the person from whom the property was divested, his or her executors and administrators, against every claim, action, suit and other proceeding that shall be made or taken in relation to any such contract engagement or cause of action.
- (5) The person from whom the property was divested shall have a charge or lien on the property divested to the extent to which and in the circumstances in which the charge or lien would have attached if the property had not been divested; but the charge or lien, or possibility of it, shall, in favour of a person dealing for value with the trust, be deemed to have been extinguished unless the person entitled to it has, within 6 months after the commencement of this Act, given written notice to the trust of its existence or of the possibility of its arising.
- (6) A statement under the common seal of the trust that no such notice has been received within such period shall be conclusive evidence of the fact so stated in favour of any person dealing for value with the trust in relation to the divested property.

8 Powers of trust

The trust shall have power—

- (a) to purchase, take on lease, or acquire by gift, devise, bequest, exchange or otherwise any real or personal property; and
- (b) for any church trust property, at any time vested in it and subject to the covenants and conditions under which the property is held—
 - (i) to sell it, and to exchange it for other land, and to transfer or convey church trust property so sold or exchanged to the purchaser or person taking in exchange, freed and discharged from all trusts affecting the same in the hands of the trust; and

- (ii) to demise or let it for the term at the rent and with or without taking a premium, fine or foregift and subject to the provisions that the trust considers appropriate; and
 - (iii) to accept surrender of leases, on the terms and subject to the conditions that the trust considers appropriate; and
 - (iv) to raise money on the security of it on the terms and conditions that the trust considers appropriate; and
 - (v) to declare trusts of it or any estate or interest in it created by the trust for any order or community of the Church, or for any association of members of the Church, or for the use or benefit of or for any purpose of any such order, community or association, and either to keep the property in relation to which trusts are declared, or to vest it, or any estate or interest created, in other trustees on the trusts declared; and
- (c) for any purpose mentioned in this section, to execute all instruments that the trust considers proper.

8A Variation of trusts

- (1) If the trust is satisfied that it has become impossible or inexpedient to carry out the terms of a trust of property vested in it, it may, by instrument, declare that it is so satisfied.
- (2) The trust may, by the same instrument, 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 a declaration under subsection (2), the trust shall ensure that the property is dealt with as nearly as is possible for

the purposes for which it was held immediately before the declaration.

- (4) If the trust is satisfied that 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 to be replaced, it may, by the instrument referred to in subsection (1)—
 - (a) declare that it is so satisfied; and
 - (b) declare purposes for which the property may be held, disposed of or otherwise dealt with or applied for the use or benefit of the Church.
- (5) On the execution of an instrument referred to in subsection (1) that contains a declaration under subsection (4) (b), the trust may hold, dispose of or otherwise deal with or apply the property for the purposes specified in that declaration.

8B 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 1 fund (a *blended fund*).
- (2) Any income arising from the investment of a blended fund shall be distributed rateably 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 a blended fund shall be distributed rateably among the several purposes or activities for which the money invested is held in trust.

9 Execution of instruments

Every instrument bearing what purports to be the common seal of the trust and purporting to be signed by the Bishop shall, in favour of every person claiming, for value and in good faith,

under or through that instrument, be conclusively presumed to have been duly executed by the trust.

10 Protection of purchasers etc

- (1) A purchaser, mortgagee, lessee or other person dealing with the trust, and the registrar-general, the chief solicitor or any other person registering or certifying title shall not, on any sale, exchange, mortgage, lease or other dealing purporting to be made under a power given by this Act be concerned to see or inquire into the necessity for or propriety of it, or the mode of exercising it, or be affected by notice that the exercise of the power is unauthorised, irregular or improper, and a receipt for any money payable to the trust, signed by the Bishop, shall be a sufficient discharge in favour of, and shall exonerate the person paying the money from all responsibility for the application of the money.
- (2) If—
 - (a) an instrument purports to have been executed in the exercise of a power given by this Act, and to pass or create an estate or interest in land described in the instrument as being church trust property; and
 - (b) the land which the instrument purports to pass or affect is not, in fact, under the provisions of the *Land Titles Act 1925*, or the *Real Property Act 1900* (NSW) in its application to the Territory; and
 - (c) the instrument is executed by the trust in accordance with the requirements of this Act; and
 - (d) the instrument is registered under the provisions of the *Registration of Deeds Act 1897* (NSW) in its application to the Territory;the instrument shall—

- (e) in favour of every person claiming any estate or interest under or through the instrument, be conclusive evidence against the trust that the land described in the instrument as being church trust property was church trust property at the time of the execution of the instrument, and that the trust had, at the time of the execution of the instrument, an estate or interest in the land so described sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create; and
 - (f) in favour of every person claiming any estate or interest under or through the instrument and having taken for value, without notice that the land in which the instrument purports to create an estate or interest was not church trust property or that the trust had not an estate or interest sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, and in favour of every person claiming under or through any person having so taken, as against every person claiming under or through an instrument executed before the commencement of this Act or under or through an instrument executed by the trust, and not in either such case registered under the [Registration of Deeds Act 1897](#) (NSW) in its application to the Territory, before the registration under that Act of the instrument by this subsection made evidence, be conclusive evidence that the land described in the instrument so made evidence as being church trust property situated in the ACT, was at the time of the execution of that instrument so situated, and that at the time of the execution of that instrument the trust had an estate or interest in the land so described sufficient to make that instrument effective to pass or create the estate or interest which that instrument purported to pass or create.
- (3) Any person, other than the trust, deprived of any estate or interest in land by any such instrument as is mentioned in

subsection (2) may bring and prosecute an action for damages against the trust and any judgment recovered by the plaintiff in any such action shall be enforceable by execution against any real or personal property for the time being vested in the trust, whether church trust property or not, and any real or personal property taken by a purchaser on a sale in any such execution shall be free of all trusts affecting the same while vested in the execution debtor, except a trust created by the Crown, and the proceeds of every such sale shall, in the hands of the sheriff and of the execution creditor, be free of all trusts to which it would be subject in the hands of the execution debtor.

11 Evidence

A certificate under the common seal of the trust that the land described in the certificate is situated within the ACT and is church trust property shall—

- (a) for the purpose of any application by the trust to be registered as the proprietor pursuant to a vesting by this Act of any land under the provisions of the *Land Titles Act 1925*, or the *Real Property Act 1900* (NSW) in its application to the Territory of which the trust is not the registered proprietor, be conclusive evidence; and
- (b) in any action, suit or other proceeding, whether civil or criminal, be prima facie evidence;

of the facts so certified.

12 Trusts preserved

- (1) All church trust property for the time being vested in the trust shall be held by it on the trusts (if any) expressly declared in relation to it, and if no such trusts have been expressly declared, on trust for the Church in the diocese.
- (2) The powers given by section 8 shall be exercisable in relation to all church trust property notwithstanding any trust or provision affecting it in the hands of the trust.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the [Legislation Act 2001](#), part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced
om = omitted/repealed	or to be expired

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Roman Catholic Church Property Trust Ordinance 1937* No 2 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* A1989-21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

Roman Catholic Church Property Trust Act 1937 A1937-2

notified 18 February 1937

commenced 18 February 1937

as amended by

Roman Catholic Church Property Trust Ordinance 1938

Ord1938-11

notified 17 March 1938

commenced 17 March 1938

Seat of Government (Designation) Ordinance 1938 Ord1938-25 s 2

notified 8 September 1938 (Cwlth Gaz 1938 No 53)

s 2 commenced 8 September 1938

Ordinances Revision Ordinance 1938 Ord1938-35

notified 15 December 1938

commenced 15 December 1938

Roman Catholic Church Property Trust Ordinance 1961

Ord1961-17

notified 20 July 1961

ss 3 and 4 taken to have commenced 11 February 1948 (s 2)

remainder commenced 20 July 1961

Legislation after becoming Territory enactment

Registrar-General (Consequential Provisions) Act 1993 A1993-64 sch 1

notified 6 September 1993 ([Gaz 1993 No S172](#))
 s 1, s 2 commenced 6 September 1993 (s 2 (1))
 sch 1 commenced 1 October 1993 (s 2 (2) and see [Gaz 1993 No S207](#))

Land Titles (Consequential Amendments) Act 1995 A1995-54 sch pt 1

notified 20 December 1995 ([Gaz 1995 No S313](#))
 commenced 20 June 1996 (s 2)

Roman Catholic Church Property Trust (Amendment) Act 1996 A1996-88

notified 20 December 1996 ([Gaz 1996 No S328](#))
 commenced 20 December 1996 (s 2)

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 351

notified 26 July 2001 ([Gaz 2001 No 30](#))
 s 1, s 2 commenced 26 July 2001 (IA s 10B)
 pt 351 commenced 12 September 2001 (s 2 and see [Gaz 2001 No S65](#))

4

Amendment history

Title

title am [Ord1938-25](#)

Name of Act

s 1 hdg am R3 LA
 s 1 am R3 LA

Definitions for Act

s 2 def **Bishop** sub [Ord1961-17](#) s 3
 def **diocese** sub [Ord1961-17](#) s 3

Application of Legislation Act

s 2A ins [A2001-44](#) amdt 1.3826

Trustees to be a body corporate

s 4 am [Ord1961-17](#) s 4

Common seal and quorum

s 5 am [A1996-88](#) s 4

Endnotes

5 Earlier republications

Objects of trust

s 6A ins [A1996-88](#) s 5

Powers of trust

s 8 am [Ord1938-11](#) s 2

Variation of trusts

s 8A ins [A1996-88](#) s 6

Blending of trust funds

s 8B ins [A1996-88](#) s 6

Execution of instruments

s 9 am [A1996-88](#) s 7

Protection of purchasers etc

s 10 am [A1993-64](#) sch 1; [A1995-54](#) sch

Evidence

s 11 am [Ord1938-35](#) sch 2; [A1993-64](#) sch 1; [A1995-54](#) sch

Validation of grants

s 13 om [Ord1938-11](#) s 3

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Ord1961-17	31 August 1991
2	A1996-88	31 January 1998

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