

No. 16 of 1971

AN ORDINANCE

Relating to the property of the Presbyterian Church of Australia in the Australia Capital Territory.

I THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this sixteenth day of July, 1971.

PAUL HASLUCK

Governor-General.

By His Excellency's Command,

NIGEL BOWEN

Attorney-General, for and on behalf of
the Minister of State for the Interior.

PRESBYTERIAN CHURCH TRUST PROPERTY ORDINANCE 1971

1. This Ordinance may be cited as the *Presbyterian Church Trust Property Ordinance 1971*.^{*} Short title.

2. The Presbyterian Church Property Consolidation Act of 1904 of the State of New South Wales and the Acts specified in the Preamble to that Act shall cease to be in force in the Territory. State Act to cease to apply.

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

“church trust property” means property in the Territory that is for the time being subject to a trust, whether by dedication, consecration, trust instrument or otherwise, for, or for the use, benefit or purposes of, the Church;

“congregation” means the congregation of a church of the Presbyterian Church of Australia;

“scheme of co-operation” means a scheme of co-operation entered into in pursuance of section 23 of this Ordinance;

“the Church” means the Presbyterian Church of Australia;

“the General Assembly” means the General Assembly of the Church in the State of New South Wales;

“the Trust” means the Presbyterian Church (Australian Capital Territory) Property Trust established by section 4 of this Ordinance;

“the trustees” means the members of the Trust.

^{*} Notified in the *Commonwealth Gazette* on 12 August 1971.

**Establishment
of Trust.**

4.—(1.) There shall be a Trust by the name of the Presbyterian Church (Australian Capital Territory) Property Trust.

(2.) The Trust—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) has, subject to this Ordinance, power to acquire, hold and dispose of or otherwise deal with real and personal property;
- (d) may sue and be sued in its corporate name; and
- (e) has, in addition to the powers expressly conferred on it by this Ordinance such other powers as are necessary or convenient for the performance of its functions under the Ordinance.

**Constitution
of Trust.**

5. The Trust shall consist of the persons who, for the time being, hold office as the trustees of the Presbyterian Church (New South Wales) Property Trust, being the body corporate of that name established by The Presbyterian Church (New South Wales) Property Trust Act, 1936 of the State of New South Wales, as amended from time to time.

**Management
and proceedings
of Trust.**

6.—(1.) There shall be a chairman of the Trust who shall be elected by the trustees from among their number.

(2.) The chairman shall hold office for a period of twelve months but is eligible for re-election.

(3.) The chairman shall preside at all meetings of the Trust at which he is present.

(4.) In the absence of the chairman from a meeting of the Trust, the trustees present shall elect one of their number to preside at that meeting.

(5.) At a meeting of the Trust, four of the trustees constitute a quorum.

(6.) The Trust shall meet at least once every six months and shall keep or cause to be kept minutes of its proceedings and a record of its resolutions.

(7.) The minutes of proceedings of the Trust and the record of its resolutions shall be made available for inspection when required by the official auditor of the Church, being the person appointed to that office by the General Assembly.

(8.) The method of calling meetings of the Trust, the places at which those meetings are held and the procedure to be followed at those meetings shall be as determined from time to time by the trustees.

**Common Seal
of Trust.**

7.—(1.) The trustees may determine the form of the common seal of the Trust.

(2.) The trustees shall have the custody of the common seal of the Trust.

(3.) The common seal of the Trust shall be affixed to such documents or classes of documents as the trustees determine.

(4.) The affixing of the common seal of the Trust shall be attested by not less than four trustees.

(5.) All courts, judges and persons acting judicially shall take notice of the common seal of the Trust affixed to a document and shall presume that it was duly affixed.

8.—(1.) Subject to this section, any land in the Territory, together with any rights, easements and appurtenances relating to that land, and any personal property in the Territory, which is, at the date of commencement of this Ordinance, held, or which, at any date after the date of commencement of this Ordinance, shall be held, by any person for or on behalf of the Church or which belongs to the Church whether in possession, reversion, remainder or expectancy whether for, or for the use of, or for the benefit of the Church shall, without any conveyance or transfer, vest in the Trust on and after the date of commencement of this Ordinance.

Property to
vest in Trust.

(2.) The last preceding sub-section applies in respect of land or personal property referred to in that sub-section whether or not that land or property—

- (a) is held on behalf of, or belongs to, any congregation or institution of the Church; or
- (b) is held on behalf of any activity, service or interest of the Church,

and whether or not that land or property is connected with any congregation, institution, activity, service or interest of the Church.

(3.) Subject to any express trust affecting that land or personal property, any land or property which vests in the Trust in pursuance of this section shall be held, and may be dealt with, by the Trust in accordance with the provisions of this Ordinance.

(4.) Where any land or personal property referred to in this section is subject to an encumbrance, charge or mortgage, that land or property shall not vest in the Trust, except with the consent of the encumbrancee, chargee or mortgagee, until that encumbrance, charge or mortgage has been discharged or until the Trust, with the consent of the encumbrancee, chargee or mortgagee, has undertaken to be responsible for the liabilities imposed by that encumbrance, charge or mortgage.

9.—(1.) In addition to the property vested in the Trust by virtue of the last preceding section, the Trust may hold property in the Territory on trust for any purpose, activity or institution of the Church whether within or outside Australia, or in any way connected with the Church.

Vesting of
other property
in Trust.

(2.) Property vested in the Trust by virtue of the last preceding sub-section shall be held, and may be dealt with, in accordance with the provisions of this Ordinance as if that property were property that had vested in the Trust by virtue of the last preceding section.

10.—(1.) Where, by reason of circumstances subsequent to the creation of a trust to which any church trust property is for the time being subject, it has, in the opinion of the Assembly acting at the request of the Trust, become impossible or inexpedient to carry out or observe that trust, the Assembly may by resolution direct that the property be held for, or for the use, benefit or purposes of the Church

Variation of
Trust.

subject to such other trust as the Assembly declares and that first-mentioned trust shall thereupon cease and determine and the property shall be held subject to the trust so declared.

(2.) Where any church trust property referred to in the last preceding sub-section is held on behalf of a congregation, the Trust shall not make a request referred to in the last preceding sub-section without first having obtained a report from the Presbytery of the Bounds.

(3.) Subject to the next succeeding sub-section, the property shall be applied for the same congregation or, if not held on behalf of a congregation, for the same purposes as nearly as may be as the purposes for which it was held immediately before the Assembly resolved that the trust subject to which the property was held should cease and determine.

(4.) The Assembly may by resolution declare that, by reason of circumstances subsequent to the creation of a trust to which any church trust property is held, it has, in the opinion of the Assembly, become impossible or inexpedient to deal with or apply that property or some part of the property for the use or benefit of that congregation or for the same or like purposes, and, in such a case, that property or that part of that property may be dealt with and applied for such other purposes and in relation to such other congregation or congregations as the Assembly by resolution declares.

(5.) Where any church trust property is held by the Trust for any purpose, activity or institution conducted by or on behalf of the General Assembly of the Presbyterian Church of Australia, the powers conferred by the preceding sub-sections of this section on the Assembly shall be exercised by it not only at the request of the Trust but also at the request of, and in accordance with any directions given by, the General Assembly of the Presbyterian Church of Australia.

(6.) In this section, "the Assembly" means the General Assembly of the Church in New South Wales.

Rules relating
to dealing
with land.

11.—(1.) The General Assembly may make rules with respect to—

(a) the purchase or acquisition of freehold or leasehold property in the Territory—

(i) as an investment for the funds of the Church;

(ii) for any use, activity, service or object of the Church; or

(iii) for the purposes of the Church generally; and

(b) the dealing with, management and control of all or any particular property that is vested in the Trust,

but, if such a rule conflicts with this Ordinance or any other law of the Territory, the rule shall to the extent of that conflict be void.

(2.) A failure, on the part of the Trust or any other person, to comply with a rule made by the Assembly under this section shall not invalidate any transaction in relation to which the rule applied.

Dealing with
congregational
property.

12.—(1.) No property that is held on behalf of a congregation shall be sold, leased, mortgaged, surrendered or exchanged and no claim in respect of the compulsory acquisition or surrender of any such property shall be determined without the consent of that congregation.

(2.) The consent of a congregation shall be deemed to have been given for the purposes of the last preceding sub-section if a majority of the members of the congregation present and voting at a meeting of the congregation duly called for the purpose of considering and deciding on the question vote in favour of the particular matter.

(3.) The General Assembly shall not make a rule under the last preceding section that in any way attempts to limit the rights of a congregation under this section.

13.—(1.) Subject to this Ordinance, all property vested in the Trust shall, so far as the property is not subject to any express trust, be held and dealt with by the Trust in such manner as the Trust thinks fit. Power of Trust to deal with land.

(2.) The General Assembly may from time to time give directions or instructions to the Trust with regard to any matter affecting any property held by it for the Church.

(3.) Any such directions or instructions may be given with respect to the property of the Church generally or with respect to any fund, institution, activity or service of the Church.

(4.) The Trust shall comply with any such directions or instructions.

14. Subject to this Ordinance, the Trust may grant leases or sub-leases of any land or premises held by it for such periods, at such rents and subject to such terms and conditions as it thinks fit. Trust may lease land.

15. Subject to the rights of a congregation under section 12 of this Ordinance, the Trust has full discretionary power to act in relation to all cases of exchange, surrender, dedication and compulsory acquisition of any property vested in the Trust under this Ordinance including the power to make claims for compensation, and to agree to and settle upon such terms and conditions as it thinks fit any such claims. Trust may exchange, &c., land.

16. Subject to the rights of a congregation under section 12 of this Ordinance— Trust may mortgage land

- (a) the Trust may from time to time mortgage to any person any land vested in the Trust in pursuance of this Ordinance for the purposes of securing the repayment of such sum or sums of money with or without interest as the Trust considers necessary for the purposes of the Church generally or any of its funds, services, institutions or interests or for the purposes of any congregation of the Church; and
- (b) the Trust may guarantee advances with or without security made for any purpose set out in this section.

17.—(1.) Subject to this Ordinance, the Trust may from time to time sell any property vested in it by public auction or private contract as it thinks fit at such price as can be reasonably obtained for that property. Trust's power of sale.

(2.) When any property is sold by the Trust, the Trust shall transfer or convey that property and it shall vest in the transferee or purchaser, his heirs, executors, administrators and assigns, according to the estate and interest of the Trust in that property absolutely freed and discharged from all trusts.

(3.) The Trust shall stand possessed of the net moneys obtained from any mortgage given over any land and the net moneys arising from the sale, surrender or compulsory acquisition of any property sold, surrendered or compulsorily acquired after payment and satisfaction of mortgage and other moneys chargeable against that property and may apply those moneys, with the consent of the General Assembly, for all or any of the following purposes:—

- (a) the erection of buildings for the congregation to which the property mortgaged, sold, surrendered or compulsorily acquired belonged;
- (b) the improvement, repair, enlargement or maintenance of the church, minister's residence, school house or hall of that congregation; or
- (c) the purchase of other property or the erection of buildings for that congregation,

or may otherwise apply those moneys for the benefit of that congregation in such manner as the General Assembly directs.

(4.) If the last preceding sub-section is not applicable either because there is no congregation to which the property belonged or because the property was held for the Church generally, or for any fund, institution, activity or service of the Church, the Trust shall apply the moneys in accordance with the directions of the General Assembly.

Trust may guarantee performance or indemnify loss.

18. The Trust may guarantee, or undertake to indemnify any person for any loss arising out of, the performance of any obligation undertaken by persons administering property used for any purpose, activity or institution of the Church and whether solely so used or not.

Rights of Minister of Church.

19.—(1.) The minister duly appointed to a church—

- (a) shall, at all times, have free access to the church of which he is the officiating minister;
- (b) may freely exercise his spiritual functions in the church without interruption or disturbance by any person; and
- (c) may, while he continues to be the minister freely use, possess and enjoy the minister's dwelling house and the appurtenances to that house.

(2.) The exercise of any right in pursuance of the last preceding sub-section shall not confer any right of possession or property on a minister after he has ceased to be, or has been removed from the office of, the officiating minister of the church regardless of the length of time for which that minister exercised that right.

Exercise of certain powers by Deacon's Court or Committee of Management

20.—(1.) The Deacon's Court or Committee of Management of a congregation shall hold all moneys collected on behalf of that congregation and shall apply those moneys in such manner as the General Assembly, by regulation or otherwise, directs.

(2.) The Deacon's Court or Committee of Management of a congregation may from time to time, with the approval of the Trust, exercise all or any of the functions of the Trust with respect to the management of the property of the congregation.

21. A receipt for—

- (a) the moneys raised on any property mortgaged by the Trust;
- (b) the purchase money of any property sold under this Ordinance;
- (c) the moneys received as a result of the surrender or compulsory acquisition of any property; or
- (d) any other moneys payable to the Trust as the result of the exercise by it of any of the powers conferred on it under this Ordinance or otherwise receivable by it under this Ordinance,

Receipt to
absolve from
liability.

being a receipt—

- (e) to which the seal of the Trust has been affixed in accordance with section 7 of this Ordinance;
- (f) that is signed by a majority of the trustees; or
- (g) that is signed by a person authorized by the Trust to receive those moneys,

shall exonerate the mortgagee, purchaser or other person paying the moneys from all liability for supervising the application of those moneys or for the loss, misapplication or non-application of those moneys and from inquiring into the propriety, necessity or regularity of any mortgage, sale, lease or other dealing and no mortgagee, purchaser or other person paying the moneys shall be entitled or concerned to enquire whether any consent has been given or rules, regulations or formalities made or imposed and, if any have been so made or imposed, have been observed and complied with in the premises.

22.—(1.) Where, by any will, deed or other instrument, any property in the Territory—

Certain pro-
perty to be
transferred to
Trust.

- (a) is devised, bequeathed, given, granted, released, conveyed or appointed or is declared or directed to be held for, or upon trust for, or for the benefit of, the Church, a congregation or a fund, institution, activity or service of the Church;
- (b) is recoverable by, or payable to, the Church, a congregation or any fund, institution, activity or service of the Church;
- (c) is payable for any religious, social, educational or charitable work of the Church; or
- (d) is payable to an officer or official of the Church for the benefit of the Church generally or any of its funds, institutions, activities or services or that of any congregation,

that will, deed or other instrument shall be construed and shall take effect as if the Trust were named in it as legal owner.

(2.) The Trust may call for and require the payment, transfer, conveyance and delivery to it of any property referred to in the last preceding sub-section.

(3.) Any property paid, transferred, conveyed or delivered in accordance with the last preceding sub-section shall be held and dealt with by and be under the direction and control of the Trust subject only to the trusts declared in respect of that property in the will, deed or other instrument relating to that property.

(4.) Where any person pays, transfers, conveys or delivers any property to the Trust in accordance with this section, an acknowledgment or receipt—

- (a) to which the seal of the Trust has been affixed in accordance with section 7 of this Ordinance;
- (b) that is signed by a majority of the Trustees; or
- (c) that is signed by a person authorized by the Trust to receive that property,

shall be sufficient discharge and complete exoneration to the person who is liable to pay, transfer, convey or deliver that property.

Power to deal with property where scheme of co-operation entered into.

23.—(1.) Where, with the consents for the time being and from time to time prescribed by the General Assembly, a congregation has, at a meeting duly called in accordance with the requirements of the Assembly, resolved to enter into a scheme of co-operation with, or involving, a church of another denomination or a congregation or activity of such a church being a scheme that involves the use of property vested in the Trust, the Trust may, while that scheme of co-operation continues in force, permit that property to be used, managed and administered in connexion with that scheme in such manner and upon such conditions as the General Assembly determines.

(2.) The conditions that the General Assembly may determine under the last preceding sub-section include conditions with respect to the making of contributions of money for the acquisition, construction, alteration or repair of assets vested in or held on behalf of a co-operating church or congregation upon such terms as to charges upon other assets and charges upon property vested in the Trust for any such contributions from other denominations and otherwise as may be so determined and any such contribution by or on behalf of a congregation of the Church or towards assets of or held on behalf of such a congregation shall to the extent so determined at the time of the contributions be so secured, subject however to all mortgages and charges created in good faith for consideration and registered or entitled to be registered at the date of cessation of the scheme of co-operation.

(3.) The proceeds of the sale, mortgage or other dealing with any property referred to in this section and all moneys collected or held in respect of a scheme of co-operation may be applied in such manner as the General Assembly determines.

Rights of Minister of co-operating congregations.

24. The minister or other person in charge of the religious services of a congregation that has entered into a scheme of co-operation may be of a denomination other than Presbyterian and, if that minister is of another denomination, he shall, so long as he is in charge of the religious services and so long as that scheme of co-operation is in force, have the rights of a minister that are specified in section 19 of this Ordinance.

Constitution of Committee of Management where scheme of co-operation is in force.

25. Where a congregation has entered into a scheme of co-operation, the Committee of Management of that congregation may include members of any other congregation that is a party to the scheme of co-operation and those members may be of a denomination other than Presbyterian.

26.—(1.) The provisions of sections 23, 24 and 25 of this Ordinance apply to and in relation to all property at any time held on behalf of a congregation that has entered into a scheme of co-operation except to the extent that the property is held subject to any express trust expressly forbidding its use or administration in any of the ways referred to in those sections.

Sections 23, 24 and 25 to apply to property held on behalf of co-operating congregation.

(2.) The last preceding sub-section does not apply to prevent the use of property in a way referred to in sections 23, 24 and 25 of this Ordinance if the property is merely directed to be held on trust for Presbyterian worship or puposes.

27.—(1.) The Registrar of Titles shall, upon application, by the Trust, register such transfers, entries, cancellations and corrections, and do such other acts as are necessary to give effect to section 8 of this Ordinance—

Registrar of Titles may amend register, &c.

- (a) on each instrument, and on each endorsement on an instrument, in the Register Book kept in pursuance of the *Real Property Ordinance* 1925-1970; and
- (b) on the original of any such instrument and on each endorsement on the original of any such instrument that is produced to him for the purpose.

(2.) For the purposes of this section, a certificate under the seal of the Trust and signed by the chairman on behalf of the Trust is evidence that—

- (a) land described in the certificate is vested; or
- (b) rights stated in the certificate in respect of land in the certificate have vested,

in the trust by virtue of section 8 of this Ordinance.

(3.) A document purporting to be a certificate referred to in the last preceding sub-section shall, unless the contrary is proved, be deemed to be such a certificate.

(4.) In this section, "the Registrar of Titles" means the Registrar of Titles under the *Real Property Ordinance* 1925-1970 and includes an acting Registrar of Titles or Deputy Registrar of Titles under that Ordinance.

28.—(1.) A certificate under the hand of the person for the time being holding the office, or performing the duties, of Clerk of the General Assembly certifying—

Evidence with respect to membership, resolutions, &c., of the Trust.

- (a) that the Trust consists of the persons specified in the Certificate;
- (b) that, on a day specified in the certificate, the Trust consisted of the persons specified in the certificate;
- (c) that any declarations, determinations, resolutions or rules specified in the certificate have been made or passed by the General Assembly; or
- (d) that the Church comprises the bodies set out in the certificate and that those bodies carry out the duties set out in the certificate,

is evidence of the matters so certified.

(2.) A document purporting to be a certificate referred to in the last preceding sub-section or purporting to be a receipt referred to in section 21 or 22 of this Ordinance shall, unless the contrary is proved, be deemed to be such a certificate or receipt.

Effect of
Ordinance
on any other
Ordinance.

29. Nothing in this Ordinance shall be taken to limit the operation of any other law of the Territory and this Ordinance shall be read subject to all other laws of the Territory.