

## 22/09 Amendments to the Anglican Church of Australia Trust Property Act 1917

### Explanatory Report

#### Background

1. By resolution 22/09, the Synod noted the increasing responsibilities in managing church trust property and requested the Standing Committee to confer with the Property Trust about seeking amendments to the Anglican Church of Australia Trust Property Act 1917 (the "1917 Act") to enable the Property Trust to discharge its responsibilities more efficiently and expeditiously.
2. At its meeting on 25 June 2010, the Property Trust –
  - (a) approved the proposed amendments to the 1917 Act shown as marked in the attached extracts from the 1917 Act, and
  - (b) requested the Standing Committee to endorse the promotion of these amendments to the NSW Parliament.
3. At its meeting on 26 July 2010, the Standing Committee agreed to endorse the promotion of the proposed amendments to the NSW Parliament.

#### Explanation of amendments as initially proposed

##### *Section 6AA: preclusion of ex officio membership of bishops on corporate bodies*

4. By section 5 of the 1917 Act, the bishop of each Anglican diocese in New South Wales is ex officio a member of the corporate body constituted for the diocese under that section. Similarly, the bishop of any new diocese created in New South Wales would be a member ex officio of the corporate body constituted for that diocese under section 6.
5. The proposed section 6AA would enable the synod of a diocese, by ordinance, to preclude the bishop of the diocese from being a member ex officio of the corporate body of the diocese.
6. The proposed section 6AA has particular relevance for the Archbishop of the Diocese of Sydney in view of the size and complexity of the Diocese. The significant range of responsibilities exercised by the Archbishop makes it difficult for the Archbishop to regularly attend meetings of the corporate body. It is therefore considered appropriate to give the Synod of the Diocese the option of precluding the Archbishop from ex officio membership of the corporate body of the Diocese.
7. In view of the particular relevance of the proposed section 6AA for the Diocese of Sydney, the section has been drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

##### *Section 10A: delegation of powers and functions of corporate bodies*

8. At present a corporate body of a diocese does not have the power to delegate the exercise of its powers and functions except in certain limited circumstances prescribed by law. It is proposed that a new section 10A be inserted into the 1917 Act to enable the corporate body of a diocese to delegate the exercise of its powers and functions (other than the power to authorise the use of its common seal) in accordance with an ordinance of the synod of the diocese.
9. Under the new section, the exercise of any such power or function under delegation would be as effective as if the corporate body of the trustees had exercised it (section 10A(3)). Further, the power to delegate under the new section would be in addition to any other power the corporate body may have to delegate the exercise of its powers and functions (section 10A(4)).
10. The proposed section 10A has particular relevance for the corporate body of the Diocese of Sydney in view of the size of the undertaking for which this corporate body is responsible. The proposed section 10A has therefore been drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

##### *Section 11A: qualification of members of corporate bodies*

11. It is proposed that a new section 11A be inserted into the 1917 Act to enable the synod of a diocese, by ordinance, to provide for qualifications that are to be met by all members or different classes of members of the corporate body of the diocese. A common qualification might be that a certain number of members should be clergy. However it is possible that the synod of a diocese may consider it prudent to ensure that some or all of the members of the corporate body have particular areas of expertise, for example in finance or building.
12. The proposed section 11A has been drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

##### *Section 48: extension of powers in respect of church trust property held for a diocese*

13. Under section 4 of the 1917 Act, the term "church trust property" is defined to include –
 

*all or any part of any real and personal property which may for the time being be subject to any trust whether by dedication, consecration, trust, instrument, or otherwise, for or for the use, benefit, or*

*purposes of the Anglican Church of Australia in any diocese, and each such diocese is referred to as the diocese for which the church trust property in question is held.*

14. The 1917 Act gives the synod of a diocese extensive powers to manage, invest, deal with, and vary the trusts of the church trust property held for the diocese.

15. It was proposed that the powers of the synod of a diocese in respect of its church trust property be extended by inserting a new section 48 into the 1917 Act. The new section provides that unless the synod of a diocese, by ordinance, adopts, assents or otherwise consents to a canon, rule or determination made pursuant to the Schedule of the Anglican Church of Australia Constitution Act 1961, the canon, rule or determination is not capable of giving rise to any obligation requiring the use or application of church trust property held for that diocese.

16. The proposed section 48 was drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

### **Recent developments**

17. In a letter dated 27 August 2010, the Primate wrote to the Diocesan Secretary expressing a number of concerns about the proposed insertion of a new section 48 into the 1917 Act. In particular the Primate expressed a view that if the proposed section 48 is made into law, it would potentially have a significant adverse effect on the orderly financial management of the affairs of the General Synod because it would not be known whether or when a particular diocese will give its assent to a financial measure.

18. Following the Primate's intervention, at its meeting on 13 September 2010, the Standing Committee –

- (a) requested the Chair of the Property Trust to review the text of the proposed amendments, and
- (b) requested that a motion be moved at the Synod "by request of the Standing Committee" endorsing the amendments (incorporating any changes as a result of the review) being promoted to the NSW Parliament, and
- (c) requested that a version of the 1917 Act (or relevant extracts from the 1917 Act) showing the proposed amendments be provided to the Synod no later than the first day of the forthcoming session under cover of a brief explanatory report from the Diocesan Secretary.

19. At its meeting on 24 September 2010, the Property Trust requested that the proposed section 48 be decoupled from the other amendments being proposed by the Property Trust and that the Synod be requested to consider the promotion of these other amendments to the NSW Parliament as a matter of priority at its forthcoming session.

20. In view of the Property Trust's request, the Chair of the Property Trust intends –

- (a) to limit the review of the text of the proposed amendments to the matters which prompted the drafting of the proposed section 48, and
- (b) to seek the leave of the Synod to substitute the motion which currently appears as item 16.14 on the business paper for the first day of the session with the following motion –

"Synod, noting the explanatory report about the proposed amendments to the Anglican Church of Australia Trust Property Act 1917 –

- (a) endorses the promotion to the New South Wales Parliament of the amendments proposed to be made by the insertion into the Act of new sections 6AA, 10A and 11A, and
- (b) requests that any proposal to seek further amendments to the Act to address the concerns which prompted the drafting of the new section 48 of the Act be brought to the Synod for approval before being promoted to the New South Wales Parliament."

For and on behalf of the Standing Committee.

ROBERT WICKS  
*Diocesan Secretary*

29 September 2010

## Extracts from the Anglican Church of Australia Trust Property Act 1917

In this Act, a reference to the Church of England or to the Church of England in Australia is to be construed as a reference to the Anglican Church of Australia - see Anglican Church of Australia Act No. 21, 1976.

Act No 21, 1917 as amended by Act No 26, 1923, Act No 28, 1923, Act No 4, 1950, Act No 48, 1972, Act No 21, 1976, Act No 37, 1976, Act No 67, 1981, Act No 126, 1988, Act No 120, 1998 and Act No 31, 1999.

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**Part 3 - Trustees Constitution and Succession**

**Existing corporate bodies**

5. The following bodies, that is to say –
- Church of England Property Trust Diocese of Sydney;
  - Church of England Property Trust Diocese of Goulburn;
  - The Corporate Trustees of the Diocese of Grafton and Armidale;
  - Church of England Property Trust Diocese of Bathurst;
  - Trustees of the Church Property for the Diocese of Riverina;
  - The Corporate Trustees of the Diocese of Grafton,

are hereby declared to have been duly constituted as bodies politic and corporate by the said names respectively, under the provisions of the Church of England Trust Property Incorporation Act 1881, and notwithstanding the repeal of the said Act they shall remain so constituted as aforesaid, and, except so far as there is anything in this Act inconsistent therewith, this Act shall apply to them as if this Act had been in force at the time they were constituted and they were constituted hereunder.

The bishop of a diocese shall ex officio be a member of the corporate body so constituted as aforesaid for such diocese, and the number of members shall be increased by one for the said purpose.

**New corporate bodies**

6. The synod of each diocese, other than the dioceses for which the said bodies in the preceding section mentioned were and remain so constituted as aforesaid, may at any time elect such persons as such synod desires, should together with the bishop of the diocese, ex officio, be incorporated as trustees for such diocese, and the bishop of such diocese shall notify such election in the Gazette, and immediately upon such notification and thenceforth the said persons and such persons as may from time to time be members of such body, together with the bishop of the diocese, ex officio, shall be and they are hereby constituted a body politic and corporate, by the name of incorporation mentioned in such notification, and by such name they shall have perpetual succession and a common seal, and shall sue and be sued, or shall otherwise appear and answer and be answered, and may take and hold to them and their successors by grant, will, or otherwise any real or personal property, and for any estate or interest therein.

**Ex officio membership of the bishop of a diocese**

6AA. (1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) Despite sections 5 and 6, the bishop of a diocese to which this section applies shall not be a member, ex officio, of a corporate body constituted for the diocese if the synod of the diocese determines by ordinance published in the Gazette under the hand of the Bishop that the bishop shall not be such a member.

**Term of office of member of corporate body of trustees**

6A. (1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) The members of a corporate body of trustees for a diocese to which this section applies (members ex officio excepted) hold office –

(a) for such term as is specified in respect of all members; or

(b) for such different terms as are specified in respect of different members or different classes of members, in an ordinance of the synod of the diocese published in the Gazette under the hand of the Bishop.

(3) A member of a corporate body of trustees whose term of office as such a member expires is eligible for re-election as such a member.

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**Change of name**

10. It shall be lawful for the synod of a diocese from time to time, by ordinance, to change the name of the corporate body of trustees constituted for such diocese.

**Delegation of powers and functions of corporate bodies**

10A. (1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) The corporate body of trustees of a diocese to which this section applies may, in accordance with an ordinance of the synod of the diocese published in the Gazette under the hand of the Bishop, delegate the exercise of any of its powers and functions (other than the power to authorise the use of its common seal).

(3) The exercise of any such power or function under delegation shall be as effective as if the corporate body of trustees had exercised it.

(4) The power to delegate under this section is in addition to any other power the corporate body of trustees may have to delegate the exercise of its powers and functions.

**Alteration of number of members of corporate body**

11. It shall be lawful for the synod of a diocese from time to time, by ordinance, to declare what shall be the number of members of the corporate body of trustees constituted for such diocese, and in case of increase in the number such increase shall be effected by the synod of such diocese electing an additional member, or additional members, and in case of decrease in the number such decrease shall be effected by the synod of such diocese not electing a person, or persons, to fill a vacancy, or vacancies, declared under the provisions of this Act.

**Composition of members of corporate bodies**

11A. (1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) It shall be lawful for the synod of a diocese to which this section applies from time to time, by ordinance published in the Gazette under hand of the Bishop, to provide for qualifications that are to be met by all members or different classes of members before a person is eligible to be elected to the office of member of the corporate body of trustees of such diocese.

**Vacancies in membership of corporate bodies**

12. It shall be lawful for the synod of a diocese from time to time, by resolution, to declare the existence of a vacancy, or vacancies, in the office of member of the corporate body of trustees of such diocese by reason of one or more of the members for the time being of such corporate body having died, resigned office, refused or neglected or having become incapable to act in the said office, or having for the space of six months ceased to reside within the said diocese, or by reason of some other matter to be specified in such resolution, and thereupon or at any time thereafter the synod of the said diocese may elect a person or persons to be, and such person or persons shall thereupon become a member or members of the said body in the place or places of the member or members referred to in the said resolution.

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**Exclusion of defeasance clauses from certain conveyances**

13 47. Each of the following deeds of conveyance, namely, deed of conveyance dated the thirteenth day of June, one thousand nine hundred and five, from the Minister for Public Works for the State of New South Wales to the Most Reverend William Saumarez Smith and others Registered Number 166 Book 784, and deed of conveyance dated the thirteenth day of June, one thousand nine hundred and five, from the said Minister to the Church of England Property Trust Diocese of Sydney Registered Number 169 Book 784, shall have and shall be deemed always to have had effect as though the proviso contained therein providing, inter alia, for the forfeiture and reverter to the Crown in certain events of the land thereby conveyed had not been inserted in the deed of conveyance.

**Canons, rules and determinations**

48. (1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.

(2) No canon, rule or determination made under or by virtue or in pursuance of the articles and provisions of the Schedule to the Anglican Church of Australia Constitution Act 1961 is capable of giving rise to any obligation requiring the use or application of church trust property held for a diocese to which this section applies unless the synod of the diocese, by ordinance, adopts, assents or otherwise consents to such canon, rule or determination.

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**Endnotes**

<sup>5</sup> “Church of England Property Trust Diocese of Sydney” has been the “Anglican Church Property Trust Diocese of Sydney” since 7 October 1982.

<sup>6</sup> Inserted by Act No 37, 1976.

<sup>13</sup> Amended by Act No 4, 1950.