

Church Administration (Heritage Property) Amendment Ordinance 2003

Explanatory Statement

Introduction

1. The object of the proposed ordinance is to amend the Church Administration Ordinance 1990 (the "1990 Ordinance") to clarify the functions of churchwardens, parish councils and archdeacons in relation to the maintenance and repair of the property of a church which is listed on the State Heritage Register maintained under the *Heritage Act 1977* (the "Act").

2. The substance of the proposed ordinance was recommended by a committee appointed by the Standing Committee in 2001 to consider appropriate responses to the minimum standards of maintenance and repair which now apply to properties listed on the State Heritage Register. It was originally intended that the Standing Committee consider the ordinance but, prior to it being able to do so, 3 of its members, acting under clause 5(3)(b) of the Delegation of Powers Ordinance 1998, requested that it be referred to the Synod.

3. To enable the Synod to consider the proposed ordinance, the Standing Committee initially requested that a motion for its introduction be moved at the 3rd session of the 45th Synod. However a motion for the introduction has not been considered by the Synod and the Standing Committee has since requested that a motion for the introduction of the proposed ordinance be considered at the 2nd session of the 46th Synod.

Minimum standards of maintenance and repair

4. Prior to the commencement of the *Heritage Amendment Act 1998*, there was no general obligation on the owner of an item listed on the State Heritage Register (a "heritage item") to maintain that item to a particular standard of maintenance or repair.

5. The *Heritage Amendment Act 1998* amended the Act to authorise minimum standards of maintenance and repair relating to -

- (a) the protection of the heritage item from damage or deterioration due to weather (including such matters as the weather proofing of roof, doors and windows), and
- (b) the prevention of and the protection of the heritage item from damage or destruction by fire, and
- (c) security (including fencing and surveillance systems to prevent vandalism), and

- (d) essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration).

6. Regulations prescribing minimum standards of maintenance and repair are contained in part 3 of the *Heritage Regulation 1999*. In brief, those regulations require the following -

- (a) Heritage items must have a reasonable level of protection against damage or deterioration due to weather.
- (b) Any material that could create a fire hazard for a heritage item must be removed and not be permitted to accumulate. Further, the systems or components in a heritage item must be maintained and repaired to the standard necessary to ensure a reasonable level of protection for the item against damage or destruction by fire.
- (c) Additional fire protection measures (such as the shutting down of certain services and the installation of smoke detection systems) must be taken for the protection of a building that is to be unoccupied for a continuous period of 60 days or more.
- (d) Fencing or surveillance systems appropriate to the nature and location of the heritage item must be installed to secure it and prevent vandalism. Further, certain systems or components must be maintained and repaired to the standard necessary to ensure a reasonable level of security.
- (e) Additional security measures (such as the connection of an electronic surveillance or alarm system to the police or a commercial security provider) must be taken for the protection of a building that is to be unoccupied for a continuous period of 60 days or more.
- (f) Essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration) must be carried out whenever necessary.
- (g) The heritage item must be inspected at least once every 12 months to identify maintenance and repairs needed to ensure compliance with the matters referred to in (a) to (e) above, and an inspection must be carried out at least once every 3 years to ensure compliance with the matter referred to in (f) above. Such inspections are to be carried out by a person with expertise and experience appropriate to the nature of the item concerned.

7. There are serious consequences if a heritage item is not maintained and repaired in accordance with the minimum standards.

- (a) The owner of the heritage item commits an offence, although proceedings cannot be taken without the written consent of the Minister administering the Act. A person

convicted of an offence is liable to a financial penalty or imprisonment for a period, or both.

- (b) The Heritage Council may order that the owner do or refrain from doing whatever is necessary to ensure that the heritage item is maintained and repaired to those standards. Failure to comply with an order is an offence.

8. If a corporation is the owner of a heritage item, its directors and employees commit the same offence as the corporation commits unless one of a limited number of defences apply.

Consequences for the Diocese

9. Currently, 18 properties of the church in the diocese are listed on the State Heritage Register. In some cases, the relevant listing applies to more than one heritage item on the property.

10. Most of the relevant heritage items are buildings or other fixtures (such as walls) on the land. Generally, the Property Trust is the trustee of those buildings and other fixtures. However, there are some other heritage items, such as some church organs, which are not fixtures. Generally, the churchwardens of the relevant church are the trustees of those other heritage items.

11. The Property Trust has been advised by its external legal advisers that it is the "owner" under the Act of the buildings or other fixtures of which it is trustee. This means that the Property Trust and its members are liable under the Act if those buildings or other fixtures are not maintained and repaired to the minimum standards notwithstanding that -

- (a) under clause 20(1)(p) of the 1990 Ordinance, it is the function of the churchwardens, and not the Property Trust, to repair a building held for the sole purposes of a church, and
- (b) under its constituting ordinance, the Property Trust is not permitted to repair or renovate a parish building without the authority of the majority of the parish council.

12. Churchwardens who are the trustees of a heritage item (such as an organ) are considered to be the owners of that item for the purposes of the Act. This means that the churchwardens are liable under the Act if that item is not maintained and repaired to the minimum standards.

13. The Heritage Office is understood to be considering the listing of more than 20 other properties of the church on the State Heritage Register. If listed, such other properties will also become subject to the minimum standards of maintenance and repair.

The Diocesan response

14. Following the passing of the *Heritage Amendment Act 1998*, the Property Trust has asked on several occasions that the Heritage Office recommend to the Minister who administers the Act an amendment to enable the Property Trust and its members, and other trustees of properties held for charitable purposes, to be relieved of personal liability under the Act. It has been argued that since such trustees serve in a voluntary capacity and have no beneficial interest in or right to the property, it is unreasonable for the Parliament and the Heritage Council to impose personal liability on those trustees if the minimum standards of maintenance and repair are not complied with.

15. However, the Heritage Office has made it clear that while it is mindful of the position of trustees of charitable trusts who serve in a voluntary capacity, it will not recommend the requested relief. Accordingly, an amendment of the Act is not a realistic option, at least in the near future.

16. Thus, for the immediate future, the issue for the Diocese is how to best manage our properties so as to minimise the risk that a trustee is liable under the Act for a failure to comply with the minimum standards of maintenance and repair.

The Proposed Ordinance

Role of churchwardens

17. The Property Trust has sent detailed information to churchwardens of churches with heritage items about the requirements of the Act and, in particular, the minimum standards of maintenance and repair. In addition, those churchwardens have been asked to complete annual returns about the maintenance and repair of the items, and ensure that annual inspections are carried out.

18. While clause 20(1)(p) of the 1990 Ordinance makes it a function of the churchwardens to repair the property of a church, it does not specify any standard of repair. The committee referred to in item 2 above recommended that the 1990 Ordinance be amended to make it clear that the standard of maintenance and repair expected for heritage items is the minimum standard prescribed from time to time under the Act. In particular, this amendment will remind the churchwardens of their obligations under the Act in relation to heritage items for which they are the trustees.

19. The committee also suggested that the 1990 Ordinance be amended to make it a function of the churchwardens of a church with a heritage item, within 28 days of request, to provide the Property Trust or other trustee of the heritage item with such information as is reasonably required about compliance with the minimum standards of maintenance and repair. This amendment is proposed to give the Property Trust or other trustee comfort that they will have information

in response to an enquiry by the Heritage Office about the matters referred to in item 6 above. In light of the potential consequences if such information is not provided, it is considered desirable to give that comfort.

20. Clause 2(a) of the proposed ordinance seeks to amend the 1990 Ordinance in the manner referred to in items 18 and 19 above.

21. Making it a function of the churchwardens to maintain and repair a heritage item to the minimum standards of maintenance and repair, and provide information about maintenance and repair, will not make the churchwardens the owner of the item for the purposes of the Act.

Role of parish councils

22. Under the 1990 Ordinance, parish councils have a significant role in the administration of parishes and their finances. For example, under clause 29 of the 1990 Ordinance, the parish council has the right and power to authorise payments and determine matters of policy in the control of the funds and property of each church in the parish.

23. The committee referred to in item 2 above also recommended that the 1990 Ordinance also be amended to make it a function of the parish council to do all things that it can reasonably do (including providing funds) to enable the churchwardens to comply with the minimum standards of maintenance and repair. Given the liabilities which exist under the Act, it is considered desirable to give the trustees of church property (whether the Property Trust, the churchwardens or other trustees) an assurance that the parish council will do all it reasonably can to enable the churchwardens to maintain heritage items to the minimum standard of maintenance and repair.

24. Clauses 2(b) and (c) of the proposed ordinance seek to amend the 1990 Ordinance in the manner referred to in item 23 above.

25. Making it a function of the parish council to do all things it can reasonably do to enable the churchwardens to comply with the minimum standards of maintenance and repair will not make the parish council the owner of the item for the purposes of the Act.

Role of archdeacons

26. Under clause 63 of the 1990 Ordinance the archdeacon and area dean have power to visit the minister and churchwardens of a church for the purpose of being satisfied, among other things, that a building or property of the parish is being properly maintained and repaired.

27. The committee referred to in item 2 above also recommended an amendment to clause 63 to give the archdeacon and area dean power to visit to ensure that churchwardens and parish councils are fulfilling the functions proposed by clauses 2(a) and (c) of the proposed ordinance in relation to heritage items. It is also proposed to amend the 1990 Ordinance to require the archdeacon to take all reasonable

steps to ensure compliance with those functions, if requested by the Property Trust or other trustee.

28. Clauses 2(d) and (e) of the proposed ordinance seek to amend the 1990 Ordinance in the manner referred to in item 27 of this report.

Final Comments

29. The proposed amendment of the 1990 Ordinance to clarify the functions of churchwardens, parish councils and archdeacons in relation to the maintenance and repair of heritage items is not the only measure undertaken or proposed to be undertaken to manage the risk that a church property listed on the State Heritage Register will not be maintained and repaired in accordance with the minimum standards.

30. Funds of about \$500,000 have been allocated to be used to maintain and repair state heritage items should the funds of a church or parish be insufficient.

For and on behalf of the Standing Committee

MARK PAYNE
Diocesan Secretary

19 August 2003