

Version No. 001**Anglican Trusts Corporations Act 1884****Act No. 797/1884**

Version incorporating amendments as at 9 November 2000

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Version No. 001

Anglican Trusts Corporations Act 1884

Act No. 797/1884

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An Act to provide for the creation of corporate bodies of Trustees in which property belonging to the Church of England in Victoria may be vested and to make further provisions in reference thereto.

Preamble

WHEREAS by the Act eighteenth Victoria No. XLV intituled "An Act to enable the Bishops Clergy and Laity of the United Church of England and Ireland in Victoria (now described as the Church of England in Victoria under the authority of the Amending Act 36 Victoria No. 454) to provide for the regulation of the affairs of said Church" certain powers are conferred upon the members of the said Church meeting in assembly as therein mentioned of managing the property of the said Church:

AND WHEREAS the members of the said Church are desirous in order the more effectively to carry out the powers so conferred that the property of the Church be vested in corporate bodies of trustees and be dealt with in manner hereinafter mentioned:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows:

1. Definitions

In this Act the following terms shall if not inconsistent with the context have the meanings hereinafter respectively assigned to them—

"bishop" or **"bishop of a diocese"** shall mean as to the term "bishop" the bishop registered under the title of "bishop" under the provisions of the **"Successory Trusts Act 1878"** as head of the Church of England in the portion of Victoria described in the certificate of registrations, and shall include the administrator of the affairs of the dioceses during the vacancy of the see; and the term **"diocese"** shall mean the portion of Victoria described in such certificate as the diocese of the person so registered;

"Church" shall be taken to designate and apply to the Church now known as the Anglican Church of Australia in Victoria;

"property" shall mean land promised or reserved by the Crown for any of the purposes of the said Church and all property real or personal including money or securities for money held by or vested or purporting to be vested in or claimable by any person or persons either in trust generally for the said Church or for any special purpose in connexion therewith or for the benefit or use of the members thereof as such or of any person or persons holding for the time being office therein;

S. 1 def. of
"Church"
amended by
No. 56/2000
s. 9(a).

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s. 2

¹"**Synod**" shall mean an assembly of the said Church convened under the provisions of the Act of the Legislature of Victoria passed in the eighteenth year of Her Majesty and numbered XLV or of any Act amending the same;

S. 1 def. of "Church Assembly" amended as "Synod" by No. 56/2000 s. 8(a).

"**trusts corporation**", in relation to a diocese, means the corporate body of trustees constituted within the diocese under this Act.

S. 1 def. of "trusts corporation" inserted by No. 56/2000 s. 5(a).

2. Powers of Synod to pass resolution to form body corporate

S. 2 amended by No. 56/2000 s. 8(a).

The Synod in any diocese may if it thinks fit pass a resolution expressing its desire—

- (a) that there be constituted within the diocese a corporate body of trustees for the purpose of holding property in trust for the benefit of the Church within such diocese;
- (b) that the persons nominated in the resolution as trustees shall be the corporation;
- (c) that such trustees be incorporated under the name specified in the resolution.

Provided always that nothing in this section shall affect any separate trust but such trust shall continue in force after the transfer of the trust estate to a corporate body of trustees under the provisions hereinafter contained.

3. Certified copy of resolution to be delivered to Registrar-General

As soon as may be after the passing such resolution the bishop of the diocese shall cause a copy thereof duly certified under his hand to be delivered to the Registrar-General, who shall retain and register the same.

s. 4

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S. 4
amended by
No. 56/2000
s. 8(a).

4. Incorporation of trustees as body corporate

After the registration of such resolution the Registrar-General shall notify the same in the Government Gazette, and thereupon the trustees named in such notice and their successors to be appointed as hereinafter provided shall be a body corporate by the name stated in such notice, and shall have perpetual succession and a common seal and may sue and be sued and may acquire take and hold any property in trust for the Church in the diocese in which such resolution shall have been passed or for any person or persons holding for the time being any office therein and may receive any moneys which have been or shall be given or contributed by any person or persons to be applied to any of the purposes of the said Church and may take over any securities for money held by any person or persons on behalf thereof and may take in the name of such corporate body any securities for money belonging to the said Church which shall be lent or advanced on account thereof, and shall deal with all such property and securities so as to give effect to the trusts to which they shall be specially subject, or when not subject to any express trust in such manner as the Synod of such diocese may from time to time direct but so as not to interfere with the jurisdiction of the Supreme Court in the enforcement of trusts.

S. 4A
inserted by
No. 10194 s. 4.

4A. Change of name of Diocesan Trusts Corporation

S. 4A(1)
amended by
No. 56/2000
s. 8(b).

- (1) The Synod in a diocese may from time to time by a resolution made with the concurrence of a majority both of the clergy and the laity, the votes of the clergy and those of the laity being separately taken, and the resolution receiving the assent of the bishop, change the name of the

corporate body of trustees to a name specified in the resolution.

- (2) The bishop of the diocese shall as soon as possible after the passing of a resolution under sub-section (1) cause a copy of the resolution duly certified under his hand to be delivered to the Registrar-General who shall retain the copy and register the resolution.
- (3) After the registration of the resolution, the Registrar-General shall notify the change of name in the Government Gazette and upon that notification, the change of name takes effect.
- (4) A change of name under this section does not operate—
 - (a) to create a new legal entity;
 - (b) to prejudice or affect the identity of the body corporate constituted by the corporate body of trustees or its continuity as a body corporate;
 - (c) to affect the property, or the rights and obligations, of the corporate body of trustees; or
 - (d) to render defective any legal proceedings by or against the corporate body of trustees—

and any legal proceedings that could have been continued or commenced by or against the corporate body of trustees by its former name may be continued or commenced by or against its new name.

5. Property vested in bishop

When any property is vested or purports to be vested in the bishop of any diocese or has prior to the passing of this Act been granted or conveyed to the bishop of any diocese in order that the same be held by him and his successors upon trust for

the benefit of the person holding for the time being the office of bishop thereof or for any of the purposes of the Church in such diocese or for furthering any object in connexion therewith, all such properties shall be held to be and from the date of his appointment to have been and shall become vested in the bishop for the time being of such diocese subject to the trusts affecting the same although such bishop has not been appointed bishop of such diocese under letters patent from the Crown, and such property may be transferred by such bishop to the body corporate constituted under the provisions of this Act within the diocese of such bishop and shall thenceforth be held by such body corporate subject to the trusts originally affecting the same, and on the demise of any bishop prior to his having made such transfer the same shall be come vested in such body corporate without any conveyance.

6. Persons holding property in trust

Where any persons hold any property in trust for or on the behalf of the Church in any diocese or of any person holding any office therein in which a corporate body of trustees has been constituted under the provisions of this Act, the trustees or a majority of them may if they think fit consent to a transfer of the trust property to such corporate body upon the trusts to which the same is subject, and such transfer when completed and accepted by the corporate body shall from and after its date operate as a discharge of all the trustees from the duties of the trust.

7. Bishop of diocese may consent to transfer in place of trustee deceased absent or under disability

S. 7
amended by
No. 56/2000
s. 9(b).

In the circumstances mentioned in the next preceding section, if by reason of death absence from Victoria or any other disability the consent of any trustee to the transfer as aforesaid cannot be obtained within six months after the constitution of the corporation as aforesaid, the bishop of the diocese may by writing under his hand consent to such transfer in place of any such trustee, and if such consent be published in the Government Gazette and in some newspaper circulating in the place where the property to which the consent refers is situate, and if within a month from the last publication of such advertisements no proceedings be taken therein by the person in whose name such consent is given, such consent shall upon the expiration of such month be as effective for the purpose of this Act as a consent given by the person in whose place the consent is declared to have been given.

8. Registrar-General or Registrar of Titles to make transfers to body corporate

Upon obtaining the written consent of a majority of the trustees of any property held by them on behalf of the Church in any diocese in which trustees have been incorporated under the provisions of this Act either under their own hands or that of the bishop of the diocese as hereinbefore mentioned, and also the consent of the bishop of the diocese to the transfer to the said corporate body of the trust property and the acceptance by the corporation of the transfer to it of such property, the Registrar-General or the Registrar of Titles as the case may be shall make the proper transfer thereof in his registers, and thereupon without further conveyance or transfer

the whole estate and interest of the trustees of such property shall vest in such corporate body.

S. 8A
inserted by
No. 56/2000
s. 6.

8A. Number of trustees

The Synod of a diocese may, by Act of Synod, alter the composition, including the number, of trustees constituting the trusts corporation of the diocese.

S. 9
amended by
No. 56/2000
s. 8(a).

9. Appointment of trustees

The trustees appointed for the purposes of this Act and their successors shall be appointed in such manner and shall hold their office for such term and upon such conditions and vacancies in such offices shall be filled in such manner as the Synod of the diocese shall by any regulation or act from time to time prescribe.

10. Successor in office to become trustee in place of predecessor

When any person who has been appointed a trustee by virtue of his office whether clerical or lay ceases to hold such office, the successor thereto shall upon the certificate in writing of the bishop of the diocese of the vacating of the office by the last holder thereof and of the appointment of the person named therein as his successor and of his acceptance of the office become a trustee under his official designation in the stead of the person last registered under such designation.

11. The successor of bishop vacating see to become trustee in place of predecessor

When the bishop of a diocese is one of the trustees appointed under this Act under his episcopal title and vacates the see, his successor thereto who is registered as bishop thereof under the Successory Trusts Act or any Act amending the same shall on the completion of such registration become a trustee in the stead of the last preceding bishop.

12. Property vested in trustees

All property becoming vested in any corporate body of trustees as hereinbefore mentioned or which shall in any manner be acquired by such corporate body shall so far as the same is subject to any express trust be held managed dealt with, mortgaged, charged or otherwise encumbered by such corporate body in conformity with such expressed trust, and shall so far as the same is not subject to any express trust be held managed dealt with, mortgaged, charged or otherwise encumbered in such manner as the Synod in the diocese may from time to time direct, and such property shall be subject as to the management thereof to the acts and regulations of the Synod in force for the time being which are applicable thereto.

S. 12 amended by Nos 10194 s. 5, 56/2000 s. 8(a)(c).

12A. Common Funds

(1) In this section—

"Common Fund" means a Common Fund authorized in accordance with this section to be established and kept in the books of a trusts corporation;

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S. 12A inserted by No. 10194 s. 6.

S. 12A(1) def. of "Trusts Corporation" repealed by No. 56/2000 s. 5(b).

(2) Where the Synod of a diocese by resolution has so authorized, the trusts corporation of that diocese may, subject to the directions (if any) of the Synod, in its discretion, invest any moneys in its hands whether or not they are subject to any express trust—

(a) on the separate account of any trust or person; or

- (b) (if the moneys are not directed by the terms of the trust to be invested in some other specified manner and investment in a Common Fund is not specifically prohibited by the terms of the trust governing these moneys) as part of a Common Fund established and kept in the books of the trusts corporation.
- (3) A trusts corporation of a diocese may invest moneys forming part of a Common Fund in any manner in which trust moneys may be invested by a trustee under any Act or in any manner authorized by the Synod of the diocese.
- (4) Investments made from moneys forming part of a Common Fund of a trusts corporation of a diocese shall not be made on account of or belong to any particular trust or person but the trusts corporation shall cause to be kept in the books of the trusts corporation accounts from which may be determined at any time the current amount at credit in a Common Fund kept by it on account of each trust or person.
- (5) The trusts corporation of a diocese may in its discretion make advances of moneys forming part of a Common Fund for any purpose of or relating to the diocese.
- (6) An advance of moneys under sub-section (5) shall be deemed to be an investment of moneys forming part of the Common Fund and shall bear interest at a rate fixed by the trusts corporation and the amount advanced and the interest thereon shall be a charge on the assets of the diocese.
- (7) A trusts corporation of a diocese may sell investments belonging to a Common Fund and may withdraw any of the moneys belonging to a Common Fund for any purpose of or relating to the exercise and discharge of its powers and duties
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under this or any other Act or under any trust or under any direction of the Synod of the diocese.

- (8) A trusts corporation of a diocese may in its discretion at any time withdraw from a Common Fund any amount at credit in the Common Fund on the account of any trust or person and may invest that amount on a separate account of that trust or person.
- (9) Amounts withdrawn from a Common Fund under sub-section (8) shall as from the date of withdrawal cease to have any claim for interest or otherwise from the Common Fund.
- (10) Any profits or losses upon realisation of any investment in a Common Fund shall be credited or debited (as the case requires) to the Common Fund and be received or borne proportionately by the several amounts in the Common Fund on account of each trust or person at the time of the realisation.
- (11) As on the first day of each month a trusts corporation of a diocese shall, in respect of each Common Fund kept by it, determine the value of the investments in the Common Fund as on that day and, in respect of securities listed on a Stock Exchange, the quotations published by the Stock Exchange shall be prima facie evidence of value and if there are no such quotations on that day the valuation of the chairman or secretary of the relevant Stock Exchange shall be prima facie evidence of the value.
- (12) Additions to, or withdrawals from, a Common Fund shall during any month be effected on the basis of the valuation under sub-section (11) made as on the first day of that month.

- (13) The trusts corporation of a diocese shall pay or allocate the income arising from a Common Fund proportionately to or among the trusts or persons entitled to the income of the Common Fund in proportion to the several amounts in the Common Fund on account of each trust or person and the period for which they formed part of the Common Fund.

12B. Joint use or ownership of church trust property

- (1) If an Act of the Synod of a diocese provides for a scheme of co-operation to be entered into—
- (a) with or involving a church of another denomination or any congregation or activity of such a church; and
 - (b) for the use of specified real or personal property vested in the trusts corporation of the diocese—
- the trusts corporation may permit that property to be used, managed and administered under and in connection with that scheme during its continuance in such a manner and on such conditions as are specified in the scheme.
- (2) The proceeds of sale or mortgage or any other dealing with property referred to in sub-section (1) may be applied in such manner as may be determined under the scheme.
- (3) The conditions referred to in sub-section (1) may include conditions with respect to—
- (a) the making of contributions of money for the acquisition, construction, alteration, maintenance or repair of assets vested in or held on behalf of either or both the trusts corporation and the co-operating church or congregation; and

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s. 12B

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- (b) the giving and taking of security or charge in accordance with the scheme over any property in respect of contributions of money or money's worth made or received under the scheme and any property vested in the trusts corporation in any scheme is, to the extent set out in the scheme, charged accordingly.
- (4) The Registrar-General, the Registrar of Titles and any person dealing in good faith and for value with any property vested in the trusts corporation is not bound to enquire whether any security or charge referred to in sub-section (3) exists and is not deemed to have notice of any such security or charge by reason only of this Act or the existence of a scheme of co-operation under this section and—
- (a) a conveyance, transfer or other assurance to another person operates as a discharge of any security or charge so referred to, in so far as the property conveyed, transferred or assured would, but for this sub-section, be so subject; and
- (b) a mortgage or charge in favour of another person has priority over any security or charge so referred to that affects the property mortgaged or charged in favour of that person.
- (5) This section applies in relation to all property at any time held by a trusts corporation of a diocese except to the extent that any property is held subject to any express trust expressly forbidding its use in any manner referred to in this section.
- (6) Sub-section (5) does not prevent the use of trust property in a manner referred to in this section if the property was merely directed to be held on trust for the worship or purposes of the Church.
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13. Trustees appointed hereunder to be trustees of property

When after the passing of this Act any land which has been granted promised or reserved by the Crown for any of the purposes of the Church in any diocese in which trustees have been incorporated under this Act shall be brought under the provisions of the Act of the Parliament of Victoria No. CCCXCI, the trustees appointed under the provisions of this Act shall be the trustees of such land.

14. Synod in any diocese to make rules for the appointment of corporation trustees

The Synod in any diocese in which trustees have been incorporated under the provisions of this Act shall from time to time make rules for the appointment of corporation trustees and the filling up of vacancies occurring in the trusteeship for the custody of the seal of the corporation and the affixing the same to any document and for verifying the affixing thereof and for carrying into effect the provisions of this Act and may from time to time alter or vary the same, and a copy of every such rule and of any alteration or variation thereof certified by the bishop of the diocese shall be deposited with the Registrar-General and advertised in the Government Gazette, and a duly certified copy of any such rule regulation or provision so registered and advertised shall be prima facie evidence of the same having been duly made.

S. 14
amended by
No. 56/2000
s. 8(a).

ENDNOTES

1. General Information

Act No. 797 of 1884 was assented to on 25 November 1884 and came into operation on 25 November 1884.

The title of this Act was inserted by section 4 of the **Anglican Trusts Corporations (Amendment) Act 2000**, No. 56/2000.

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2. Table of Amendments

This Version incorporates amendments made to the **Anglican Trusts Corporations Act 1884** by Acts and subordinate instruments.

Anglican Church of Australia Act 1985, No. 10194/1985

Assent Date: 8.10.85
Commencement Date: 8.10.85: s. 2
Current State: All of Act in operation

Anglican Trusts Corporations (Amendment) Act 2000, No. 56/2000

Assent Date: 8.11.00
Commencement Date: 9.11.00: s. 2
Current State: All of Act in operation

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Endnotes

3. Explanatory Details

¹ S. 1 def. of "Church Assembly": Section 4 of the **Church of England Act 1904**, No. 1947/1904 reads as follows:

4. References in deeds and documents

Wherever in the Act passed in Victoria in the year One thousand eight hundred and eighty-four and intituled "An Act to provide for the creation of corporate bodies of Trustees in which property belonging to the Church of England in Victoria may be vested and to make further provisions in reference thereto" or in any deed document or instrument made or entered into by or in connexion with the Church of England in Victoria any reference is made to any Assembly or Assemblies or Church Assembly or Church Assemblies such reference unless inconsistent with the context shall be deemed and taken to refer to the Synod or Synods.