

Western Australia

**Anglican Church of Australia School Lands Act
1896**

As at 03 May 2002

Version 02-a0-08

Extract from www.slp.wa.gov.au, see that website for further information

Western Australia

Anglican Church of Australia School Lands Act 1896

CONTENTS

1.	Short title	3
2.	Trustees may sell lands	3
3.	Power to mortgage extended	4
4.	Power to lease extended	4
5.	Application of funds from lands	4
	First Schedule	9
	Second Schedule	10
	Notes	
	Compilation table	11

Anglican Church of Australia School Lands Act 1896

An Act to empower The Perth Diocesan Trustees² 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.]

Preamble

Whereas 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 purposes³, 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”, 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 established⁴.

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 5, 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 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 in Western Australia 6, 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 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 3, should be read and taken to mean the Diocesan Trustees of the Church of England 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.

And whereas the said Standing Committee raised the sum of £1 400, 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 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.

And whereas the said Right Reverend Henry Hutton Parry expended, over and above the sum of £1 400 hereinbefore mentioned, the further sum of £360 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 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 and £360, and in maintaining and repairing the buildings on the said lands, and all interest on the said sums has been duly paid:

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

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 —

1. Short title

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

[Section 1 amended by No. 121 of 1976 s. 7.]

2. Trustees may sell lands

The Perth Diocesan Trustees² 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

s. 3

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.]

3. Power to mortgage extended

The power to mortgage the said lands and hereditaments contained in the Fourth Section of the said Act, 49 Victoria, No. 19³, may be exercised by the said Diocesan Trustees in respect of any sum of money, notwithstanding the limit of £1 400 thereby imposed.

4. Power to lease extended

The power to lease the said lands and hereditaments or any part thereof contained in the Sixth Section of the said lastmentioned Act³ may be exercised by the said Diocesan Trustees for any term of years, notwithstanding the limit of 7 years thereby imposed.

5. Application of funds from lands

(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 *Church of England School Lands Act Amendment Act 1957*¹; and

of such amount of the principal of any such mortgage as the said Diocesan Trustees think fit, and are hereby authorised, 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*⁸, as Guildford Church of England Grammar School or other body whether corporate or unincorporate for the time being managing such school;

s. 5

- (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 *Church of England School Lands Act Amendment Act 1957*¹, of one-half to each of those bodies as hereinbefore provided and thereafter for such purposes of education of children 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 Church of England Grammar School 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 £42 750 and interest thereon at the rate of £4 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 *Church of England School Lands Act Amendment Act 1957*¹; 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 *Church of England School Lands Act Amendment Act 1957*¹, 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. 19³ or under this Act, whether authorised or not by those Acts, shall be deemed to have been authorised 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 *Church of England School Lands Act Amendment Act 1957*¹, 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 to take over the management and control of the School known, immediately prior to the coming into operation of that Act, 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 as trust funds may be invested under Part III of the *Trustees Act 1962* and may apply the interest and income of

s. 5

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. 13 of 1991 s. 3; No. 1 of 1997 s. 18.]

[6. Omitted under the Reprints Act 1984 s. 7(4)(f).]

First Schedule

[S. 5(2)(a)]

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

<i>Certificate of Title</i>					
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

Second Schedule

[S. 5(2)(b)]

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 Church of England Grammar School at the coming into operation of the *Church of England School Lands Act Amendment Act 1957*¹, and used or intended to be used by that School.

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

Notes

- ¹ This is a compilation of the *Anglican Church of Australia School Lands Act 1896* and includes the amendments made by the other written laws referred to in the following table ¹⁰. The table also contains information about any previous reprints.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Church of England School Lands Act 1896</i> ⁷	Private Act 1896	27 Oct 1896	27 Oct 1896
<i>Church of England Diocesan Trustees and Lands Act 1918 s. 11</i> ⁹	34 of 1918	24 Dec 1918	24 Dec 1918
<i>Church of England School Lands Act Amendment Act 1957</i>	41 of 1957	22 Nov 1957	28 Feb 1958 (see s. 2 and <i>Gazette</i> 28 Feb 1958 p. 389)
<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)
Reprint of the <i>Anglican Church of Australia School Lands Act 1896</i> as at 18 Sep 1989 (includes amendments listed above)			
<i>Anglican Church of Australia School Lands Amendment Act 1991</i>	13 of 1991	21 Jun 1991	21 Jun 1991 (see s. 2)
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
Reprint of the <i>Anglican Church of Australia School Lands Act 1896</i> as at 3 May 2002 (includes amendments listed above)			

- ² 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).
- ³ 49 Vict. No. 19 (1885). Now cited as *Perth Anglican Church of Australia Collegiate School Act 1885*.

⁴ The objects are set out in the preamble to 29 Vict. No. 12 (1865) which relevantly reads:

“

object of teaching the Holy Scriptures in the Original Tongues, the Principles of the Christian Religion, Classics, and Mathematics, together with any Language, Art, Branch of Science, or of Literature that shall from time to time be deemed by the Authorities of the said School to constitute a sound and liberal education;

”.

⁵ References in this reprint to old currency are of historical interest only and have not been amended under the *Decimal Currency Act 1965*.

⁶ 52 Vict. No. 2 (1888). Now cited as the *Anglican Church of Australia (Diocesan Trustees) Act 1888*.

⁷ Now cited as the *Anglican Church of Australia School Lands Act 1896*. The short title was changed by the *Anglican Church of Australia Act 1976* s. 7.

⁸ Formerly referred to the *Associations Incorporation Act 1895* which was repealed by the *Associations Incorporation Act 1987* s. 47. Reference changed under the *Reprints Act 1984* s. 7(3)(g).

⁹ Now cited as the *Anglican Church of Australia Diocesan Trustees and Lands Act 1918*. Short title changed by No. 121 of 1976 s. 11.

¹⁰ Other relevant Acts are:

Hale School Act 1876

Perth Anglican Church of Australia Collegiate School Act 1885

Anglican Church of Australia (Diocesan Trustees) Act 1888

Anglican Church of Australia Lands Vesting Act 1892

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