

[Extract from *Commonwealth of Australia Gazette*, No. 7, dated
18th February, 1937.]

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 2 of 1937.

AN ORDINANCE

**Relating to Property held upon any Trust for or for
the use, benefit or purposes of the Roman
Catholic Church in the Territory for the Seat of
Government.**

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the power conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910-1933*, as follows:—

1. This Ordinance may be cited as the *Roman Catholic Church Property Trust Ordinance 1937*. Short title.

2. In this Ordinance, unless the contrary intention appears— Definitions.

“Bishop” means the person for the time being administering the Diocese of Goulburn whether as Bishop, Coadjutor Bishop, Vicar Capitular or Administrator;

“Church” means the Roman Catholic Church;

“Church trust property” means land situated in the Territory, for the time being subject to any trust created, before or after the commencement of this Ordinance, 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 Ordinance, 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;

“Diocese” means the Diocese of Goulburn in the State of New South Wales;

“Diocesan Consultors” means the Diocesan Consultors for the time being of the Diocese;

“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 four of this Ordinance.

Trustees
for the
Diocese.

3. There shall be trustees of Church trust property, who shall be the Bishop of the Diocese and the Diocesan Consultors of the Diocese.

Trustees
to be bodies
corporate.

4.—(1.) The trustees of Church trust property shall, by virtue of this Ordinance, be a body corporate, having perpetual succession and a common seal, and being capable of acquiring, holding and disposing of any property, real or personal, and of suing and being 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 Diocese of Goulburn.

Common
seal and
quorum.

5.—(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 thereto shall, subject to this section, be from time to time determined at meetings of the Trust.

(2.) The Bishop and two 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 affixed 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 affixed shall be signed by the Bishop and by two other members of the Trust.

Vacancies
and
membership.

6.—(1.) Subject to this section, no capacity or power of the Trust shall be affected by the existence of vacancies in its membership.

(2.) Where 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, by virtue of this Ordinance, revive as soon as a quorum of the Trust is capable of being constituted.

Vesting of
Church trust
property.

7.—(1.) All Church trust property which at the commencement of this Ordinance is situated within the Territory shall by virtue of this Ordinance—

(a) vest in the Trust; and

(b) be thereupon divested from the person in whom it was vested before the commencement of this Ordinance

(2.) No vesting by virtue of this Ordinance 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 executors and administrators, against every claim, action, suit and other proceeding which shall be made or taken in respect of 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 thereof, shall, in favour of a person dealing for value with the Trust, be deemed to have been extinguished unless the person entitled thereto has, within a period of six months after the commencement of this Ordinance, 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 respect of the divested property.

8. The Trust shall have power, from time to time—

Powers of
Trusts.

- (a) to purchase, take on lease, or acquire by gift, devise, bequest, exchange or otherwise any real or personal property; and
- (b) in relation to any Church trust property, at any time vested in it—
 - (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;
 - (ii) to demise or let it for such term at such rent and with or without taking a premium, fine or foregift and subject to such provisions as the Trust thinks fit;
 - (iii) to accept surrender of leases, upon such terms and subject to such conditions as the Trust thinks fit;
 - (iv) To raise money on the security of it on such terms and conditions as the Trust thinks fit; and
 - (v) to declare trusts of it or of 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 retain the property in relation to which trusts are so declared, or to vest it, or any estate or interest so created, in other trustees upon the trusts so declared; and

(c) for any purpose mentioned in this section, to execute all such instruments as to the Trust appear proper.

Execution of instruments.

9. Every instrument bearing what purports to be the common seal of the Trust and purporting to be signed by the Bishop and two other members of the Trust 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.

Protection of purchasers, &c.

10.—(1.) A purchaser, mortgagee, lessee or other person dealing with the Trust, and the Registrar of Titles, the Crown Solicitor or any other person registering or certifying title shall not, upon any sale, exchange, mortgage, lease or other dealing purporting to be made under a power conferred by this Ordinance be concerned to see or inquire into the necessity for or propriety thereof, or the mode of exercising the same, or be affected by notice that the exercise of the power is unauthorized, 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 such money from all responsibility for the application of such money.

(2.) Where—

- (a) an instrument purports to have been executed in the exercise of a power conferred by this Ordinance, 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 *Real Property Ordinance 1925-1936*, or the *Real Property Act, 1900* of New South Wales in its application to the Territory; and
- (c) the instrument is executed by the Trust in accordance with the requirements of this Ordinance; and
- (d) the instrument is registered under the provisions of the *Registration of Deeds Act, 1897* of New South Wales in its application to the Territory—

the instrument shall—

- (i) 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

- (ii) 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 Ordinance or under or through an instrument executed by the Trust, and not in either such case registered under the *Registration of Deeds Act, 1897*, of New South Wales in its application to the Territory, before the registration under that Act of the instrument by this sub-section made evidence, be conclusive evidence that the land described in the instrument so made evidence as being Church trust property situated in the Territory, 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 sub-section (2.) of this section 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.

Evidence.

11. A certificate under the common seal of the Trust that the land described in the certificate is situated within the Territory 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 Ordinance of any land under the provisions of the *Real Property Ordinance* 1925-1936, or the *Real Property Act* 1900 of New South Wales in its application to the Territory of which the Trust is not the registered proprietor, be conclusive evidence; and

(b) be in any action, suit or other proceeding, whether civil or criminal be *prima facie* evidence of the facts so certified.

Trusts preserved.

12. 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 respect thereof, and if no such trusts have been expressly declared, on trust for the Church in the Diocese:

Provided that the powers conferred by section eight of this Ordinance shall be exercisable in relation to all Church trust property notwithstanding any trust or provision affecting it in the hands of the Trust.

Validation of grants.

13. No title to any land granted by the Crown before the commencement of this Ordinance, for or for the use, benefit or purposes of the Church shall be held bad, either at law or in equity, by reason of any breach or non-performance, before or after the commencement of this Ordinance, 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.

Dated this seventeenth day of February, 1937.

GOWRIE

Governor-General.

By His Excellency's Command,

T. PATERSON

Minister of State for the Interior.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.