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WESTERN AUSTRALIA

ANGLICAN CHURCH OF AUSTRALIA (DIOCESAN TRUSTEES) ACT 1888

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WESTERN AUSTRALIA

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 Anglican Church of Australia, 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. 56 of 1973 s. 2; No. 121 of 1976 s. 7.]

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 Anglican Church of 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of having Statute 38 Victoria, No. 18, incorporating the said Standing Committee as Trustees of the said Church, repealed; And that the said Standing Committee should cease to be Trustees of the said Church, and that another body of Trustees be incorporated in their place: Be it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:—

[Preamble amended by No. 121 of 1976 s. 7.]

Repeal

1. [*Section 1 omitted under Reprints Act 1984 s. 7(4)(f)*]

Incorporation of new trustees

2. 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 Diocesan Trustees of the Anglican Church of Australia;" 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 authorized by Statutes of Synod as aforesaid;—but nevertheless only for the purposes of the branch of the Anglican Church of Australia, 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 ss. 7 and 11. No. 121 of 1976 s. 7.*]

**Church lands vested in
Standing Committee transferred
to Diocesan Trustees**

3. All lands or other property now vested in the said Standing Committee, shall be and the same are hereby vested in the Diocesan Trustees of the Anglican Church of Australia 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. 121 of 1976 s. 7.]

**Variation of trusts on land in
Cathedral Square**

3A. (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 section¹, and any such trust is, to the necessary extent, hereby varied accordingly.

(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.]

The Cathedral Square Foundation

3B. (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.

(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 section¹.

(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.]

Fees and commissions

3BA. (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 section¹; and
- (b) in respect of the income of any such trust created before or after the coming into operation of this section¹,

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 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*^{2,3} and the *West Australian Trustees Limited Act 1893*^{4,3}.

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

Interpretation of sections 3A, 3B and 3BA

3C. 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.]

Liabilities and benefits to Diocesan Trustees

4. The Diocesan Trustees of the Anglican Church in Western Australia 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. 121 of 1976 s. 7.]

Standing Committee

5. The words “Standing Committee,” in 49th Victoria, No. 19, shall be read as and taken to mean the Diocesan Trustees of the Anglican Church of Australia, 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. 121 of 1976 s. 7.]

Incorporation of missions and institutions of the Church and vesting of property therein

5A. (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 *Stamp Act 1921*; 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 property or rateable land under the provisions of the *Local Government Act 1960*, or the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*, and is exempt from assessment for taxation under the *Land Tax Assessment Act 1907*.

(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 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.]

Short title

6. This Act may be cited as the *Anglican Church of Australia (Diocesan Trustees) Act 1888*.

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

SCHEDULE

Description of Cathedral Square

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

¹ This reprint is a compilation as at 8 March 1989 of the *Anglican Church of Australia (Diocesan Trustees) Act 1888* and includes all amendments effected by other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
	52 Vict. No. 2 1888	21 November 1888	21 November 1888	Short title subsequently given (see footnote to section 6)
<i>Church of England Diocesan Trustees and Lands Act 1918</i> , section 7	34 of 1918	24 December 1918	24 December 1918	
<i>Statute Law Revision (Short Titles) Act 1966</i>	81 of 1966	12 December 1966	12 December 1966	
<i>Church of England (Diocesan Trustees) Act Amendment Act 1969</i>	66 of 1969	14 October 1969	14 October 1969	
<i>Church of England (Diocesan Trustees) Act Amendment Act 1973</i>	55 of 1973	19 November 1973	19 November 1973	
<i>Church of England (Diocesan Trustees) Act Amendment Act 1975</i>	101 of 1975	1 December 1975	1 December 1975	
<i>Anglican Church of Australia Act 1976</i> , section 7	121 of 1976	1 December 1976	Sections 1 and 2: 1 December 1976 (see section 2(1)); balance 24 August 1981 (see <i>Gazette</i> 30 January 1981 p. 441)	

N.B. The *Anglican Church of Australia (Diocesan Trustees) Act 1888* is effected by the *Anglican Church of Australia Constitution Act 1960*.

² Title changed pursuant to section 7(3)(h) of the *Reprints Act 1984* and section 1(3) of *The Perpetual Executors, Trustees, and Agency Company (W.A.) Limited, Act Amendment Act 1979*.

³ Repealed by the *Trustee Companies Act 1987*.

⁴ Title changed pursuant to section 7(3)(h) of the *Reprints Act 1984* and section 1(4) of *The West Australian Trustee Executor and Agency Company Limited, Act Amendment Act 1979*.