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Act 1984* as at 18 September 1989.

WESTERN AUSTRALIA

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# ANGLICAN CHURCH OF AUSTRALIA SCHOOL LANDS ACT 1896

**AN ACT to empower The Perth Diocesan Trustees<sup>2</sup> to sell, mortgage, or lease Perth Allotments H 7 and H 1, and to apply the proceeds or rents and profits thereof subject to and in accordance with certain trusts.**

*[Long title amended by No. 34 of 1918 s. 11; No. 121 of 1976 ss. 4 (a) and 7.]*

## **Preamble**

**W**HEREAS under and by virtue of an Act passed in the 49th year of the reign of Her present Majesty, numbered 19, intituled An Act to dissolve the Corporation of "The Governors of the Perth Church of England Collegiate School," and for other purposes, all those lands and hereditaments known in the books of the Survey Office as Perth Allotments H 7 and H 1, together with the buildings thereon, and all rights, easements, and appurtenances thereto belonging, were vested in and declared to be thenceforth held and applied by "The Standing Committee of the Synod of the West Australian Branch of the Church of England<sup>3</sup>," for such educational purposes as such Committee should consider to be most nearly in accordance with the objects for which the said School was originally established.

Lands vested in Standing  
Committee on certain  
trusts

Limited power to borrow

And whereas, by the said Act, the said Standing Committee were, amongst other things, empowered to raise by mortgage of the said lands, tenements, and hereditaments, sufficient funds, not exceeding £1 400<sup>4</sup>, for the re-payment to the Right Reverend Henry Hutton Parry, Bishop of Perth (since deceased), of certain moneys expended by him in building upon, repairing and improving the said lands, tenements, and hereditaments, with the interest due on such moneys; and the said Committee was also empowered to lease the said lands, tenements, and hereditaments, or any part thereof, for any term not exceeding 7 years, and to appropriate the whole of the rents, issues, and profits thereof towards paying the interest due upon any moneys raised upon mortgage, and towards paying off and reducing the moneys so raised until the said moneys and interest should be fully paid.

and to lease for certain purposes

52 Vict.. 2

And whereas under and by virtue of an Act passed in the 52nd year of the reign of Her present Majesty, numbered 2, intituled an Act to repeal the Act 38 Victoria, No. 18, and to incorporate a new body of Trustees of the Church of England<sup>3</sup> in Western Australia, all the lands or other property then vested in the said Standing Committee (which included the said Perth allotments H 7 and H 1) were vested in the Diocesan Trustees of the Church of England<sup>3</sup> in Western Australia for the time being for the same estate as such lands and property were then held by the said Standing Committee, but upon and subject to all trusts, covenants, contracts, and liabilities affecting the same; and by the said lastmentioned Act it was enacted that the words "Standing Committee" in the 49th Victoria, No. 19, in part hereinbefore recited, should be read and taken to mean the Diocesan Trustees of the Church of England<sup>3</sup> in Western Australia, and that all rights, powers, privileges, and discretions by the said Act conferred, and all duties thereby imposed upon the said Standing Committee should be enjoyed, exercised, and performed by the said Diocesan Trustees.

Lands vested in Diocesan Trustees

Diocesan Trustees substituted for Standing Committee in 49 Vict.. 19

Mortgage by standing committee

And whereas the said Standing Committee raised the sum of £1 400<sup>4</sup>, by mortgage of the said Perth allotments H 7 and H 1, and therewith paid the said Right Reverend Henry Hutton Parry all moneys due to him as aforesaid, and have since repaid the said sum of £1 400<sup>4</sup> to the mortgagee, out of moneys belonging to them on another account, and have obtained a discharge of such mortgage and a reconveyance of the said property.

Repayment of mortgage and discharge

Further sum of £360<sup>4</sup> expended by Bishop Parry

And whereas the said Right Reverend Henry Hutton Parry expended, over and above the sum of £1 400<sup>4</sup> hereinbefore mentioned, the further sum of £360<sup>4</sup> in building upon, repairing, and improving the said lands and hereditaments, which last mentioned sum belonged to and was part of a

Fund in the hands of the said Henry Hutton Parry, called The Native and Half-caste Mission Fund, and the said sum of £360<sup>4</sup> has never been repaid to the said Fund:

And whereas the said Standing Committee and the said Diocesan Trustees have applied the rents, issues, and profits of the said lands and hereditaments towards keeping down the interest on the said sums of £1 400<sup>4</sup> and £360<sup>4</sup>, and in maintaining and repairing the buildings on the said lands, and all interest on the said sums has been duly paid:

Rents heretofore applied to paying interest and repairs

And whereas the said sums of £1 400<sup>4</sup>, and £360<sup>4</sup>, and the interest to accrue due thereon respectively, constitute a charge upon the said lands and hereditaments:

Lands now subject to charge of £1 760<sup>4</sup> and interest

And whereas the said Diocesan Trustees are desirous of obtaining power to sell, and extended powers of mortgaging and leasing the said allotments as to them may seem most expedient for the purpose of raising funds to liquidate the said charge on the same and towards the establishment of a Grammar School for Boys, and it is expedient to confer such powers: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows—

### Short title

1. This Act may be cited, for all purposes, as the *Anglican Church of Australia School Lands Act 1896*.

[Section 1 amended by No. 121 of 1976 ss. 4 (a) and 7.]

### Power to Trustee to sell

2. The Perth Diocesan Trustees<sup>2</sup> may at any time hereafter sell the said Perth allotments H 7 and H 1, or any part or parts thereof, with the appurtenances or make a partition thereof amongst the beneficiaries entitled under section 5 (1) including a partition in consideration of money paid for equality of partition, and transfer or otherwise assure the same to a purchaser or the persons interested in the partition freed and absolutely discharged from the trusts to which the said lands and hereditaments are now held by them, and no purchaser shall be concerned to see to the application of his purchase money or be affected by any notice of the non-application or misapplication thereof.

[Section 2 amended by No. 34 of 1918 s. 11; No. 41 of 1957 s. 3; No. 121 of 1976 ss. 4 (a) and 7.]

**Power to mortgage extended**

3. The power to mortgage the said lands and hereditaments contained in the Fourth Section of the said Act, 49 Victoria, No. 19, may be exercised by the said Diocesan Trustees in respect of any sum of money, notwithstanding the limit of £1 400<sup>4</sup> thereby imposed.

[Section 3 amended by No. 113 of 1965 s. 8 (1).]

**Power to lease extended**

4. The power to lease the said lands and hereditaments or any part thereof contained in the Sixth Section of the said lastmentioned Act may be exercised by the said Diocesan Trustees for any term of years, notwithstanding the limit of 7 years thereby imposed.

**Application of moneys**

5. (1) The proceeds

of the sale or resumption and any other capital proceeds of the said lands and hereditaments or of any part thereof;

and all moneys

raised on mortgage thereof or of any part thereof;

and all rents, issues and profits

received therefrom by the said Diocesan Trustees;

and the interest

of any such proceeds, moneys, rents, issues and profits;

and any present or future accumulations

of any such proceeds, moneys, rents, issues, profits and interest;

after payment

of all rates and taxes payable in respect of the said lands; and

of all costs and expenses of and incidental to the maintenance and repair and insurance of the buildings on the said lands; and of other like outgoings; and

of interest payable under any mortgage of the said lands, whether executed before or after the coming into operation of the *Anglican Church of Australia School Lands Act Amendment Act 1957*<sup>1</sup>; and

of such amount of the principal of any such mortgage as the said Diocesan Trustees think fit, and are hereby authorized, to pay in the reduction thereof; and

of the cost of building upon or otherwise improving the said lands; and

of the costs of any sale, partitioning, mortgaging, or leasing, thereof;

shall,

subject to the right hereby conferred on the said Diocesan Trustees to retain such part or parts of such proceeds, moneys, rents, issues, profits and interest for any of the aforesaid purposes as the said Diocesan Trustees may from time to time consider necessary,

be applied and distributed by the said Diocesan Trustees—

- (a) as to nine-sixteenths—in payment in perpetuity to the body corporate registered under the *Associations Incorporation Act 1987*<sup>5</sup>, as Guildford Grammar School (Inc)<sup>6</sup> or other body whether corporate or unincorporate for the time being managing such school;
- (b) as to five-sixteenths—in payment in perpetuity to the body whether incorporated or unincorporated for the time being managing the School now known as Christ Church Grammar School; and
- (c) as to the remaining two-sixteenths—in payment for 25 years from the coming into operation of the *Anglican Church of Australia School Lands Act Amendment Act 1957*<sup>1</sup>, of one-half to each of those bodies as hereinbefore provided and thereafter for such purposes of education of boys in the Diocese of Perth, including if the said Diocesan Trustees think fit for the benefit of either or both of the Schools referred to in subsection (1) (a) and (b), as the said Diocesan Trustees from time to time determine and are hereby authorized to determine.

(2) On the body corporate known as Guildford Grammar School (Inc)<sup>6</sup> executing in favour of the said Diocesan Trustees a deed of covenant binding the body to pay to the said Diocesan Trustees in such manner and at such times as may be determined by the said Diocesan Trustees the principal sum of \$85 500 and interest thereon at the rate of \$8 per centum per annum, the said Diocesan Trustees shall execute and deliver to the body at the cost of the body such instruments as are necessary to vest in the body

- (a) as proprietor in fee simple, the land described in the First Schedule, free of encumbrances and freed and discharged from the trusts upon which the land was held by the said Diocesan Trustees immediately prior to the coming into operation of the *Anglican Church of Australia School Lands Act Amendment Act 1957*<sup>1</sup>; and
- (b) as absolute owners, the personal property described in the Second Schedule, free of all liens, charges and trusts.

(3) The amount of that principal sum and interest is hereby secured as a first charge on the capital of the nine-sixteenths interest mentioned in subsection (1) (a).

(4) If and when a deed of covenant referred to in subsection (2) is executed, the moneys receivable by the said Diocesan Trustees under the deed of covenant shall not be subject to the trusts of this Act.

(5) In order to resolve any doubts which, but for the enactment of this subsection may exist or arise as to the proper application thereof by the said Diocesan Trustees, it is hereby expressly enacted that all applications made or caused to be made by the said Diocesan Trustees prior to the coming into operation of the *Anglican Church of Australia School Lands Act Amendment Act 1957*<sup>1</sup>, of capital or income moneys which have come to the hands of the said Diocesan Trustees in exercise or purported exercise of their powers under the Act 49 Victoriae No. 19 or under this Act, whether authorized or not by those Acts, shall be deemed to have been authorized by this Act and the said Diocesan Trustees shall be deemed not to have committed any breach of trust in respect of the application of those moneys.

(6) The said Diocesan Trustees may at any time after the coming into operation of the *Anglican Church of Australia School Lands Act Amendment Act 1957*<sup>1</sup>, vest by transfer or other assurance, upon such terms and conditions as they may in their discretion see fit, in any body incorporated after the coming into operation of that Act<sup>1</sup> to take over the management and control of the School known, immediately prior to the coming into operation of that Act<sup>1</sup>, as Christ Church Grammar School, the whole or any part or parts of the lands and other assets for the time being used for the purposes of that School, freed and discharged from the trusts upon which those lands and assets may then be held by them.

(7) The said Diocesan Trustees may apply any proceeds, moneys, rents, issues, profits and interest mentioned in subsection (1) in building upon and otherwise improving and developing the whole or any part of the land mentioned in subsection (1); and may invest any such proceeds, moneys, rents, issues, profits and interest in any investments authorized by law for the investment of trust funds and may apply the interest and income of such investments and the capital of such investments in the manner mentioned in subsection (1).

[Section 5 inserted by No. 41 of 1957 s. 4; amended by No. 113 of 1965 s. 8 (1); No. 121 of 1976 ss. 4 (a) and 7.]

## **Repeal**

6. Sections 5 and 7 of the Act 49th Victoria, No. 19, are hereby repealed.

FIRST SCHEDULE

The land referred to in section 5 (2) (a) comprises the pieces of land the subject of the following respective Certificates of Title—

Certificate of Title,					
Volume	Folio	Volume	Folio	Volume	Folio
584	96	674	69	680	138
514	59	675	85	555	170
514	58	692	11	966	171
402	11	621	155	1009	628
569	50	709	159	1100	4
675	153	711	91	1075	366
556	77	720	54	1060	961
550	50	841	5	696	107
661	131	852	29		

[First Schedule inserted by No. 41 of 1957 s. 5.]

SECOND SCHEDULE

The personal property referred to in section 5 (2) (b) comprises all of the furniture, furnishings, plant, and equipment, in, upon, or about, the premises of the Guildford Grammar School (Inc)<sup>6</sup> at the coming into operation of the *Anglican Church of Australia School Lands Act Amendment Act 1957*<sup>1</sup>, and used or intended to be used by that School.

[Second Schedule inserted by No. 41 of 1957 s. 5; amended by No. 121 of 1976 ss. 4 (a) and 7.]

NOTES

<sup>1</sup> This reprint is a compilation as at 18 September 1989 of the *Anglican Church of Australia School Lands Act 1896* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	No. and Year	Assent	Commencement	Miscellaneous
<i>Church of England School Lands Act 1896</i>	Private Act 1896	27 October 1896	27 October 1896	Short title subsequently amended (see note to section 1)
<i>Church of England Diocesan Trustees and Lands Act 1918</i>	34 of 1918	24 December 1918	24 December 1918	
<i>Church of England School Lands Act Amendment Act 1957</i>	41 of 1957	22 November 1957	28 February 1958 (see <i>Gazette</i> 28 February 1958 p. 389)	Short title subsequently amended (see sections 4 (a) and 7 of Act No. 121 of 1976)

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance: 21 December 1965	
<i>Anglican Church of Australia Act 1976</i> , sections 4 (a) and 7	121 of 1976	1 December 1976	1 December 1976 (see section 2)	

N.B. *The Anglican Church of Australia School Lands Act 1896* is affected by the *Anglican Church of Australia Constitution Act 1960*

<sup>2</sup> Title altered pursuant to section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 11 of Act No. 34 of 1918.

<sup>3</sup> This reference to the Church of England has not been changed under sections 4 and 7 of Act No. 121 of 1976 on the ground that the context requires that such change not be made.

<sup>4</sup> This reference to old currency has not been changed under sections 5 and 8 of Act No. 113 of 1965 on the ground that it would be inappropriate in the context to do so.

<sup>5</sup> Formerly referred to the *Associations Incorporation Act 1895*. Reference substituted under section 7 (3) (g) of the *Reprints Act 1984*.

<sup>6</sup> Title changed pursuant to section 7 (3) (h) of the *Reprints Act 1984*.