



Western Australia

## **Anglican Church of Australia (Diocesan Trustees) Act 1888**

Compare between:

[03 Sep 2012, 02-g0-02] and [18 Nov 2013, 02-h0-03]



## **Anglican Church of Australia (Diocesan Trustees) Act 1888**

**An Act to repeal the Act 38 Victoria, No. 18, and to incorporate a new body of Trustees of the Church of England in Western Australia<sup>2</sup>, to make provision in respect of the Trusts on which certain land is held by the Trustees, and to make provision for the incorporation of the missions or institutions of that Church and for other purposes.**

*[Long title amended by No. 66 of 1969 s. 2; No. 55 of 1973 s. 2.]*

### **Preamble**

WHEREAS by an Act of the Legislative Council of this Colony, the 38 Victoria, No. 18, it was provided that the Standing Committee for the time being of the Diocesan Synod of the branch of the Church of England in Western Australia should be incorporated, and should have power to hold lands and other property in trust for the said Church; And whereas the Synod of the said Church are desirous of having Statute 38 Victoria, No. 18, incorporating the said Standing Committee as Trustees of the said Church, repealed; And that the said Standing Committee should cease to be Trustees of the said Church, and that another body of Trustees be incorporated in their place:

Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows: —

### **1. Repeal**

The Ordinance 38th Victoria, No. 18, intituled ‘An Act for the Incorporation of the Standing Committee of the Diocesan Synod

**s. 2**

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of the branch of the Church of England in Western Australia', is hereby repealed.

**2. New trustees incorporated**

THE Right Reverend Father in God Henry Hutton Parry, Doctor of Divinity, Lord Bishop of Perth; the Very Reverend Frederick Goldsmith, Dean of Perth; the Venerable James Brown, Archdeacon of Perth; Mr. Justice Edward Albert Stone; the Honourable Anthony O'Grady Lefroy, Esquire; and William Thorley Loton, Esquire, and their successors as appointed by Statute of the Synod, or to be appointed in accordance with the provisions of any Statute of Synod to be made and enacted hereafter, shall be and are hereby constituted a Corporation, by the name and style of 'The Perth Diocesan Trustees'<sup>3</sup>; and by that name shall and may have perpetual succession and a common seal, to be by them from time to time altered as they shall think fit, and by the same name to sue and be sued, plead and be impleaded, in all courts of law and equity, and shall exercise all the powers and perform all the functions and duties by the Statutes of Synod, now or hereafter to be enacted, directed and empowered and intended to be performed by the said Trustees; and the said Trustees shall have full power to acquire and hold for the said Church, by purchase, devise, or otherwise, all lands, tenements, and hereditaments, whatsoever of every tenure, and also all personal estates, and of conveying, assigning, demising, or otherwise disposing of such real and personal estate, and shall also have power to borrow and take up at interest any sum or sums of money for the purpose of erecting or improving, or aiding in erecting or improving, Churches, Parsonage Houses, or other buildings, or in the improvement of any freehold property or for the purpose of redeeming any mortgage or other security or charge or any part thereof respectively upon any lands or other property vested in the said Trustees: and for any such purpose to mortgage by deed under the said corporate seal such portions of the said lands, tenements, and hereditaments as may be necessary for securing the repayment of such moneys with interest thereon. And the

said Trustees shall have power to take, hold, employ, and invest, all such real and personal estate as they shall deem advisable and shall be thereunto authorised by Statutes of Synod as aforesaid; — but nevertheless only for the purposes of the Anglican Church of Australia so far as it is in the State<sup>4</sup>, subject to the performance of any Trusts upon which the said lands, tenements, hereditaments, and personal estate may have been acquired, and subject in all respects to the Statutes, orders, directions, and regulations of the said Synod. Provided, always, that no lands which have been, or shall, or may be hereafter given or granted by the Crown to or for the use or benefit of the said Church, without pecuniary consideration therefor, shall be conveyed, transferred, mortgaged, sold, or otherwise disposed of except with the consent of the Governor.

*[Section 2 amended by No. 34 of 1918 s. 7 and 11; No. 4 of 1960 s. 5; No. 121 of 1976 s. 7.]*

**3. Standing Committee's property vested in new body**

All lands or other property now vested in the said Standing Committee, shall be and the same are hereby vested in The Perth Diocesan Trustees<sup>3</sup> for the time being, for the same estate as such lands and property are now held by the said Standing Committee, but upon and subject to all trusts, covenants, contracts, and liabilities affecting the same.

*[Section 3 amended by No. 34 of 1918 s. 11.]*

**3A. Cathedral Square land, trusts varied**

- (1) The provisions of this section apply notwithstanding any other provision of this Act, any provision of any other Act, or any provision of a trust upon which any land in Cathedral Square may have been acquired or held before the coming into operation of this section<sup>1</sup>, and any such trust is, to the necessary extent, hereby varied accordingly.

**s. 3A**

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- (2) All land in Cathedral Square shall be held on trust for the ecclesiastical purposes of the Cathedral, the Diocese, and the Province in accordance with this section.
- (3) The rents issues and profits derived by the Trustees from Cathedral Square and all moneys raised on mortgage thereof or any part thereof and the proceeds of sale (if any) and any other capital proceeds thereof or any part thereof and interest thereon and any accumulation of any such rents issues profits money proceeds and interest shall, after deducting fees and commissions charged pursuant to section 3BA, be applied by the Trustees —
  - (a) firstly to —
    - (i) all rates and taxes (if any) payable in respect thereof;
    - (ii) all costs and expenses of and incidental to the maintenance and repair and insurance of all the buildings and all other improvements on or forming portion of Cathedral Square and the Deanery and other usual property outgoings;
    - (iii) interest payable on any mortgages on all or any part of Cathedral Square or the Deanery;
    - (iv) commitments on any mortgage on all or any part of Cathedral Square or the Deanery including the payment of such amount of principal on any such mortgage as the Trustees may decide to pay from time to time in reduction thereof;
    - (v) such annual amounts as are agreed between the Cathedral Chapter and the Trustees in or towards a sinking fund to provide for the amortization of the costs of the improvements erected on Cathedral Square and any plant, floor coverings, furnishings, or any property of whatever kind contained within such improvements; and
    - (vi) the cost of the provision and maintenance of a Deanery whenever and wherever required;

and

- (b) as to the balance thereof after those applications, in distributions towards the needs of any one or more of the Cathedral, the Diocese, and the Province in accordance with the determinations and directions of the Foundation under section 3B(11)(b).
- (4) A distribution to a parish or to the Cathedral Chapter pursuant to subsection (3)(b) shall not be subject to assessment by any Synod of the Church in the Province as income of the parish or the Cathedral Chapter, as the case may be.
- (5) Any act, matter, or thing, for or with respect to which provision is made in this section, made, done, or executed before the coming into operation of this section which would have been lawful if this section had been in force at the time such act, matter, or thing was made, done, or executed is hereby validated.

*[Section 3A inserted by No. 55 of 1973 s. 3; amended by No. 101 of 1975 s. 2.]*

**3B. Cathedral Square Foundation established**

- (1) There shall be a standing committee representing the Cathedral Chapter and the Diocesan Council to be known as “The Cathedral Square Foundation”.
- (2) The Foundation shall consist of—
  - (a) the Archbishop or his commissary appointed pursuant to the Perth Archbishopric Statute of the Church as amended from time to time or pursuant to any Church statutory replacement therefor;
  - (b) the Dean for the time being or the person for the time being fulfilling the office of the Dean; and
  - (c) 4 Laymen, 2 appointed by the Cathedral Chapter and 2 appointed by the Diocesan Council.

**s. 3B**

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- (3) The Cathedral Chapter and the Diocesan Council shall respectively appoint a deputy for each of the Laymen appointed by them to the Foundation, to act at a meeting in the place of the Layman for whom he is a deputy if for any reason the Layman is absent therefrom.
- (4) The first appointment of Laymen and their deputies shall be made not more than 2 months after the coming into operation of this section<sup>1</sup>.
- (5) The Laymen and their deputies shall be appointed for a term of 3 years and shall be eligible for re-appointment.
- (6) If a Layman or a deputy dies or resigns his office as member or deputy of a member of the Foundation, the vacancy shall be filled by appointment by the same body as appointed the Layman or deputy and the person filling the vacancy shall hold office for the remainder of his predecessor's term.
- (7) The Foundation shall hold such meetings as are necessary for the exercise of its functions and duties.
- (8) At a meeting of the Foundation —
  - (a) not less than 5 members thereof, including, where the case requires, deputies, forms a quorum;
  - (b) a question arising at the meeting shall be determined by a majority of the valid votes of the members, including, where the case requires, deputies, present; and
  - (c) the Archbishop or his commissary shall have a deliberative and a casting vote.
- (9) No act or thing done by the Foundation is invalidated, prejudiced, or affected by reason of any vacancy in the membership thereof as long as a quorum remains.
- (10) Subject to this section, the Foundation may regulate its procedure in such manner as it thinks fit.
- (11) The functions and duties of the Foundation shall be —



- (a) to give advice to the Trustees on the matters referred to in section 3A(3)(a).
  - (b) to make such determinations as the Foundation thinks fit of the distributions to be made by the Trustees under section 3A(3)(b) towards the needs of any one or more of the Cathedral, the Diocese, and the Province, and to direct the Trustees to make the distributions accordingly;
  - (c) to make recommendations to the Trustees with respect to the development of Cathedral Square; and
  - (d) to report half-yearly to the Cathedral Chapter and the Diocesan Council in relation thereto.
- (12) Determinations and directions of the Foundation under subsection (11)(b) are binding on the Trustees but advice and recommendations of the Foundation under paragraphs (a) and (c) thereof are not so binding.

*[Section 3B inserted by No. 55 of 1973 s. 3.]*

**3BA. Fees and commissions chargeable by Trustees**

- (1) In addition to all moneys properly expended by the Trustees and chargeable against trusts administered by them, the Trustees may, subject to subsection (2), from time to time charge fees and commissions —
- (a) in respect of the capital of any such trust created after the coming into operation of this section<sup>1</sup>; and
  - (b) in respect of the income of any such trust created before or after the coming into operation of this section<sup>1</sup>,
- and retain those fees and commissions or receive them against, from or out of such capital or income, as the case requires.
- (2) The fees and commissions charged from time to time pursuant to subsection (1) —
- (a) shall not exceed the fees and commissions which Trustee Companies may from time to time lawfully charge, retain or receive against, from or out of the

s. 3C

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- capital or income, as the case requires, of estates, trusts, or funds committed to their administration; or
- (b) if those last mentioned fees and commissions differ, shall not exceed the average thereof.
- (3) Any act, matter, or thing, for or with respect to which provision is made in this section, made, done, or executed before the coming into operation of this section which would have been lawful if this section had been in force at the time such act, matter, or thing was made, done, or executed is hereby validated.
- (4) In subsection (2) *Trustee Companies* means the companies on which powers are conferred respectively by *The Perpetual Trustees W.A. Ltd., Act 1922*<sup>5</sup> and the *West Australian Trustees Limited Act 1893*<sup>6</sup>.

[Section 3BA inserted by No. 101 of 1975 s. 3.]

**3C. Interpretation of sections 3A, 3B and 3BA**

Wherever occurring in section 3A, 3B or 3BA —

*Archbishop* means the Archbishop of the Perth Diocese of the Anglican Church of Australia;

*Cathedral* means the Cathedral Church of the Perth Diocese of the Anglican Church of Australia;

*Cathedral Chapter* means the Chapter of the Cathedral Church of the Perth Diocese of the Anglican Church of Australia;

*Cathedral Square* means all those pieces of land described in the Schedule;

*Church* means the Anglican Church of Australia;

*Dean* means the Dean of the Cathedral Church of the Perth Diocese of the Anglican Church of Australia;

*Deanery* means the residence from time to time of the Dean of the Cathedral Church of the Perth Diocese of the Anglican Church of Australia;

**Diocese** means the Perth Diocese of the Anglican Church of Australia;

**Diocesan Council** means the Council of the Perth Diocese of the Anglican Church of Australia;

**Foundation** means The Cathedral Square Foundation established under section 3B;

**Province** means the Province of Western Australia of the Anglican Church of Australia; and

**Trustees** means The Perth Diocesan Trustees.

*[Section 3C inserted by No. 55 of 1973 s. 3; amended by No. 101 of 1975 s. 4; No. 121 of 1976 s. 7.]*

**4. Liabilities and entitlements of Trustees**

The Perth Diocesan Trustees<sup>3</sup> shall be liable upon and entitled to the benefit of all contracts, bonds, covenants, agreements, and engagements made, executed, or entered into by the said Standing Committee with any person, corporation, or company, or by any person, corporation, or company with the said Standing Committee, in the same manner and as fully as if the said Diocesan Trustees were originally parties to the same contracts, bonds, covenants, agreements, and engagements in place of the said Standing Committee.

*[Section 4 amended by No. 34 of 1918 s. 11.]*

**5. Standing Committee replaced by Trustees**

The words ‘**Standing Committee**’, in 49th Victoria, No. 19, shall be read as and taken to mean The Perth Diocesan Trustees<sup>3</sup>, and all rights, powers, privileges, and discretions thereby conferred, and all duties thereby imposed upon the said Standing Committee shall be enjoyed, exercised, and performed by the said Diocesan Trustees.

*[Section 5 amended by No. 34 of 1918 s. 11.]*

**s. 5A**

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**5A. Missions and institutions may be incorporated etc.**

- (1) The Synod of the Diocese of Perth may resolve that any mission or institution of the Anglican Church of Australia Diocese of Perth (in this section called *the Church*) shall be separately incorporated according to law in such manner and subject to such conditions, restrictions, limitations and provisions as that Synod may by resolution determine.
- (2) On the date on which a mission or institution becomes so separately incorporated —
  - (a) all the real and personal property that immediately before that date was exclusively used in the work and activities of that mission or institution, including all such real and personal property as was then held by The Perth Diocesan Trustees upon trust for that mission or institution, and all contractual rights and benefits then existing that relate to the mission or institution are hereby vested in the mission or institution in its corporate name, subject to all easements, encumbrances, rights, trusts and equities, affecting it or them; and
  - (b) all debts, liabilities and obligations of every class or kind existing at that date that relate to the mission or institution, by force of this section and without any transfer or assignment, shall be taken over by the mission or institution as so incorporated, and the mission or institution shall indemnify and at all times on and after that date keep indemnified The Perth Diocesan Trustees and all persons who prior to that date were liable for or subject to those debts, liabilities and obligations.
- (3) Subject to all easements, encumbrances, trusts and equities affecting the same, each mission or institution incorporated as provided in this section, shall hold in its corporate name —
  - (a) all real and personal property, rights and benefits that are acquired by it after it is so incorporated; and

- (b) all real and personal property given to The Perth Diocesan Trustees in trust for the mission or institution after it is so incorporated.
- (4) Notwithstanding the operation and effect of the foregoing provisions of this section on any mission or institution, any mission or institution incorporated as therein provided, shall continue to be a mission or institution of the Church.
- (5) Every transfer, conveyance, assignment, application, deed and instrument that may be necessary for the purpose of effectually vesting the real and personal property, rights and benefits referred to in subsection (2) in the corporate name of a mission or institution incorporated as provided in this section shall be free from all —
- (a) duty imposed by the *Duties Act 2008*; and
- (b) fees that, but for this subsection, would be payable in respect thereof under the *Transfer of Land Act 1893*.
- (6) Where an institution is separately incorporated pursuant to this section or has been incorporated according to law prior to the commencement of this section, if the institution is a school or college all vacant land held by the institution and all land so held that is used exclusively or mainly for the purposes of the school or college is not rateable land under the provisions of the *Local Government Act 1995*, ~~or the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*~~ is not subject to statutory water service charges under the *Water Services Act 2012* unless the land is connected to water service works as defined in section 3(1) of that Act, and is exempt from land tax imposed by the *Land Tax Act 2002*.
- (7) Notwithstanding anything contained in this section, all real and personal property held by or in trust for or on behalf of or in connection with a mission or institution separately incorporated pursuant to the provisions of this section shall be held subject to the performance of any trusts relating thereto and subject to the statutes, orders, directions and regulations of the Synod of the

**s. 6**

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Church, so far as they do not contravene or are not inconsistent with any Act or law in force in the State.

*[Section 5A inserted by No. 66 of 1969 s. 3; amended by No. 121 of 1976 s. 7; No. 14 of 1996 s. 4; No. 45 of 2002 s. 8; No. 12 of 2008 s. 52; [No. 25 of 2012 s. 204.](#)]*

**6. Short title**

This Act may be cited as the *Anglican Church of Australia (Diocesan Trustees) Act 1888*<sup>1</sup>.

*[Section 6 inserted by No. 81 of 1966 s. 2; amended by No. 121 of 1976 s. 7.]*

## Schedule — Description of Cathedral Square

[s. 3C]

*[Heading amended by No. 19 of 2010 s. 4.]*

All those pieces of land being —

- (a) Perth Town Lot B8 and portion of Perth Town Lot B14 together being Lot 25 the subject of Diagram 39056 and being the whole of the land comprised in Certificate of Title Volume 377 Folio 116A;
- (b) Portion of each of Perth Town Lots B4, B9 and B9½ and being Lot 23 the subject of Diagram 39050 and being the whole of the land comprised in Certificate of Title Volume 377 Folio 117A;
- (c) Portion of Perth Town Lot B2 and being Lot 26 the subject of Diagram 39057 and being the whole of the land comprised in Certificate of Title Volume 377 Folio 118A;
- (d) Perth Town Lot B1 and portion of Perth Town Lot B9 together being Lot 24 the subject of Diagram 39055 and being the whole of the land comprised in Certificate of Title Volume 377 Folio 119A;
- (e) Portion of each of Perth Town Lots B2, B9 and B14 and being Lot 21 the subject of Diagram 39051 and being the whole of the land comprised in Certificate of Title Volume 377 Folio 120A.

*[Schedule inserted by No. 55 of 1973 s. 4.]*

### Notes

- <sup>1</sup> This is a compilation of the *Anglican Church of Australia (Diocesan Trustees) Act 1888* and includes the amendments made by the other written laws referred to in the following table<sup>1a, 11</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
Untitled <sup>8</sup>	52 Vict. No. 2 (1888)	21 Nov 1888	21 Nov 1888
<i>Church of England Diocesan Trustees and Lands Act 1918 s. 7</i> <sup>9</sup>	34 of 1918	24 Dec 1918	24 Dec 1918
<i>Church of England in Australia Constitution Act 1960</i> <sup>10</sup>	4 of 1960	6 Oct 1960	1 Jan 1962 (see s. 2 and <i>Gazette</i> 24 Nov 1961 p. 3223)
<i>Statute Law Revision (Short Titles) Act 1966 s. 2</i>	81 of 1966	12 Dec 1966	12 Dec 1966
<i>Church of England (Diocesan Trustees) Act Amendment Act 1969</i>	66 of 1969	14 Oct 1969	14 Oct 1969
<i>Church of England (Diocesan Trustees) Act Amendment Act 1973</i>	55 of 1973	19 Nov 1973	19 Nov 1973
<i>Church of England (Diocesan Trustees) Act Amendment Act 1975</i>	101 of 1975	1 Dec 1975	1 Dec 1975
<i>Anglican Church of Australia Act 1976 s. 7</i>	121 of 1976	1 Dec 1976	24 Aug 1981 (see s. 2(2) and <i>Gazette</i> 30 Jan 1981 p. 441)
<b>Reprint of the <i>Anglican Church of Australia (Diocesan Trustees) Act 1888</i> as at 8 Mar 1989</b> (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<b>Reprint of the <i>Anglican Church of Australia (Diocesan Trustees) Act 1888</i> as at 3 May 2002</b> (includes amendments listed above)			



Short title	Number and year	Assent	Commencement
<i>Taxation Administration (Consequential Provisions) Act 2002</i> s. 8 <sup>12</sup>	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Duties Legislation Amendment Act 2008</i> s. 52	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

~~<sup>14</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 204 <sup>15</sup>	25 of 2012	3 Sep 2012	<del>To be proclaimed</del> <a href="#">18 Nov 2013</a> (see s. 2(b)) and <a href="#">Gazette 14 Nov 2013 p. 5028</a>

- <sup>2</sup> Under No. 4 of 1960 s. 5 a reference to “the Church of England in Western Australia” is to be construed as a reference to the Church of England in Australia so far as it is in the State. The name of the “Church of England in Australia” was changed to the “Anglican Church of Australia” by No. 121 of 1976 s. 7. This reference to the original name has not been changed due to its context.
- <sup>3</sup> Formerly referred to “The Diocesan Trustees of the Church of England in Western Australia” the name of which was changed to “The Perth Diocesan Trustees” by No. 34 of 1918 s. 11. Reference changed under the *Reprints Act 1984* s. 7(3)(h).
- <sup>4</sup> Formerly referred to the “branch of the Church of England in Western Australia”. Under No. 4 of 1960 s. 5, that reference is to be read and construed as if it were a reference to the “Church of England in Australia so far as it is in the State”. Under No. 121 of 1976 s. 4 a reference to the “Church of England in Australia” is to be construed as a reference to the “Anglican Church of Australia”.
- <sup>5</sup> Formerly *The Perpetual Executors, Trustees and Agency Company (W.A.) Limited Act 1922* the short title of which was changed to *The Perpetual Trustees W.A. Ltd., Act 1922* by *The Perpetual Executors, Trustees, and Agency Company (W.A.)*

*Limited, Act Amendment Act 1979 s. 1(3). The reference was changed under the Reprints Act 1984 s. 7(3)(gb). The 1922 Act was repealed by the Trustee Companies Act 1987.*

<sup>6</sup> Formerly *The West Australian Trustee Executor and Agency Company Limited Act 1893* the short title of which was changed to the *West Australian Trustees Limited Act 1893* by *The West Australian Trustee Executor and Agency Company Limited, Act Amendment Act 1979 s. 1(4)*. The reference was changed under the *Reprints Act 1984 s. 7(3)(gb)*. The 1893 Act was repealed by the *Trustee Companies Act 1987*.

<sup>7</sup> Footnote no longer applicable.

<sup>8</sup> The Act was given the short title *Church of England (Diocesan Trustees) Act 1888* by No. 81 of 1966 s. 2. That short title was changed to the *Anglican Church of Australia (Diocesan Trustees) Act 1888* by No. 121 of 1976 s. 7.

<sup>9</sup> Now cited as the *Anglican Church of Australia Diocesan Trustees and Lands Act 1918*. Short title changed by No. 121 of 1976 s. 7.

<sup>10</sup> Now cited as the *Anglican Church of Australia Constitution Act 1960*. Short title changed by No. 121 of 1976 s. 7.

<sup>11</sup> Other relevant Acts are:

*Hale School Act 1876*

*Perth Anglican Church of Australia Collegiate School Act 1885*

*Anglican Church of Australia Lands Vesting Act 1892*

*Anglican Church of Australia School Lands Act 1896*

*Anglican Church of Australia Lands Act 1914*

*Anglican Church of Australia Diocesan Trustees and Lands Act 1918*

*Anglican Church of Australia (Diocese of North West Australia) Act 1961*

*Anglican Church of Australia (Swanleigh land and endowments) Act 1979*

<sup>12</sup> The *Taxation Administration (Consequential Provisions) Act 2002 s. 3 and 4 and Pt. 4* read as follows:

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**3. Relationship with other Acts**

The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

**4. Meaning of terms used in this Act**

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

## Part 4 — Transitional provisions

### Division 1 — Interpretation

#### 33. Definitions

In this Part —

**commencement day** means the day on which the *Taxation Administration Act 2003* comes into operation;

**old Act** means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

**old Stamp Act** means the *Stamp Act 1921* as in force immediately before the commencement day;

**substantive provisions**, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

### Division 2 — General transitional provisions

#### 34. General transitional arrangements

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
  - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
  - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
  - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.
- (3) Subject to subsections (4) and (5) —

- (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
- (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
- (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,

as if the substantive provisions of the relevant old Act —

- (d) had not been repealed;
  - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the **action**) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
  - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
  - (c) any penalty may be imposed and enforced; and
  - (d) any decision, order or determination made in the action has effect, and may be enforced,

as if this Act and the taxation Acts had not commenced.

- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.
- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.
- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

**35. Commissioner not to increase tax liability**

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

**36. Delegations**

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

**Division 3 — Debits tax**

**37. Certificates of exemption from tax (*Debits Tax Assessment Act 1990*, s. 11)**

- (1) A certificate issued under section 11 of the *Debits Tax Assessment Act 1990* and in force immediately before the commencement day continues in force on and after that day as a certificate issued under section 10 of the *Debits Tax Assessment Act 2002*.
- (2) Where section 13(1) of the *Debits Tax Assessment Act 2002* applies in relation to a certificate issued under section 11 of the *Debits Tax Assessment Act 1990* the Commissioner cannot make a reassessment of the amount of debits tax payable on a debit for the purpose of giving effect to that section more than 3 years after —
  - (a) if the financial institution has recovered the amount of the debits tax paid on the debit from the customer — the date on which that amount was recovered; or
  - (b) otherwise — the date on which the debits tax on the debits was paid.

**Division 4 — Land tax**

**38. Exemptions for certain home unit owners (*Land Tax Assessment Act 1976*, s. 19)**

If the amount of land tax payable on land for the financial year commencing on 1 July 2001 was assessed under section 19 of the *Land Tax Assessment Act 1976*, then on and after the commencement day section 16 of the *Land Tax Assessment Act 2002* applies in relation to that land as if that assessment had been made under section 16.

39. **Inner city residential property rebate (*Land Tax Assessment Act 1976*, s. 23AB)**  
A notice given by the Commissioner under section 23AB(7) of the *Land Tax Assessment Act 1976* and in force immediately before the commencement day continues in force on and after that day as a notice under section 28(4) of the *Land Tax Assessment Act 2002*.
40. **Land tax relief Acts**  
Despite —
- (a) the repeal of the *Land Tax Assessment Act 1976* and *Land Tax Act 1976*; and
  - (b) the amendment of section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*,
- on and after the commencement day the *Land Tax Relief Act 1991* and *Land Tax Relief Act 1992* apply as if the substantive provisions of the Acts mentioned in paragraphs (a) and (b) —
- (c) had not been repealed;
  - (d) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (e) had been amended to make any modifications necessary for this section to have effect.

**Division 5 — Pay-roll tax**

41. **Treatment of certain contributions (*Pay-roll Tax Assessment Act 1971*, Sch. 2 cl. 5)**  
Despite the repeal of the *Pay-roll Tax Assessment Act 1971*, Schedule 2 clause 5 of that Act continues to apply on and after the commencement day in relation to contributions wholly or partly in respect of services performed or rendered before 1 July 1997 as if that Act had not been repealed.
42. **Reassessments and refunds (*Pay-roll Tax Assessment Act 1971*, s. 19)**  
Despite sections 16(3), 20(3) and 22(4) of the *Pay-roll Tax Assessment Act 2002* and section 16(1)(a) of the *Taxation Administration Act 2003*, the Commissioner is not required to make a reassessment of the amount of pay-roll tax payable by an employer in respect of wages paid or payable before the commencement day unless an application for a reassessment is made within 2 years after the tax was paid.

**Division 6 — Stamp duty**

- 43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)**
- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
  - (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for 3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
  - (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.
- 44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)**
- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
  - (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.
- 45. First home owners — reassessment (*Stamp Act 1921*, s. 75AG)**
- Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.
- 46. Reassessment of duty on grant or transfer of vehicle licences (*Stamp Act 1921*, s. 76C(18) and (19), 76CA(3a) and 76CB(9))**
- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.

- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
- (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
  - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence fee would have been payable under the *Road Traffic Act 1974*,
- cannot be made more than 15 months after the licence was granted or transferred.
- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been, but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

**47. Alternative to stamping individual insurance policies  
(Stamp Act 1921, s. 95A)**

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.



- 48. Workers' compensation insurance (*Stamp Act 1921*, s. 97 and item 16 of the Second Schedule)**
- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
  - (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —
    - (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
    - (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.
- 49. Payment of duty by returns (*Stamp Act 1921*, s. 112V)**
- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.
  - (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

<sup>13</sup> ~~On the date as at which this compilation was prepared, the *Water Services Legislation Amendment and Repeal Act 2012* s. 204 had not come into operation. It reads as follows:~~

~~**204. Anglican Church of Australia (Diocesan Trustees) Act 1888 amended**~~

- ~~(1) This section amends the *Anglican Church of Australia (Diocesan Trustees) Act 1888*.~~
- ~~(2) In section 5A(6) delete “or the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*,” and insert:~~

~~\_\_\_\_\_ is not subject to statutory water service charges under the *Water Services Act 2012* unless the land is connected to water service works as defined in section 3(1) of that Act,~~